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**RACIAL INJUSTICE AND PHILIPPE VAN PARIJS' DISTRIBUTIVE JUSTICE BASIS
FOR THE UNIVERSAL BASIC INCOME: INTRODUCING THE FILTERED
LEXIMINNING OF MODIFIED REAL FREEDOM THEORY OF DISTRIBUTIVE
JUSTICE**

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University of Sussex, December 2021

I hereby declare that this thesis has not been and will not be, submitted in whole or in part to another University for the award of any other degree.

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ABSTRACT

In this thesis, I argue that Van Parijs' theory of distributive justice, which grounds his basic income offer, is blind to racial inequality, and therefore to racial injustice. I revise his theory to make it insusceptible to charges of blindness to racial injustice as well as suitable for grounding a basic income that can help eliminate racial inequality. According to Van Parijs' theory, people's freedom should not only incorporate the absence of hindrance in doing what they might want to do. It should also include their real access to the opportunities to do what people might want to do, hence he defines freedom as critically including a principle of the leximinning of real freedom, or more precisely, of opportunities. On the principle of leximinning opportunities, one society is more just than an alternative if the least well-off people in that society are better off in terms of opportunities than the least well-off people in the alternative, and if both groups are equally well off the groups above them are compared, and so on until a better off comparable group is found. I argue that on this account, a leximin chooser would be unable to consider a racially equal society as more just than a racially unequal society. That is, Van Parijs' theory is blind to racial injustice. To deal with this, I argue for racially sensitive versions of leximin and real freedom and suggest that the theory that emerges will ground a basic income offer that can help eliminate or at least reduce racial injustice.

TABLE OF CONTENTS

ACKNOWLEDGMENTS ... 1

PREFACE AND INTRODUCTION ... 3

CHAPTER ONE ... 15

1. Introduction ... 15
2. Some general remarks about the role of freedom in Van Parijs's theory ... 17
3. Security, Self-ownership and Opportunity ... 23
 - i) Security ... 23
 - ii) Self-ownership ... 25
 - iii) Opportunities ... 28
4. Leximinning opportunities ... 31
5. Real-freedom-for-all and basic income ... 34

CHAPTER TWO ... 38

1. Introduction ... 38
2. What makes a society institutionally racist? ... 41
3. Institutional racism and formal freedom ... 54
4. Institutional racism and Van Parijs's leximin principle ... 58

CHAPTER THREE ... 64

- 1 Introduction ... 64
- 2 Van Parijs's as a theory of relative justice ... 64
- 3 Efficiency-sensitivity and the leximin principle ... 71
- 4 Leximinning opportunities vs income ... 76

CHAPTER FOUR ... 83

1. Introduction ... 83
2. Retrieving Rawls for racial justice ... 86
3. Van Parijs's theory in the Original Position ... 95

- i) Leximin ... 100
- ii) Real freedom ... 103
- 4. Comparing similar societies ... 106

CONCLUSION ... 111

POSTSCRIPT ... 121

- 1. Introduction ... 121
- 2. The adaptability of neoliberal politics ... 123
- 3. The need for a basic income ... 131
- 4. Could basic income really give everyone a stake in society? ... 140
- 5. Conclusion ... 144

Reference List ... 145

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PREFACE AND INTRODUCTION

Growing up in Nigeria in the early 1990s, with the West (mainly the United States and Great Britain) as no more than some distant phenomenon to me at that point, two images of the West were formed in my young mind from the media coverage of it that I saw. Both images seemed to me, even that early on, to contradict each other. On the one hand, I perceived a strong belief in the idea that humans had inherent worth; that they had value and dignity in and of themselves, and that human life was the centerpiece for all moral thinking. To a significant extent taking human life was the worst crime or sin (before the law and before the Abrahamic God) one could commit. In like fashion, saving or maintaining a human life was a great virtue, hence philanthropists seemed so greatly respected in Western societies. As I came to learn later, not only was this idea already part of the philosophical infrastructure of Western culture since at least the enlightenment with John Locke and Immanuel Kant, it had also very much become part of mainstream political culture as well. The US Declaration of Independence, for instance, boldly proclaiming, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of Happiness.”

But on the other hand, there was a glorification of the market and capitalism, and to a good extent a justification of the gross inequalities that it produced. So unashamed was this belief in the market and in capitalism that Western countries, through the World Bank, seemed to think that it could save many African countries from their economic woes. In many ways, the lynchpin of this belief was the idea that the market rewards those

who make the most efficient use of resources; those who demonstrate the most ingenuity, and those who work the hardest, and that because, according to the prophets of this idea, regulations distorted the market they should be eschewed. So the inequality produced by unregulated or scantily regulated markets is justified on account of something like the following thought: if everyone had an equal chance to make it in the market, those who make it deserve their earnings, and so do those who do not make it. And of course, it is a truism for many exponents of capitalism that everyone has indeed had an equal chance to make it. As a child I could only process this idea as follows: capitalism believes it is right for some people to be exceedingly wealthy while some others die from lack of access to necessities.

I did not discover some of the deeper contradictions within each of these aspects of Western societies until much later. On the one hand, for much of the modern history of Western Europe and America and continues in new forms today, native American genocide, the Transatlantic slave trade, Jim Crow, colonialism, wars of aggression against black and brown peoples in the Middle East and South America, police murders of black and brown people, systemic injustices in almost every area of life from education and housing to jobs and sports, stood side-by-side with relative ease with an apparent belief that all human beings are equal and that they have inherent dignity. On the other hand, exploitation of labour, capitalist extraction of value, wage theft, financialisation, and rentierism stood alongside the belief that inequality is justified because the rich earned their wealth by the sweat of their brow and that everyone can become rich if they work hard enough and play by the rules. But before these contradictions became apparent to me (even more so since they became apparent to me) and although I could not care for

the second of these aspects of Western society, it seemed to me that it should be a central preoccupation of people who cared to maintain the importance of both ideas in Western culture to find ways to mitigate the very worse outcomes of the market, which undermined the inherent worth and value of human life. My reaction to the second of these aspects of Western societies (inequality) turned me into a socialist (in a Marxian sense) as I grew older, but the pragmatist in me never ceased wondering how we might set about making Western capitalist societies (with the gross inequalities they almost inevitably contain and reproduce) less deleterious to human life and dignity.

Soon after I started my Master's degree in philosophy at the University of Fort Hare, South Africa, I discovered *Real Freedom for All: What (If Anything) Can Justify Capitalism* (henceforth RFA) by the Belgian philosopher Philippe Van Parijs. In it, I discovered a very simple and brilliant idea that I thought, and continue to think, could do the job: give every resident money each month to enable them to have a reasonably respectable standard of life, whatever else they chose to do with their lives, without any attached work, training or income conditions. Or as Van Parijs put it, give everyone a universal basic income. The idea might have been new to me in 2015, but it was by no means a new idea at that point. Van Parijs had, after all, written the book I just discovered twenty years earlier in 1995 when I was only seven years old. Van Parijs's seminal book is the main subject of this PhD thesis. *Real Freedom for All* is, by far, the most complete and systematic development of a theory of distributive justice explicitly to ground the idea of a basic income in the political philosophy literature. While Van Parijs himself has, in his most recent book on basic income (*Basic Income: A Radical Proposal for a Free Society and a Sane Economy*, 2017) argued that other distributive justice theories, such

as those of John Rawls and Ronald Dworkin, can justify a basic income, neither of those thinkers saw their own theory as leading there. And one of them, Rawls, seemed actively opposed to his theory being read as leading to a basic income.

The universal basic income in some form or other has a long history. Over the last almost 500 years, versions of the idea have been proposed to more effectively exercise society's religious duty to be charitable (Johannes Ludovicus Vives made this proposal in a booklet titled *On the Assistance to the Poor* in 1526), or to reduce poverty and insecurity (Marquis de Condorcet, 1798 and Thomas Paine, 1796) or as an entitlement deriving from the rental value of society's land (Joseph Charlier, 1848). But despite this long history, it is an idea whose flames do not seem to be burning out. Quite the contrary. In the form ascribed to Van Parijs above, the idea continues to attract significant support on a range of grounds among economic, development and social thinkers today.

The idea has been defended in recent literature in a myriad of ways. It has been argued that a basic income would enhance the freedom of members of society (Raventos 2007); that it would enhance the market's functioning (Nell 2013); and that it would deal with some gender inequality (Pateman 2003, McKay 2005). In *Arguing for Basic Income: Ethical Foundations for a Radical Reform* (1992) Van Parijs assembles essays from many prominent thinkers that make the case for a basic income from the point of view of freedom, equality, efficiency and community.¹ The Van Parijsian argument that shall be the focus of this thesis is itself based on freedom.

¹ I should say that a distinction has often been made between arguments for basic income that, on one hand, derive from pragmatism, that is, the need to solve some social problem or the need achieve a desired social

To be sure, since the idea of a basic income has found support both on the political right and on the left, there is much debate even among proponents over how it would look in reality. There is much debate, for example, over how it could be funded, that is, whether any new taxes would need to be introduced or whether current taxes should be raised (Atkinson 1995; Monnier & Vercellone 2014; Špeciánová 2018). There is likewise the question of whether it should totally supplant other benefits, or rather supplement them (Painter, et al 2019; Matthews 2017). This thesis will steer clear of these kinds of economic and political questions for a simple reason: the argument for a basic income on grounds of distributive justice, or more specifically Van Parijs's theory of distributive justice, which this thesis makes its focus, precedes these more practical concerns. One cannot ask the question of how the basic income should be funded unless one has answered the question of whether it should exist. Likewise, the question of whether it should replace, say, disability benefits depends very much on how you ground the basic income in principle. And in some ways, how you justify its existence will have consequences for how far you are willing to go to fund it.

This brings us to Van Parijs's theory of distributive justice. There are two approaches to grounding a universal basic income relevant to distributive justice in RFA: (1) Van Parijs

outcome more efficiently (such as some we have highlighted above), and arguments, on the other hand, about what social justice requires, that is, principled arguments (Barry 1996, Van Parijs 1995). The arguments for basic income listed in the text span both approaches, although there is often a confusion between both approaches in some of those authors. I take the main distinction between these kinds of approaches to be disciplinary. Simply as a matter of competence, economists and social policy professionals are bound to take the former approach, while political philosophers the latter. This is not of course to suggest that one does not have implications for the other. As Cunliffe & Erreygers (2003:89) suggest, "The principled arguments must be addressed before the pragmatic arguments are brought into consideration." What you say about the principles will have an implication for what you say in making pragmatic arguments, in other words. In this thesis, I am interested in the principled approach exclusively.

argues that a combination of the rental value of society's natural endowments (land, natural resources, etc.), the value of all bequests and inheritances, and the value of what he calls "employment rents" belongs to all and so should be distributed equally to all. This justifies certain taxation, the yield of which is to be redistributed in the form of a basic income. This is the subject of chapter four of RFA. This is also the subject of a slim majority of the secondary English-language literature in philosophy, political theory and political science on Van Parijs's basic income proposal. (2) On a second approach, Van Parijs argues that the basic income is the necessary institutional outcome of his theory of distributive justice, which is couched in terms of people's "real freedom", where real freedom is defined to incorporate people having as many opportunities as possible to do what they might want to do. This is the subject of chapters one and two of RFA. This thesis is based solely on this latter approach.² I will engage the English-language secondary literature on this latter approach in footnotes (in the instances where some of the elements of it have been discussed in the literature) in order to get to the point in as straightforward a way as possible in the body of the thesis. This thesis ultimately offers a

² It has been suggested that one aspect of Van Parijs's basic income justification cannot be considered in isolation from the other (Williams 1999:86). I disagree for a simple reason: each of these approaches belongs in a different political philosophical debate from the other. It seems clear to me that the first approach follows a more traditionally (left) libertarian conception of justice, while the latter approach follows a more traditionally liberal egalitarian conception of justice. The general left libertarian approach to justice suggests that we own all of society's natural resources in common and that their value should be distributed equally to all (Fried 2004). That is clearly the framework of the first approach. The second approach follows more clearly the liberal egalitarian concern for identifying principles of justice that tell us which inequalities are justified. In a 2001 article, Van Parijs speaks of this second approach to arguing for basic income in RFA as "building upon" the work of thinkers like Rawls, Dworkin and Cohen (Van Parijs 2001:106).

revision of the Van Parijsian theory of distributive justice, which I argue repairs what I see as the blindness to racial injustice in the theory.³

This thesis is written by a supporter of a universal basic income. What I argue, in essence, is that the blindness to racial injustice present in the theory of justice Van Parijs uses to ground it leads to a basic income proposal that is likely to perpetuate racial injustice. And over and above demonstrating how Van Parijs's theory is susceptible to the charge that it is blind to racial injustice, I propose revisions to his theory aimed at proofing it against that charge. In the conclusion, I suggest ways that the changes I make to the theory could be said to affect what a basic income offer that ameliorates racial injustice should look like but systematic research in this last area will have to take place outside this thesis.

This thesis is laid out in the following way: in chapter one, I discuss Van Parijs's theory of distributive justice. I describe the components of Van Parijs's conception of real freedom, namely, security, self-ownership and leximin opportunity. Security is the idea that a free society incorporates a well-enforced regime of property rights. Self-ownership is the idea that each person owns themselves and cannot be forced to perform actions they do not want to. Combined these two components make up formal freedom on which freedom is merely the absence of hindrance from exercising your property or self-ownership rights. But for Van Parijs, real freedom must also offer an answer to our intuition that if I do not have the money to get on a cruise, I am not really free to get on

³ I am, in essence, answering a call Van Parijs made in a 2001 article in which he responds to seven critics. He says, "I was building upon earlier work by elder fellow thinkers such as John Rawls, Amartya Sen, Ronald Dworkin, Bruce Ackerman, G. A. Cohen and John Roemer. I was also hoping that younger fellow thinkers would soon join in to critically appropriate and improve upon my own attempt" (Van Parijs 2001:106).

that cruise. The last component of real freedom is opportunity, which is the absence of being hindered from what you might want to do by any other circumstance, and which is especially given effect by providing people with the means and resources to do the things they might want to do or live as they might want to. With the addition of the opportunity component, Van Parijs argues that to achieve distributive justice opportunity should be leximinised, subject to formal freedom being respected. Leximinising opportunity means that a society should be considered more just than another society if those with the least opportunities in that society have more opportunities than those with the least opportunities in the other society. Van Parijs justifies the introduction of the basic income as the result of taking the leximinising of people's opportunities seriously. For him, monetary incomes serve as a measure of people's opportunities in market societies.

In chapter two, I offer one criticism of this theory of justice outlined in chapter one. I argue that this theory of justice is blind to institutional racism.⁴ I demonstrate this using a thought experiment involving two societies that are identical in every way (they have the exact same number of income strata and the occupants of each stratum have the exact same amount of opportunities in both societies) except that race is a determining factor in membership in the lowest stratum of one of the societies, whereas it is not the case for the other. I argue that the society in which race is a determining factor in people ending

⁴ I take this as different from similar criticisms of Van Parijs's basic income offer that suggest that while "basic income may provide increased security, employment opportunities and bargaining power for those who have the greatest difficulties in finding decent jobs or other meaningful activities, it does not address the informal barriers of unjust norms that make some groups more likely than others to be in such a vulnerable position in the first place" (Birnbau 2004). This critique no doubt gestures to a set of unjust social norms that includes racism, but it is one thing to say that the institutional/policy implication of a theory of justice does not address racial injustice and quite another to say the theory of justice itself is blind to racial injustice. Moreover, my conclusion is that the basic income can be designed in such a way that allows it to help reduce racial injustice in society.

up in the lowest stratum is an institutionally racist society, but also that a Van Parijsian leximin chooser (that is, someone choosing between both societies solely based on the leximin principle) would be unable to prefer the non-institutionally-racist society to the institutionally racist society. In essence, the leximin principle would judge both societies as equally just.

In chapter three, I take on and respond to three possible rebuttals to my argument in chapter two. First, I consider the possibility that a Van Parijsian might suggest that regardless of whether Van Parijs's theory of distributive justice is blind to racial injustice, it is still very useful as a theory of comparative/relative justice. This rebuttal assumes that our charge against Van Parijs stems from a belief that Van Parijs is offering a theory of transcendental/absolute justice such that to show that it is blind to some injustice is to discredit it altogether. In response, I argue that we do not need to assume that his theory is offering an account of absolute justice to make the point and in fact our argument is precisely that the theory is failing to make the comparative choice between two societies, one of which contains racial injustice. Second, I consider a rebuttal that suggests that because Van Parijs cares about efficiency and that it is possible to argue that a non-institutionally-racist society is more efficient than an institutionally racist one because it makes the most of the talents of all its members, a Van Parijsian leximin chooser would prefer the non-institutionally-racist society to the institutionally racist one on efficiency-sensitivity grounds. The main problem with this rebuttal is that Van Parijs's concern with efficiency is factored into his choice of the leximin principle itself. It is not a consideration over and above the leximin principle. Lastly, I discuss a rebuttal that suggests that my thought experiment misconstrues Van Parijs's theory in one key sense: what Van Parijs

leximins is opportunities not incomes. The rebuttal suggests that it is possible for the occupants of the strata in the societies being compared to have the same incomes but different levels of opportunities, and that the occupants of the least well-off position in the non-institutionally-racist society are likely to be better off in terms of opportunities than the occupants of the same position in the institutionally racist society, even if they have the same income. The rebuttal disappears once we adapt the thought experiment to replace incomes with opportunities. Our critique of Van Parijs's theory remains just as valid with that change.

Finally, chapter four revises both Van Parijs's leximin principle and his conception of real freedom in order to make the theory sensitive to racial injustice. I go about this by applying a version of Rawls's Original Position decision device that incorporates what I shall call a “racial stipulation”, to those two elements of the theory. In essence, we compare variants of the leximin principle and real freedom in an Original Position that includes the racial stipulation and argue that the parties would choose different versions of the leximin principle and real freedom to the ones Van Parijs offers. The racial stipulation makes the parties in the Original Position aware of the possibility of racial injustice in human societies, which means that they will be conscious of avoiding racial injustice in the society which is picked out as the most just by the versions of the leximin principle and real freedom they choose, lest perchance they themselves belong to a racial group that could be disadvantaged. I argue that they will choose what I shall call a “filtered leximin” principle and a “modified real freedom” account defined as follows:

1. Filtered leximin principle: A society is more just than an alternative if the gap between the median amount of opportunities available to each racial group within it is narrower than the gap between the median amount of opportunities of the racial groups within the alternative society. Where there is a tie, Van Parijs's original leximin principle is applied
2. Modified real freedom: The opportunity component of real freedom is defined such that limitations on freedom incorporate not just physical and psychological hindrances but also specifically hindrances resulting from racial disadvantage.

I outline briefly what this filtered leximinning of modified real freedom theory of distributive justice means for the implementation of a basic income in the conclusion. The filtered leximin of course puts the elimination of racial inequality ahead of the elimination of economic or income inequality. By consequence, whereas Van Parijs treats the universal basic income as a way to deal with income or economic inequality in the first instance, I treat the basic income as a way to eliminate racial inequality in the first instance. Although I do not explore the claim, I take it to be the case that because the basic income is universal in character, it has a secondary effect of reducing economic or income inequality. I suggest that the filtered leximinning of modified real freedom leads to at least three things with respect to the form of the basic income offer that emerges. First, it leads us to incorporate into our thinking about how to maximise the tax yield a sensitivity not only to what will keep high income people incentivised to remain productive, but also what will unlock the potential of unproductive people who are so because of racial inequality. Second, it leads to a tax structure for funding a basic income

aimed at incentivising racial inequality-eliminating behaviour in market actors, such as owners and managers of industries that are currently overwhelmingly white. And lastly, it leads to taking the possibility of giving part of the basic income in the form of universally needed services seriously. In this last connection, we can use not just the universal provision of some services, but also the reform and ongoing monitoring of the institutions created to distribute those services, to deal with racial inequality.

As I wrote this thesis, the Covid pandemic struck and changed life as we knew it, introducing new kinds of inequality. That explains the postscript.⁵ The postscript is my effort to ground a basic income in a slightly different way than the one that I have proposed in this thesis. That is, in a way that is relevant to the pandemic world we live in today. It highlights one kind of inequality created by the Covid pandemic, which very much intersects with racial inequality, namely, “pandemic inequality” and argues that a basic income is needed to deal with it and give everyone a stake in society. This approach is not dissimilar to the approach in this thesis based on proposing a basic income that reduces racial inequality because I take racial inequality to represent a situation in which people of some races have less of a stake in their society than people of others. In other words, the arguments in this thesis lead to a basic income as a policy that gives everyone a stake (or at least more of a stake than they currently have) in their society.

⁵ A version of the postscript has been accepted under the title “Why the Post-Covid World needs a Universal Basic Income” for an upcoming 2021 book *Thinking Beyond Neoliberalism* (Palgrave Macmillan, edited by Neal Harris and Onur Acaroğlu).

CHAPTER ONE

1. INTRODUCTION

Van Parijs's theory of justice proposes that justice requires leximinning people's opportunities to do what they might want to do. This chapter will examine what this means. That said, it is useful at this point to make two general introductory points about the theory, which will guide our exploration of it. First, it is very much part of the egalitarian tradition of theories of distributive justice. That is, it sees the objective of a theory of justice to be that of thrashing out the answer to the question of what a just distribution of some distribuendum, that is, what is to be distributed, consists of and assumes some version of equality to be just, only permitting inequality when certain other conditions are met. Van Parijs agrees with much of mainstream egalitarian theory (at least since Rawls's *A Theory of Justice*) in arguing that inequality should only be permitted where it is to the benefit of the least advantaged (on some index of advantage) people in society. As he puts it, his theory "does not demand that the least-advantaged should be given a worst deal for the sake of more equality" (RFA 28). Van Parijs proposes what he calls a leximin principle, which suggests that one distribution of some distribuendum is more just than another distribution of that distribuendum if the least well-off people in that distribution are better off than the least well-off people in the alternative distribution. And if both least well-off groups are equally well off, then the next set of groups above them in both distributions are compared, and so on until a difference is found.

The second introductory point is that Van Parijs's theory proposes that the distribuendum, that is, what is to be distributed, is a conception of freedom. More specifically, Van Parijs aims to distribute real freedom, which he defines as incorporating not simply security and self-ownership (which he calls jointly formal freedom) but also people's opportunities to do the things they might want to do. The leximinning of the opportunities component of real freedom, subject to formal freedom, leads to a theory of justice Van Parijs calls real-libertarianism. According to Van Parijs, "real libertarianism is not satisfied as long as those with least opportunities can point to another feasible formal-freedom respecting arrangement in which they would have greater opportunities, while no one would have opportunities as poor as theirs currently are" (RFA 28).

This chapter is subdivided into four sections. In the first section, I discuss the role of freedom in Van Parijs's theory, and more specifically the usefulness of the line he draws between freedom as "the freedom to do what one wants to do" and freedom as "the freedom to do what one might want to do". This is an important discussion because Van Parijs wants his theory of justice to be neutral between different conceptions of the good life. In section two I discuss the elements of Van Parijs's conception of real freedom. Section three considers what Van Parijs means when he says that opportunity should be distributed based on a leximin principle. The last section considers how the theory of justice that has been outlined throughout the chapter results, for Van Parijs, in the idea of a universal basic income.

2. SOME GENERAL REMARKS ABOUT THE ROLE OF FREEDOM IN VAN PARIJS'S THEORY

In a 1992 article titled *Basic Income Capitalism* he asks “What is a just society?”, and answers as follows, “It is nothing, I propose, but a free society, understood as a society whose members are all as really free as possible” (Van Parijs 1992:467). Freedom, on this account, is the measure of a just society. The justice⁶ (or indeed the injustice) of a society is determined exclusively by how free the members of that society are and by how freedom is distributed in that society. In his seminal work on social justice, his 1995 *Real Freedom for All*, Van Parijs treats freedom as fundamental to the theory of justice he proposes in order to ground his idea of a universal basic income. He starts by establishing the following intuition as guiding much of our discussions about justice: “Freedom is of paramount importance: we want—or at any rate many of us want—our society to be a free society” (RFA 5). It follows, from the importance ascribed to freedom in this account of justice that the most just from among a range of societies being compared will be the one that leaves its members freer than any of the other comparable societies, or as he goes on to suggest by adopting the leximin principle, the one that leaves its least well-off people with greater opportunities than the alternatives.

In the rest of this section, I consider where Van Parijs’s conception of freedom falls in the perennial debates on whether freedom is positive or negative freedom and whether it is individual vs collective sovereignty. I also consider what Van Parijs says about the

⁶ It should be noted that, unlike for many other liberal egalitarian thinkers, for Van Parijs justice is not all that matters in society. In *Real Freedom for All* he says, “I shall call real-libertarian the view that conceives of a just society as a free society... It does not follow that, for a real-libertarian, the extent to which a society is a good society is determined exactly by the extent to which it is a free society. Justice may be only one of many desirable properties of a society” (RFA 27).

distinction between the freedom to do what one *wants* to do and the freedom to do what one *might want* to do and what he takes the significance of this distinction to his conception of justice to be.

The literature on freedom in philosophy indicates two broad approaches to defining it. Although there have been developments outside of the two main approaches over the last several decades, it seems fairly evident that most discussions of freedom continue to be framed as a question of whether freedom is taken to be positive or negative freedom on one hand, or whether freedom is individual sovereignty or collective sovereignty on the other hand. Isaiah Berlin's (1958) seminal work, "Two Concepts of Freedom", captures the former contrast while the latter contrast goes at least as far back as Benjamin Constant's 1819 "Liberty of the Ancients Compared with that of Moderns". In the former approach, the question of what freedom is revolves around whether it is the absence of obstacles to persons doing the things they want to do (negative freedom) or the presence of the powers to do those things (positive freedom). This approach is often expressed in terms of "freedom from" and "freedom to". In the second approach to freedom, discussions revolve around whether freedom concerns the power each individual has to decide how their life goes by their "active and constant participation in the collective power" (freedom of the ancients) or the power each person has to decide for themselves how to run their own life where their freedom-constituting rights as an individual is held against the collective (freedom of the moderns). Van Parijs rejects the collective power conception of freedom and argues that individual sovereignty is the most defensible interpretation of freedom. He says "a society of active citizens may conceivably be a

factual condition for the rise or viability of a free society...but it does not enter its definition any more than democracy does” (RFA 17).

On the positive vs negative freedom approach, he argues that the demarcation between negative (for Van Parijs, *freedom from*) and positive freedom (*freedom to*) is largely artificial. The side on which one falls on the issue, he contends, is to a significant extent a matter of what they intend to emphasise. He says, “such a contrast [between positive and negative freedom], however, does not make much sense, as the freedom from some obstacle (interference, impediment, prohibition, force, etc.) in the presence of which freedom vanishes is always also the freedom to perform some activities in the performance of which the exercise of freedom consists. The only use for this distinction is to point out that the emphasis may be on the ‘obstacle’ side or the ‘exercise’ side of freedom, depending on the context. But in all its variants, freedom as individual sovereignty is both a freedom from and a freedom to” (RFA 17-18). His conception of freedom incorporates both “freedom from” and “freedom to” as we will discuss later in this chapter.

But before exploring this in greater detail, there is an aspect of freedom that cuts across whether freedom is taken to be a matter of the absence of hindrance or the presence of the power, which Van Parijs gives some attention and that is relevant to the use to which he puts the conception of freedom in his theory of justice, namely, the question of whether freedom is about the things people actually want to do or the things people might want to do. This is relevant because the conception of freedom Van Parijs wants to arrive at is one that incorporates not just the intuitions we have about the freedom to perform some

action, but also the idea that theories of justice should be neutral toward the different possible conceptions of the good life people in society may choose. What we say about whether freedom is the freedom to do the things people want to do or the things they might want to do has implications for whether the theory of justice being suggested is sufficiently neutral. As he notes in talking about his real libertarian theory, “liberty comes in through the postulate of neutrality” (RFA 28).

Voltaire (1772) captures the formulation of freedom as being about what people actually want to do when he says, “When I can do what I want, there is my freedom”. On this formulation, I am free with respect to getting a university education if I want to get and can get a university education. By implication, I am not unfree with respect to swimming in some lake if I do not want to swim in the lake, even if I do not have permission to swim there. There are a number of ways to see what is wrong with this formulation of freedom. Van Parijs, for example, suggests that what persons want to do is often a result of self-manipulation (people autonomously limiting their own desires to things they feel they can acquire or indeed things they think others will approve of their having) or worse as a result of manipulation by others (where what a person wants is a result of other people manipulating their desires). Accordingly, I am no freer if I can suddenly do all that I want to do after I have manipulated myself or have been manipulated by another person into drastically limiting the range of things that I want. As Van Parijs sees it, “any characterization of a person's freedom that makes essential reference to her wants would seem to give rise to this ‘contented-slave’ objection” (RFA 18). To see the problem compare two slaves: one that has been manipulated into being fully convinced that they want to work for their master and one who does not want to work for their master and

makes it their overwhelming aim to escape. We are assuming of course that by the very nature of being a slave, they are both equally unfree in material terms, but that the main difference between them is that one has been made more at peace with their material unfreedom whereas the other has not. Making freedom about the things people want to do, would require concluding that the former slave is freer than the latter. But this conclusion cuts against our established intuitions about freedom. Most people will likely agree that although their feelings about their condition are disparate, the two slaves are objectively equally unfree.

The idea that freedom is about the things we want to do seems to run counter to our commonplace intuition that if I am not allowed to swim in some lake, it does not matter to my freedom to swim in the lake that I do not want to swim in the lake. The lack of a desire to swim in the lake is not a factor in whether or not I am free with respect to that lake.⁷ The relevant factor is the absence of permission. Furthermore, freedom incorporates permission for people to do even things that we may believe they should not want to do and which many people do not want to do. Most governments have policies aimed at protecting the health of their populations, such as policies that paternalistically aim to reduce smoking, but most people, including non-smokers, would probably agree that outrightly banning smoking runs counter to freedom.⁸

⁷ Barry (2003) concurs with this interpretation of Van Parijs's conception of freedom. He says a person is free with regard to a range of actions, on Van Parijs's conception, if they are not prevented from performing those actions "regardless of whether or not (given your actual preferences) you would ever want to do any of them and regardless of the reason for your not being able to do them" (Barry 2003:53).

⁸ This is quite aside from the question of whether the protection of public health should rank higher than the protection of people's freedom in society.

For these reasons, Van Parijs opts instead for the formulation of freedom as concerned with the things that persons “might want to do”.⁹ This formulation completely rules out want-manipulation as playing a role in whether a person is considered free. People are free not just in terms of the things they want to do, but also in terms of things they may not want to do at any given moment or even things they actively think it is wrong for people to want to do but which they might want to do. This formulation incorporates the idea that a free society is one that accommodates a significant range of different conceptions of the good life, or more specifically one that does not incorporate a view on the rightness or wrongness of conceptions of the good life people may choose in society. The choice of this formulation is important because for Van Parijs justice is about effectively distributing freedom and the conception of what freedom is concerned with we choose should be such that it can accommodate people’s choice of conceptions of the good life, regardless of whether other members of society approve. The ideal of freedom with which the discussion of the rest of this chapter will be concerned, therefore, is “the freedom to do whatever one might want to do” (RFA 20). The freedom people are thought

⁹ This conception of what freedom is about has been criticised, most notably by Barry (2003) and Van Donselaar (1997). Barry highlights the example of a person who wants ice cream but can only have spinach, which they do not enjoy under any circumstance. He argues that Van Parijs’s emphasis on what people might want (as opposed to what they actually want) suggests that this person is just as free as a person who wants ice cream but can only have spinach but happens to love spinach as well. This seems absurd on its face. In similar fashion, Van Donselaar argues that Van Parijs’ approach fetishises having options, regardless of whether people have an interest in the options they have. He suggests that this could lead in the end to inefficiency in the distribution of opportunities. To my mind, the intuition here is that even if we grant that freedom should be about more than what people want, it does not follow that it should be about the things they might want. That is, it does not follow that all the things they might want should be given equal standing. Given what Van Parijs takes the broader significance of the distinction between “what people want” and “what people might want” to be, this does not seem to be a debilitating problem for Van Parijs. As I indicate in the body of the thesis, freedom, for Van Parijs, is about being able to choose and live by a holistic conception of the good life. This involves implicitly a framework for ranking options in terms of their desirability, including options one has never considered.

to have to do what they might want to do is defined as incorporating three elements, namely, a framework of property rights (security), an ownership right over themselves (self-ownership), and the opportunity to do the things they might want to do.

3. SECURITY, SELF-OWNERSHIP AND OPPORTUNITY

i. Security:

According to Van Parijs, a free society is one that necessarily incorporates the idea that persons have the right to use and dispose of the things they have legitimate entitlements to without interference from others and from society. The principle of security is, therefore, the principle that freedom incorporates the fact that persons should have, and society should provide, effectively enforced legal or customary property rights. That is, as he puts it, a free society is “a society whose members can all do what they wish to do with what they legitimately own” (RFA 12). He contrasts this conception with the much less strictly defined right libertarian belief that a free society is one in which persons are “permitted to run their own lives as they wish” (RFA 11). As Van Parijs sees it, this right libertarian conception leaves open the danger that some may easily prevent others from running their own lives as they wish. If people’s freedom to run their lives as they wish is not backed up by a framework of rights and enforcement, in the absence of any assumption that there is a natural harmony between people’s expression of their freedom, brute force is likely to become a key way of settling clashes between people’s freedom. And if this happens, the freedoms of the least powerful people in society will end up very small indeed. As he puts it, “Clashing wishes would be ‘reconciled’ by letting those of the strongest prevail over those of the weakest. Surely this cannot be a free society, a

society in which all, weak and strong, are free to run their lives as they wish. A legal or customary framework of property rights and a system of effective sanctions are necessary, though not sufficient if this is to be achieved”¹⁰ (RFA 12).

It is noteworthy though that, for Van Parijs, this formulation of the need for a framework of property rights does not lend itself to what he describes as rights fetishism. For some libertarians, freedom as the enforcement of property rights is the yardstick for measuring the justice or otherwise of a society, where property rights function as a natural right, that is, as a right a person has in nature. The enforcement of natural property rights is a necessary and sufficient condition for a free society on this conception. Van Parijs characterises this view as follows: the “perfect enforcement of the ‘right’ structure of property rights (somehow assumed to be given ‘naturally’, prior to any social arrangement) means total freedom for all—since all are allowed to do anything they wish with what they legitimately own” (RFA 15). The naturalness of this right is not of much consequence to us here, so we shall set aside the inference latent in the argument attributed to libertarians that legitimate property rights equals natural property rights, or even that natural property rights therefore equal legitimate property rights. We are concerned principally with the claim that freedom equals the enforcement of a system of

¹⁰ It is useful to notice something at this point that implicates not only what Van Parijs says about security, but also what he says about self-ownership and opportunity. There are two possible ways to interpret what Van Parijs says in this quote and in other passages in chapter one of RFA: on one hand, that security and self-ownership are only institutionally necessary for freedom, but are not to be seen as part of freedom conceptually. That is, there are institutional requirements for freedom, but at the level of concept, freedom is about the opportunities people have to do the things they might want to do. On the other hand, we can interpret Van Parijs as treating security, self-ownership and opportunity as components of freedom both conceptually and institutionally. That is, the idea of freedom incorporates all three, and a free society respects all three. I have chosen this latter interpretation because Van Parijs speaks most frequently of all three being components of freedom (RFA 8, 22) and even suggests a way of ranking them (RFA 25). This suggests that he means for them to be component parts of freedom.

legitimate property rights. There are a number of reasons why the Van Parijsian concept of security is not to be treated as incorporating this conception of property rights. First, it seems that this rights fetishism can be consistent with slavery, where some people's property rights include property rights over other human beings. Second, there are less egregious situations (less egregious than slavery, that is) that could be consistent with this rights fetishism but which run counter to our intuitions about freedom. For example, where a person is given a choice between starving to death or taking a pathetically degrading and low paid job, we might have reason to think the person involved is not free in the relevant sense but this property rights fetishism could lead to having to say the person is free as no one's property rights have been violated. Or perhaps, even more counterintuitively, this view might lead to the conclusion that steps taken to alleviate slavery or situations like the one just described could be seen as reducing rather than increasing how free a society ends up being.

ii. Self-ownership:

To mitigate the rights fetishism often associated with property rights in right libertarian conception of freedom, Van Parijs's conception of freedom requires that for a society to be considered free its system of property rights must incorporate self-ownership.¹¹ Or put

¹¹ I treat self-ownership as a component, alongside, security (and later in this chapter, opportunity) of real freedom. It has been suggested, as I have indicated before, that for Van Parijs self-ownership (and security) are side constraints and not components per se. To reflect the "self-ownership and security as side constraints" approach, Vallentyne (1997:323) formulates the egalitarian liberal thesis operative in Van Parijs' theory in the following way: "subject to the (nonempty) constraints imposed by a plausible conception of self-ownership, equality should be efficiently promoted." Williams (1999:86) makes a similarly strong claim in this connection when he says, "security and self-ownership are not reasons for, but constraints upon, the provision of a basic income". Although there are inklings toward both interpretations in Van Parijs (that is, toward both the self-ownership and security as constraints and the self-ownership and security as components interpretations), I shall not engage with what the substantive difference between both

another way, persons must be seen as not only having property rights in external things, they must also be seen as having property rights over themselves. Where property rights in external things entitle them to do as they please with the external things they legitimately own, self-ownership entitles them to do as they please with themselves and so to not being forced to perform any actions.¹² Taken together, property rights and self-ownership, for Van Parijs, constitute formal freedom. The idea of freedom as simply the right to dispose of your property as you please is compatible with slavery, hence Van Parijs argues that it is necessary to incorporate within the idea of freedom that free persons must also own themselves. They can decide what to do with their own powers and capacities. As Van Parijs puts it, “[A] society of free people is one which leaves each of its members to decide what does and does not happen to herself. However democratic, one is thus encouraged to say, a society cannot be free if it does not grant each of its members something like self-ownership” (RFA 8). A conception of freedom in which

approaches could be, except to observe (as I do later) the lexicographic priority Van Parijs imposes among the three elements of real freedom. Fleshing out that issue in more detail does nothing for us in this thesis. I should say that I am not alone in treating self-ownership and security as components of freedom (as opposed to side constraints), alongside leximin opportunity. Henderson (2017:2) seems to go a similar route when he says, “Van Parijs’ real-libertarian justice demands that security, self-ownership and leximin opportunity be guaranteed”.

¹² The literature on self-ownership is vast, despite the relative newness of the idea. Barbara Fried’s essay *Left-Libertarianism: A Review Essay* (2004) and Vallentyne, Steiner & Otsuka’s response to her (2005) extensively catalogue and clarify the conceptions of self-ownership operative in left-libertarianism, of which Van Parijs’s theory is a part. I shall not delve into that literature. I shall simply suggest that it suffices, for grasping what Van Parijs means by self-ownership, to assume humans as agents that have bodies and minds of their own and are self-originating sources of thoughts and actions. Self-ownership is the right they have to act or dispose of their bodies in whatever ways they have autonomously decided to do so. Vallentyne suggests that Van Parijs endorses what he calls “Control self-ownership” by which he means that “in the absence of any previous commitments or wrongdoings by the agent, each psychologically autonomous agent has the moral right to control the use of his or her body” (1997:324). It does not follow from this conception of self-ownership, for Van Parijs, that persons have a right to the incomes from their doing with themselves as they deem fit (RFA 25).

freedom is desirable, according to Van Parijs, must include the idea that people are able to do as they please with themselves.

Van Parijs does not elaborate a great deal on the conception of self-ownership at play in his theory. What seems clear is that the right of self-ownership as Van Parijs understands it is not an all or nothing affair. It is a matter of degrees. The depth of self-ownership is reduced if there are things that a person is not entitled to do with themselves. Van Parijs says, for example, “the more the citizens' freedom of movement is restricted, or the more repressive the legislation on sexual behaviour, the less the depth of self-ownership” (RFA 6). Although deep enough to rule out the possibility of slavery and taxation based on what you could earn, the conception of self-ownership that Van Parijs builds into his account of real freedom is shallow enough to be “consistent with the impossibility of actually doing anything with oneself, owing, for example, to not being entitled to stand anywhere” (RFA 21). His point here seems to be that “being entitled to decide what to do with yourself” does not include any rights to use things outside you, not even a right to use the ground you stand on if you don't have a property right over anything. To sum it up neatly, three main things can be said about Van Parijs's conception of self-ownership: (a) self-ownership rights can have degrees of depth. (RFA 6, 21). (b) Van Parijs says the self-ownership rights of a few (terrorists or anti-vaxxers, for example) can be overridden to guarantee the self-ownership rights of many others (RFA 25-26). And, (c) self-ownership rights have to be weighed against the values of security and leximin, with security taking a soft lexicographic priority over self-ownership and self-ownership taking a soft lexicographical priority over leximin opportunity (RFA 26). Not much in this work rests on fleshing out in great detail what this lexicographical priority entails, except perhaps to

note that, for Van Parijs, “mild restrictions of self-ownership can be incorporated into the institutional framework of a free society if a good case can be made to the effect that a major improvement would result in terms of leximin opportunity” (RFA 26). So the lexicographical priority of security and self-ownership over the leximin principle is 'soft' rather than absolute.

Lastly, for Van Parijs, self-ownership is not a natural right; it is one that our social institutions may or may not make provision for. The right to do with themselves as they may is an institutional or legal right; it is not one people are thought to have outside the institutional arrangements of society. Van Parijs's phrasing of the depth of self-ownership evinces this. I take it that the use of the phrases 'each person *is allowed* to do with herself' and '*leaves each of its members* to decide what does or does not happen to herself' refer to society as a network of institutions that are responsible for providing this right. This phrasing situates the existence of the right in society and not in something beyond it.

iii. Opportunities:

What distinguishes Van Parijs's conception of freedom in the debates around whether freedom is negative or positive is that, for him, freedom is both. It is negative in the sense that it incorporates the framework of property rights, including property rights over one's own self. These twin rights preclude interference with people doing what they might want to do with the things they own or with themselves. But for Van Parijs, this is only freedom in the formal sense. As Van Parijs puts it, “security and self-ownership, though necessary to freedom, are not sufficient for it, because doing anything requires the use of external objects which security and self-ownership alone cannot guarantee” (RFA 21). Freedom,

therefore, also necessarily includes the opportunities to do the things that one might want to do.¹³ That is, persons are only really free if they not only are not prevented from doing with the things they own and themselves as they please, but also if the things they might want to do are genuinely (not just formally) open and available to them. This is not equal simply to providing them with the means or the money with which to, say, take a cruise (if that is one of the things they might want to do).¹⁴ The means is no doubt among the things that help actuate their opportunities, but the third element of freedom for Van Parijs is the genuine availability to people of the things they might want to do. Van Parijs calls the conception of freedom that incorporates security, self-ownership and opportunity “real freedom”. His theory of justice aims to maximise the real freedom of all.

This real freedom conception cuts across a traditional distinction in the libertarian discussion of freedom. Hayek, for example, suggests that to combine formal freedom and opportunity is to confuse freedom with power. He says, “whether or not I am my own master and can follow my own choice and whether the possibilities from which I must choose are many or few are two entirely different questions” (1960:137). James Buchanan offers a similar line of thought when he argues that “Whether or not an individual has the

¹³ Van Der Veen (1998) presents both the security and self-ownership part of freedom (formal freedom) and this opportunity part of it as negative freedom. He casts the former as about the absence of legal restrictions in doing what one might want to do and the former as the absence of constraints on doing whatever people might want to do “stemming from the lack of external resources” (Van der Veen 1998:146). It does not seem to me (nor indeed to Van Parijs, as has already been observed) that there is any more than a difference in terms of emphasis being invoked here. Whether we see the second part of real freedom as about positively possessing the ability to do or negatively not being prevented from doing, it seems the implications are the same. My presentation above takes the positive tenor.

¹⁴ Farrelly (1999) has suggested that the fact that the basic income is what Van Parijs considers the outcome of his theory of justice means he is placing emphasis on people’s “means” to do as they might want to. I show both in this section and latter in chapter 3 why this is not strictly correct. The notion of “opportunities”, which is what Van Parijs uses, is richer than simply “means”.

ability or power to undertake the activity that he is at liberty to undertake is a separate matter, and it can only confuse discussion to equate liberty with ability or power or to extend its meaning to include these qualities” (1985:9–10). Van Parijs responds to this argument in two main ways. First, the institution which guarantees people’s rights to do as they may with the things they legitimately own (private property) is equally implicated in whether or not some people lack the opportunity to do what they might want to. Your having private property rights over a lake is implicated in my not having permission to swim in the lake. A holistic approach to freedom incorporates both your property rights over the lake and my possible desire to swim in the lake, not just one of them (RFA 22). Second, nothing in the libertarian argument, which draws a clear line between the freedom from interference and the real opportunity to do the things one might want to do can explain our common sense intuition that if I cannot get on a cruise because I do not have the money to buy a ticket for it, I am unfree in a non-trivial way with respect to that cruise. For Van Parijs, “if I am penniless, I am not really free to join the cruise; if I have no option but to starve or to accept a lousy job, I am not really free to turn the latter down” (RFA 22).

To say that a person’s freedom incorporates their opportunity to do what they might want to do is not to say that they are not free until they have all the opportunity to do everything they might possibly want to do. Opportunity, like security and self-ownership, is a matter of degrees. One can have more or less of it depending on how many of the things they might want to do are genuinely open to you. The goal of the theory of justice is to maximise opportunity. As we discuss in the next section, the most just society, for Van

Parijs, is the one that provides those with the least opportunity the most opportunity of any of the societies being compared.

One way to conceive of the opportunity element of real freedom, according to Van Parijs, is as an expansion of what is considered a freedom restricting obstacle. The lack of money with which to get on a cruise, on this account, restricts a person's freedom to get on the cruise. But what else does Van Parijs think restricts people's opportunities? A person's opportunities are restricted if they do not have the physical capacity to perform some action. I lack the opportunity to drive to London from Oxford even if nothing else but my eye defect is preventing me from making the trip. Furthermore, if I am disposed to certain mental or psychological problems ("Addictions or tendencies to burst into fits of anger or to indulge in spiteful behaviour"), which prevent me from doing the things I might want to do, these are likewise limitations on my opportunities (RFA 24). For Van Parijs, it does not matter whether the freedom restricting obstacles are caused by the actions of others or if they could be removed by others. Since "any restriction of the opportunity-set is relevant to the assessment of freedom", the more of these kinds of restrictions a person contends with, the less really free they are (RFA 23).

4. LEXIMINNING OPPORTUNITIES

The leximin principle aims to ensure that people end up with the greatest amount of opportunities possible. On the leximin principle, "in a free society, the person with least opportunities has opportunities that are no smaller than those enjoyed by the person with least opportunities under any other feasible arrangement; in case there exists another feasible arrangement that is just as good for the person with least opportunities, then the

next person up the scale in a free society must have opportunities no smaller than the second person up the scale of opportunities under this arrangement; and so on” (RFA 25).¹⁵ When comparing actually existing societies, one society is more just than others (or another) if the least well of people in that society are better off in terms of their opportunities than the least well-off people in the alternative society (or societies). Perhaps a usefully clear way to think of what the leximin principle does when it ranks two societies is by thinking of the comparisons it effects in a lexicographic way. First, it compares the opportunities of the least well-off people (in terms of their opportunities) in the societies being compared. Where the least well-off in one of them are better off than in the other, the society with the better off least well-off group is more just, but if the least well-off groups are equally well off, then the tie is broken by comparing the group above them in the societies being compared, and so on. The leximin principle as used in Van Parijs's theory of justice is used to rank one society as more free or just than another (or a set of other societies).

What this formulation of justice implies, for Van Parijs, is a concern for both equality and efficiency. Equalising people's opportunities in a way that is efficient, for Van Parijs,

¹⁵ It is noteworthy that Van Parijs' leximin principle follows the template that he suggests has been laid down by Rawls' difference principle. In describing the broad tenets of the difference principle, Van Parijs (2002:200) says “The core of the principle is a simple and appealing idea: that social and economic inequalities should be evaluated in terms of how well off they leave the worst off. The idea is simple: it amounts to asking that the minimum of some index of advantage should be maximised.” A significant difference between leximin and the difference principle is what happens when two social structures or societies leave the least well off equally well off in terms of the relevant index of advantages. The leximin principle compares the groups above them, until a difference is found. It should be said, though, that while both leximin and difference principle are ways of thinking about what counts as justifiable inequality, leximin seems most useful for comparing alternative unequal societies whereas Rawls' difference principle seems designed for choosing specific principles of justice. Also, leximin compares people's real freedoms (opportunities) whereas the difference principle compares their incomes and wealth (Van Der Veen 1998:147).

requires a leximin principle (RFA 28). This is a respect in which Van Parijs's theory of justice is clearly egalitarian, that is, it is a respect in which it only permits inequalities if they are to the benefit of the least well-off people. In fact, for Van Parijs “inequality must be justifiable, on a real libertarian view, to those who feel they are getting a bad deal” (RFA 28). For this reason, Van Parijs takes it for granted that the leximin principle is preferable to alternatives, such as maximizing the opportunities of the average member or giving everyone the maximum opportunities compatible with equalizing opportunities. Although Van Parijs does not elaborate on why both possible alternatives are inferior to the leximin principle, it would seem that something like the following reasoning is operative in his thinking: maximizing the opportunities of the average person says little or nothing about the size of the shares of individual members or even of representative individuals for each social stratum within society, and can admit of great inequality. Equalising opportunities, in like fashion, could carry unreasonable costs for the representative person with the least opportunities. This belief is based on a similar logic as that which underlies Rawls's difference principle, namely, the view that the size of the pot from which distributive shares are drawn depends on incentivising the most hardworking and talented members of society. It assumes that incentivising them involves giving them a larger portion of what they produce than an equalizing principle would allow.¹⁶

¹⁶ There are a number of criticisms of the leximin principle in the literature, which I consider interesting. Vallentyne (1997:341) argues, for instance, that leximin seems to involve the intuition that we should maximise the outcomes of the least well-off stratum in society regardless of how many people make up that stratum, compared to the numbers that make up the groups above them, and regardless of what the difference between the different strata are in terms of how well off their members are. He suggests that this can be unjust in some situations, especially if we could improve the lot of a much larger number of people that

Leximinning opportunities, as I shall indicate in the next section, requires giving each member of society an equal unconditional basic income. But before we discuss how Van Parijs makes that point, it is useful to note that the leximinning of opportunities is subject to formal freedom being fully respected, that is, subject to the protection of security and self-ownership. Not much in this work rests on fleshing out what this priority entails. The arguments I aim to make about Van Parijs's theory in this research do not implicate in any significant sense the order of priority among the elements of his theory. I will take for granted in the arguments I make about his leximin opportunity that formal freedom is respected. No argument that rests on the violation of formal freedom will be invoked in that discussion.

5. REAL-FREEDOM-FOR-ALL AND BASIC INCOME

In this brief section, I shall sketch how Van Parijs's conception of justice, leximin opportunity subject to security and self-ownership (or real-freedom-for-all), results in the idea of a universal basic income.¹⁷ I shall ignore many of the difficult questions that arise around the move from leximin opportunity to the basic income, such as that about why the basic income is to be given on a monthly basis and about how the theoretical jump

are badly off (but aren't the worst off) by not improving the lot of a few people (the worst off). This is a serious challenge to the leximin principle, but nothing in this thesis depends on ironing out this issue or others that have been raised against the leximin principle in the literature.

¹⁷ It is possible of course to suggest that something other than a basic income proposal derives from Van Parijs's theory of distributive justice. Henderson (2017:3), for instance, suggests that it is possible to derive a "real freedom super computer that could provide individualised bundles of goods and services (in cash and in kind) that generate maximin real freedom outcomes superior to a uniform BI in cash". There are likewise those who argue that real freedom for all does not really justify a basic income (Hunyadi & Manz 1998). I shall not delve into either of these (or other possible alternative lines of thought) in this thesis as they do not implicate the argument I want to make in this thesis, at least not directly.

between leximin opportunity and basic income might play out across different societies, as opposed to neatly within one society. Neither of these arguments is useful to us in this work, and Van Parijs deals with them as satisfactorily as I think they can be in *Real Freedom for All*.

For Van Parijs, the introduction of the basic income is a result of one simple logical jump: “If real freedom is a matter of means, not only of rights, people's incomes are obviously of great importance” (RFA 30).¹⁸ In other words, if we define freedom as incorporating not simply a concern for people’s property rights and their self-ownership but also their opportunities to do the things they might want to do, then, very straightforwardly, we must be concerned with what money they have in their pockets. As I mentioned earlier in discussing opportunities as the third element of real freedom, the means to do what they might want to do are distinct from the opportunities that result from having those means. Means are not directly what Van Parijs is leximinning. He is leximinning opportunities. But the means or resources people have available to them, other things being equal, is a practical measure of what opportunities they have. Quite simply, if I choose to live my life as a fisherman but don’t have the resources to purchase a canoe or to attend training for becoming a fisherman, I don’t really have the opportunity to be a fisherman. So leximinning people’s opportunities requires leximinning their resources, and this requires

¹⁸ I should note that the introduction of the basic income for Van Parijs is subject to the satisfaction of what he terms *undominated diversity*. Undominated diversity is a tool Van Parijs uses to justify the compensation (so to speak) of the disabled. He argues that a person is dominated if everyone, regardless their conception of the good life, would prefer another’s “internal endowment” to theirs (RFA 73). I shall not delve into this aspect of Van Parijs’s theory in this thesis because it does not form part of central infrastructure of his theory. It is proposed to deal with cases that veer out of the normal range in terms of people’s abilities. This is not at all to diminish the importance of the issues of disability support that it deals with.

giving everyone a basic income at the highest sustainable rate. According to Van Parijs, “If we are serious about pursuing real-freedom-for-all—and if we are willing to abstract for the moment both from dynamic considerations and from interpersonal differences in abilities—what we have to go for is the highest unconditional income for all consistent with security and self-ownership.” (RFA 33). In a market economy this basic income will normally take the form of cash payments. This presumption in favour of cash is not fundamental to the idea of basic income. Cash is a stand-in for the bundles of resources that people need to do the things they might want to. This means that if our economy were not a cash economy, the basic income could be given in other forms. And even in our cash economies, Van Parijs suggests that part of the basic income can be given in kind if “a particular type of good—say, breathable air or access to streets—is unanimously wanted and cheaper to deliver free of charge” (RFA 31).

The “basic” in basic income is not meant to suggest a sufficientist argument. That is, it is not meant to suggest that the basic income should be given at a level sufficient for satisfying some conception of people’s basic needs (RFA 30). It is meant only to suggest a basic level of income everyone has, on top of which they may add income from other sources. The level of the basic income should be determined by two things, according to Van Parijs. It is set in a way that ensures that everyone’s security and self-ownership is respected. That is, the common pot from whence the basic income is drawn should be filled in ways that do not violate anyone’s property rights and self-ownership rights. Usefully, neither Van Parijs's conception of self-ownership or property rights is stringent enough to preclude taxation, even high taxes. The second factor that should determine the level of the basic income is sustainability. According to Van Parijs, “If the real freedom

of those with least real freedom is to be maximized, then the basic income must be pitched at the highest sustainable level” (RFA 31). This means that it should be pitched at a level that allows it to be available on an ongoing basis, and not just to people now, but to future generations. More exactly, it should be given at a level such that if it were pitched any higher the taxes to finance it would need to be raised to the point where losses in tax take would result from people being incentivised to leave their jobs to live on basic income, or to downsize to less demanding jobs (and these losses would exceed gains from additional taxation and lead to a decline in total tax take).

Finally, Van Parijs's concern, as we discussed earlier, is not with maximising people's freedom to perform some action or the other, but with people being able to choose one way of life or another. Or as he puts it, “the real freedom we are concerned with is not only the freedom to purchase or consume. It is the freedom to live as one might like to live” (RFA 30). What this leads to is a presumption in favour of giving the basic income unconditionally. That is, without regard for whether a person is willing to work, where they live, and with whom they live (RFA 33). Making it conditional would lend itself to society making judgements about the desirability or permissibility or rightness of certain conceptions of the good life.

CHAPTER TWO

1. INTRODUCTION

As we saw in chapter one, three principles form the core of Van Parijs's real libertarianism: (i) the idea that all members of society have property rights (security), (ii) the idea that all members of society own themselves (self-ownership) and, (iii) the idea that a just distributive arrangement would be such that the least well-off people in that arrangement end up better off, or at least as well off, in terms of opportunities in that arrangement as they would be in any other feasible arrangement (leximin opportunity). In this chapter (and indeed in the rest of this thesis), we shall be concerned with just the leximinning of opportunity aspect of this theory. In this chapter, I argue that, all things being equal, given the choice between two societies that are interchangeable in every other regard except with respect to the existence of institutional racism and therefore racial injustice in one of the societies, there is no basis in the leximin principle for preferring a distributive arrangement in which there is no racial disadvantage over one with racial disadvantage. I argue that nothing Van Parijs says entails that a Van Parijsian leximin chooser (that is, a person, or a piece of software even, choosing entirely on the basis of the leximin principle) would prefer a non-institutionally-racist society to an institutionally racist one in the above choice.

To outline the core argument of this chapter, let us imagine two societies, x and y . Let us, for simplicity, suppose that x and y each have only two distinct social positions, say, rich and poor, with the rich supposed to have an annual monetary income of i and the poor

supposed to have an annual income of j . We assume that i is significantly higher than j . In other words, the rich in both society x and society y have i income, and the poor in both x and y have j income. Suppose also, significantly for this discussion, that the only difference between x and y is that in x race is a predictor of whether a person ends up with i or j income, while race is not a predictor of outcome in y . We could stipulate that in x , a higher proportion of the black population than of the white population end up in j . X , on this account, is institutionally racist. Or at least, appears to be so. We shall define “institutional racism” below but for the moment we rely on an intuitive grasp of the concept. And, given the absence of this kind of role for race in y , we assume y is not institutionally racist. The argument of this chapter is, first and foremost, that Van Parijs's leximin principle does not contain any mechanism that would require (or even permit) a leximin chooser to prefer y over x , that is, to prefer the non-institutionally-racist society to the institutionally racist society. They will not be able to ground a preference for y over x on any kind of reasoning that the leximin principle (generally, or simply as Van Parijs deploys it) necessitates. As we saw in chapter one, the leximin principle's sole requirement is that the representative person of the worst social position fares better in the higher ranked society than the representative person of the worst social position fares in the lower ranked society. Since the leximin principle does not favour either x or y over the other, Van Parijs's theory of justice as a whole will rate x and y as equally just, making it blind to the institutional racism present in x but absent in y .

I am assuming in all these, the near-universal recognition that, on the one hand, the idea of institutional racism identifies something real, and on the other, that it identifies something that is irreconcilable with any appealing conception of justice. I shall not

explicitly argue for or against either of these propositions in this work, although I shall, in the next section, try to flesh out what we are saying about a society when we say that it is institutionally racist. I shall proceed as though the two propositions we are taking for granted are accepted by all well-meaning people - as they ought to be. I believe that Van Parijs himself would accept both propositions, although the criticism I will make of his theory of justice suggests that he has a certain blindness to or a lack of preoccupation with racial disadvantage as a kind of injustice with which a theory of justice in Western political philosophy (of all political philosophies) ought to grapple. The criticism that I am making of his theory of justice in this chapter, and which I will defend from possible replies in the next chapter, amounts to the criticism that a “leximin chooser”, that is someone choosing under the strictures of his leximin principle, will not have any reason to choose a non-institutionally-racist society over an institutionally racist society, when the conditions outlined above obtain. And, to my mind, it is a major flaw that his theory of justice is unable to automatically rule out the possibility of endorsing an institutionally racist society.

This chapter will unfold as follows. The next two sections will formulate some of what it means for a society to be institutionally racist as well as argue that institutional racism is not prevented by having a well-enforced regime of property rights and self-ownership. This is crucial since the argument I intend to advance would in fact be a non-starter, if the other (non-leximin) elements of Van Parijs's broader real libertarian theory (which, importantly are lexicographically prior to the leximin principle itself) would rule institutional racism out of court. We begin with a discussion of what institutional racism means because the question of whether property rights and self-ownership are consistent

with institutional racism does not just depend on how we interpret property rights and self-ownership; it also depends on how we interpret institutional racism. Having established what an institutionally racist society looks like and that respecting property rights and self-ownership does not rule out institutional racism, we then flesh out the core claim of this chapter, namely, that in the above choice situation the leximin principle does not offer the Van Parijsian leximin chooser any reason to prefer a non-institutionally-racist society to an institutionally racist one. In the next chapter, we consider three rebuttals that may be brought against my argument.

2. WHAT MAKES A SOCIETY INSTITUTIONALLY RACIST?

In order to establish the correctness of the claim I intend to make in this chapter, it is important to flesh out what the claim that a society is institutionally racist amounts to. The aim of this section is to isolate what it is about institutional racism that distinguishes it from anything else (power imbalance of another, perhaps less morally problematic, kind, for instance). One's attitude toward the suggestion that Van Parijs's leximin chooser would have no basis on which to choose a non-institutionally-racist society over an institutionally racist society depends very much on what one takes an institutionally racist society to be.¹⁹ There are at least two broad conceptions of institutional racism in the race theory literature. This should not be confused with the view that there are at least two forms that an institutionally racist society can take. In other words, societies of varying

¹⁹ At the most rudimentary level, if you do not think the scenario I paint in making the point of this chapter is really a case of institutional racism, you will be disinclined to agree that I have successfully argued that there is a problem with Van Parijs's theory in this respect.

forms may be guilty of only one conception of institutional racism. And a society of a particular form may be guilty of different conceptions of institutional racism over time.

One account of what institutional racism amounts to emanates from Jorge Garcia's influential treatment of personal racism. In his important 1996 article, "The Heart of Racism", Garcia characterises racism as akin to a character flaw: the possession of certain feelings toward people of a race or races other than one's own. Being racist, on this account, is being disposed to feelings of viciousness, hatred, disregard and ill-will toward other people who are perceived as belonging to a race other than one's own, where the fact of their being members of a different race plays a determinative role. The characterisation of the feelings of ill-will etc., as directed at people "perceived" to be of other races, makes clear that Garcia's definition does not assume that races are real biological phenomena. They are, however, no less real as a result. They are real social phenomena. Person A, on this account, is racist toward person B, if person A feels ill-will etc. towards person B because person B is perceived to be a member of a race other than person A's race. This approach to racism has been described as volitional or non-doxastic. Accordingly, "racism is primarily a matter of ill-will" (Mills 2003:30) or alternatively racism is fundamentally "a vicious kind of racially-based disregard for the welfare of certain people" (Garcia 1996:6). Helpfully, Garcia explains that while the traditional doxastic conceptions of racism suggest that racism is about "what a person thinks," the beliefs they hold about people of other races, his non-doxastic account views a person's racism as being about "what she feels, where this includes what she wants and intends" (1996:6). In what follows I shall use 'feelings' in Garcia's expanded sense.

Two kinds of issues quickly surface regarding this conception of racism. On one hand, Charles Mills suggests that it is not quite as clear as Garcia seems to indicate that feelings can exist without underlying beliefs (whether these beliefs are factual or evaluative). The argument here is quite straightforward. To have certain feelings toward a person presupposes holding certain things to be true about that person. To put this formally, “there is a logic to the concept of x such that to say that a person feels x toward z implies that he believes such and such about z” (Mills 2003:40). While the logic here is quite appealing, it ought not to be understood as suggesting that having some feeling about a person implies having made certain evaluations about that person. What is being claimed is that some belief is necessary in order to have the feelings which Garcia argues make a person racist. Mills's argument is that, to feel ill-will toward people of a particular race presupposes a belief that those people are of a nature that makes ill-will the appropriate emotional posture to take toward them.²⁰ There is no requirement that all who take such emotional posture have arrived at it via the exact same beliefs, although history suggests that they tend to. Charles Mills argues that members of different races are socialised differently in society. In a white-supremacist racist society, a white person would have been socialised to have certain beliefs about people of other races. Mills says, “because they are white - not biologically, but socially - they will tend to be a certain way, and this will be a real metaphysical, though historically non-invariant, fact about them” (2003:45) and this fact will include their having certain beliefs about people of other races. But

²⁰ I agree with Eduardo Bonilla-Silva, who argues in his book *Racism without Racists* (2010), that those racist beliefs that ground feelings of racism do not have to be conscious. This possibility is of course not accommodated in Garcia's theory, but the theories that we consider later (Shelby's and Mills') are able to make sense of this element of racism.

regardless of how those beliefs are acquired, Mills's argument is that the relevant feelings for racism on Garcia's account must be grounded in beliefs. For example, the purportedly factual belief,²¹ more prevalent in earlier centuries, but by no means completely nonexistent today, that black people are prone to criminality, might plausibly lead a white woman to develop a feeling of bitterness toward black men because they are black men. Of course, to say that beliefs underlie the feelings that are required for racism is not necessarily to say that the beliefs, rather than the feelings, are the *real* locus of racism. In this sense, Garcia's focus on feelings, instead of beliefs, may yet be correct. But while this is true, it seems to make little sense to say that feelings of ill-will toward a person of some race, because they are of that race, are racist, but that the belief that persons of some race are inherently of such a nature as to plausibly warrant ill-will, is not racist. In some ways, because the belief appears to be more fundamental, we are justified to say that it is more inherent to racism than the feelings it begets.

The idea that the relevant kinds of feelings are based on certain, often shared, beliefs is instructive with respect to a second issue with Garcia's conception. Whether or not malevolent feelings toward people of another (that is, other than one's own) race are part of what is interesting about racism, it seems quite clear that what most people who care about racism are more interested in is power. Power is here conceived simply as the capacity to make things happen (or prevent things from happening). In our everyday understanding of racism, the power dynamics that not only allow members of one race to justify to themselves their beliefs of superiority *vis a vis* members of another race, but

²¹ Mary Beth Oliver discusses the myth of Black criminality in Oliver (2003).

also to carry out actions on the basis of those beliefs (that is, bring about certain real social effects), seem at least as interesting as, if not more interesting than, their beliefs or feelings about members of another race. There is no doubt that in any contemporary liberal European society, a black person calling a white person by a racial epithet carries different weight to most people (in the vast majority of cases, much less weight), than if the tables were turned, even if we say the use of racial epithets is morally problematic in all situations regardless of the race of the user. Yet in each case there may be the same feeling of ill-will towards those of another race. Another example is with respect to the idea of nationalism. White nationalism is considered morally repugnant by most Europeans, whereas even the more radical black or pan-Africanist nationalists are viewed as a bit of a curiosity and handled with a great deal of indulgence by most Europeans. At its core what this evinces is the fact that discussions about racism are not really discussions of racism *simpliciter*. They are also discussions of power; not just who (i.e., members of which race) has historically had the power to give effect to their beliefs and feelings about people of other races, but who currently has the power to do so. And most Europeans will no doubt be of the view that white people and white nationalist movements have had significantly more power historically and in present day Europe than black people and African nationalist movements. According to Mills, from the perspective of blacks in Europe, “[B]eing white means (to some high, if not precisely specifiable, degree of probability), being a person that looks down on you and, given motive and opportunity (*and of course whites in this period have the power, so they will generally have the opportunity*), will be likely to mistreat you” (2003:45-6, emphasis added). If this analysis is correct, it becomes crucial that Garcia offer a conception of

institutional racism that is responsive to the roles we have just argued that both beliefs and power should be thought to have in racism.

What follows from Garcia's conception of personal racism is a conception of institutional racism according to which an institution is institutionally racist to the extent that those who give that institution effect on an ongoing basis are racist in the conduct of their official duties. To put it another way, an institution becomes racist when the individuals who work in it carry out their functions in that institution in a way that is motivated by feelings of ill-will etc. towards people of another race. This can be extended to a whole society. That is, we can say a society is institutionally racist if the people who manage the network of institutions that society is constituted in are mainly from one dominant racial group and dispense their duties in those institutions in a way that is racist toward members of other racial groups. A useful way to orient what Garcia says about institutional racism is to notice that he argues that individual racism takes priority, both in terms of definition and in terms of moral importance, over institutional racism. He says, "personal racism exists when and insofar as a person is a racist in her desires, plans, aims...in the same way, institutional racism exists when and insofar as an institution is racist in the aims, plans, etc., that people give it" (1996:12). In this sense, institutional racism is nothing other than the enactment of the racism of those who work within a given institution. A question raised by this account, but which we are going to set aside, regards what level of racist saturation an institution may need to reach to be institutionally racist. That is, is an institution institutionally racist if just one of its functionaries, or half of the total number of functionaries, or a majority of the functionaries, are carrying out their duties in a way that is motivated by racist feelings? This is not an unimportant question of clarification

given how intrinsically derivative from personal racism institutional racism is on Garcia's account. However, it seems we can assume, sensibly, that the role of senior functionaries, who set the institutional culture, in whether or not an institution is racist is more significant than that of junior functionaries. We can also assume, sensibly too, that the closer an institution is to having a "culture" of carrying out official duties from racist motives, the more racist that institution can be said to be.

On this account, it is true that an institution may shape the feelings of individuals. An institution that may be said to be racist in the relevant way, could make it more likely that individuals within it develop feelings of viciousness, ill-will and disregard towards people of the targeted race(s). A good example of this might be, an army. Assuming, for instance, that the reason the US army has invaded and occupied only countries with majority black or brown populations in the last 30 years is that the leading figures of the American military and foreign policy establishment have the relevant kind of disregard for black and brown people and that therefore the American military and foreign policy establishment is institutionally racist, a young recruit into the army may find that they, having grown accustomed to interacting with certain kinds of black or brown people as enemies, may begin to develop the relevant kind of disregard toward black and brown people as would make one a racist on Garcia's account. But even granting this possibility, Garcia insists that "this reciprocity of causal influence, however, should not blind us to the questions of origins" (1996:33). It is possible for individual racism to come about absent the influence of some racist culture. But the reverse is impossible, he suggests. So, for Garcia institutional racism ultimately and necessarily results from personal racism.

On the issue of racism being a matter of feelings, Garcia's conception of institutional racism maps his conception of personal racism closely. Nothing in his conception of institutional racism is cognisant of the view that feelings are grounded in beliefs, not even if the beliefs are taken to be held unconsciously. Eduardo Bonilla-Silva argues in his book *Racism without Racists* (2010) that the racist beliefs that ground feelings of racism do not have to be conscious. They can be subconscious or unconscious. But even this possibility is not accommodated in Garcia's conception of institutional racism. What is apparent, however, is that the power imbalance between institutions and individuals begins to be factored into Garcia's conception of institutional racism. The power dynamics between the institution called the US Army and an individual Afghan, for example, illustrates this point. The US military clearly has the power to make certain things happen to the Afghan on account of its institutional racism that the Afghan cannot reciprocate in kind. In some ways, the power element of racism is more easily perceptible in the relation between an individual and an institution.

This leads us to Tommie Shelby's conception of institutional racism. There is a reason we are concerned by institutional racism, he suggests. The question, even in its abstract philosophical formulations, does not arise in a vacuum. It arises not because humans have the capacity to discriminate along racial lines necessarily, even though they evidently do. It arises instead because, in Europe at least, members of a particular racial group have historically had the power to bring about unprecedented amounts of discrimination and oppression on members of other racial groups, and that those acts of discrimination and oppression, which have historically been justified in racial (and racist) terms. Native American genocides, slavery, Jim Crow, colonialism and the barbarity that went with

that, and the continued evidence of unequal treatment across Europe of peoples of colour, tell a distinct story. Tommie Shelby suggests that the story they tell is that institutional racism consists in a shared ideology. In addition to helpfully making sense of the role of belief and power in racism, in persons or in institutions and societies, Shelby's conception allows us to see how these factors combine in producing societies in which people of one or more historically oppressed racial groups are more likely to end up worse off than people of other racial groups.

One way to grasp the theoretical move that Shelby is looking to make is through the lens of the central argument of Eduardo Bonilla-Silva's (2010) "Racism Without Racists", namely, that although explicit racist feelings of ill-will or viciousness have declined precipitously among the population of the United States since the end of Jim Crow segregation, racist behaviours that evince deeply internalised, albeit largely unconscious or subconscious, beliefs and attitudes about not simply the existence and meaningfulness of the idea of race, but also about what being of a particular race means, persist and have systemic effects on people's life outcomes, for better or for the worse. A classic study illustrates the underlying point. A sample group of Americans are shown two pictures, the first picture is of two white men fighting, one armed with a knife and the other unarmed, and the second picture is of a black man and a white man fighting, with the white man armed with a knife and the black man unarmed. When asked to recall who held the knife in the first picture, most of the study participants identified the correct man, but when they were asked to do the same for the second picture, most of the participants identified the black man as the person with the knife. It did not matter to the outcome of the experiment whether the participants were black or white. This outcome seems to offer

evidence of a tendency, noticed across a wide variety of social settings and activities in the US, from policing to education, to perceive black people, or at least black men, as more threatening than white men. To be sure, to show that evidence of racial bias exists is not to show that evidence of racism exists. Garcia might argue, for example, that racism (in his sense) has not been proven by the experiment's outcome; that to do that we would need to demonstrate that the people who thought the black man was the armed man (when he was not) did so because they had standing feelings of ill-will towards black people. What is wrong with Garcia's approach as outlined above is also wrong with this retort to the outcome of the experiment: it fails to acknowledge that unconscious racially biased beliefs can be as damaging to people of the race concerned as conscious feelings of ill-will and therefore should be included in an account of personal racism. It is on something like the unconscious beliefs at play in this experiment that Shelby relies in discussing institutional racism, even though he does not exclude the possibility that those beliefs are also accompanied by feelings.

According to Shelby, to understand racism, we need to look beyond what could be the conscious feelings of a racist, to the socio-historical situations in which racism occurs. On this account, he suggests we view racism as a type of ideology. Ideologies, on the conception operative in Shelby's account, are "widely accepted illusory systems of belief that function to establish or reinforce structures of social oppression" (2002:415). Over the course of modern European history, for example, the ideology of the racial superiority of white people (and the inferiority of black people) has developed and evolved. Sometimes these ideologies are developed, and accepted, as a result of latent fears about "the other". For example, white workers have sometimes accepted the idea that blacks

are inferior as a result of their fears of being replaced by them in the job market. But in other cases, they have been developed post hoc as a way to justify oppression and exploitation. In this latter connection, Shelby observes that “racial ideologies emerged with the African slave trade and European imperialist domination of ‘darker’ peoples. These peoples were ‘racialised’ in an effort to legitimize their subjugation and exploitation” (2002:415). Crucially, although the lynchpin of this ideology are often highly developed theories of the idea of biological races, for Shelby, their most important role is as commonplace attitudes and beliefs that people have. That is, as unconsciously held attitudes and beliefs. He says, “racism is a set of misleading beliefs and implicit attitudes about ‘races’ or race relations whose wide currency serves a hegemonic social function” (2014:66).

There are four things to note about this definition of racism. First, unlike Garcia’s, it includes 'beliefs' as well as 'attitudes'. Second, these beliefs and attitudes form a 'set'; that is, they form part of a group of interrelated beliefs and attitudes that justify and reinforce each other. Third, this set of beliefs and attitudes has 'wide currency' in society; that is, they are widely held and widely influence people’s actions in society. And lastly, this set of beliefs and attitudes serves the function of maintaining the hegemony of one racial group over another, where hegemony is simply defined as dominance.

An “institutionally racist” society then, according to Shelby, is one in which widespread racist beliefs, implicit judgements and attitudes serve a “hegemonic social function”, which in the case of European and American societies, is the function of maintaining the dominance of whites over blacks. Two important elements of institutional racism emerge:

(1) that the beliefs and attitudes it involves do actually maintain a racial dominance (as opposed to being such as to be able to maintain dominance) and (2) that this dominance is reflected in 'economic racial disadvantage' (racial disadvantage in terms of incomes) and/or 'opportunity racial disadvantage' (racial disadvantage in terms of opportunity levels). The role of these beliefs, attitudes or judgements, need not be explicit, or even conscious on the part of those acting on the basis of them. As Shelby is careful to note, a society can be institutionally racist if “its rules and regulations are not impartially and consistently applied” because of the pervasiveness of racial ideology, even when “perhaps unconscious” (2014:68).

Two things stand out about Shelby’s conception of institutional racism by contrast to Garcia’s: (1) Shelby bases racism on the presence of racist beliefs, which means that even a society in which no racist ill-will is operative, but where racist beliefs obtain (even when they are unconscious), can be institutionally racist; and (2) given the importance of the socio-historical context in which racist ideologies develop and their function in maintaining hegemony, he is able to address the power dynamics highlighted above. Shelby’s conception can account not just for the history of the subjugation of blacks by whites, but the continued maintenance of patterns of white dominance in every aspect of life across Europe and America. Importantly for our purposes in this chapter, it is clear that a society in which racist ideology creates and maintains patterns of hegemony, and thus of economic advantage of whites over blacks, such that one’s race is a reliable predictor of where one will end up on the income ladder, for example, will be considered institutionally racist. I shall adopt this Shelbian conception of institutional racism in this work and the society x described above is institutionally racist in precisely this sense. The

parties involved need not be conscious of the fact that they are either benefiting from or disadvantaged by the pervasiveness of (often unconscious) racist beliefs, attitudes and judgements, like the attitudes and beliefs that appear to be operating in the classic study of racial bias discussed above, and the consequent maintaining of one race's hegemony over another. On this conception of institutional racism, racist beliefs and attitudes produce the (historical as well as the continued) dominance of one race over another and thus its economic advantage. The causal relationship between the existence of racist beliefs and racial hegemony in an institutionally racist society is taken to be necessary although both things are theoretically distinct things (there can be racist beliefs without racial hegemony and vice versa).

In what follows I shall use 'racial disadvantage' to mean that members of one racial group are systematically worse off in some way compared to non-members of that group. Thus, based on our definition of institutional racism, it includes racial disadvantage as an aspect of itself, although in principle racial disadvantage could exist in the absence of institutional racism. I shall use 'racial injustice' to mean any injustice that specifically affects members of a racial group. It goes without saying that institutional racism is a form of racial injustice.

In the final section of this chapter, I shall argue that Van Parijs's leximin chooser (or someone choosing solely on the basis of his leximin principle), would not have any reason to prefer a non-institutionally-racist society to such an institutionally racist society. In the next section, I shall rule out the argument that the aspects of Van Parijs's theory that are

lexicographically prior to the leximin principle (property rights and self-ownership) preempt the argument I intend to make.

3. INSTITUTIONAL RACISM AND FORMAL FREEDOM

As we discussed in chapter one, formal freedom consists of a well-enforced regime of property rights and self-ownership. In other words, a person is formally free if no hindrance or interference by others to what they might do with whatever they legitimately own (including themselves) is permitted. In this section I will discuss in turn whether respecting the property rights and self-ownership of all members of society necessarily precludes institutional racism. I shall argue that it does not.

In some ways, the discussion of whether respecting property rights precludes racial dominance or institutional racism must start by touching on one case in which respect for property rights is clearly consistent with institutional racism, namely, slavery. We are not accustomed to thinking of slavery as institutional racism, but it is clear how slavery in the traditional iteration satisfies the framework of Shelby's conception of institutional racism. Slavery is systematic domination of one race over another, and in almost all cases it is backed up by a set of beliefs geared toward justifying the domination of some by others.

Furthermore, nothing about respecting the property rights of every member of society, including members of the less well-off racial group, rules out institutional racism manifesting itself against that group in other forms, including in terms of access to the opportunity to acquire property. One way to put this is to say that the fact that a black member of a white-dominated society is permitted to do what they please with a lake they

own does not rule out the possibility that black members of that society as a whole are much less likely than their white fellow citizens to own a lake in that society. The practice of “redlining” in the United States, which applied unfair loan conditions to prospective borrowers from black neighbourhoods and labour laws in Apartheid South Africa that barred black people holding certain high skilled, well-paid jobs, are some of the best known examples of institutionally racist policies that have affected the ability of black people to acquire property in societies where property rights would typically be respected.

Now, on to the question of whether respecting self-ownership rules out institutional racism. The Van Parijsian conception of self-ownership described in chapter one contrasts with the classical right libertarian approach to self-ownership. We could describe the right libertarian approach as a form of self-ownership absolutism. While classical libertarians treat self-ownership as a sort of first-principle around which every other thing (including every other right) in society ought to be adapted, Van Parijs treats it as one consideration among others - an exceedingly important one, but not one that has absolute value. On the classical libertarian account, the only measure of a legitimate society, for example, is whether it respects the self-ownership of its citizenry. The moral rightness or wrongness of a distributive principle might also be said to depend on whether or not it guarantees the self-ownership of the people who live under a regime that follows that principle. In what follows, I shall argue that, given the fact that in Van Parijs's theory of justice self-ownership can often be overridden in favour of other values, it is uniquely compatible with institutional racism.

Concern for safety and security, public order, public health, peaceful coexistence, some notion of common decency, etc. are among the social values that can override self-ownership in some situations for Van Parijs (RFA 26). One way to look at the question of whether Van Parijs's formulation of self-ownership rules out institutional racism in this context is to consider whether subordinating self-ownership rights to these other social values in some situations, that is, treating it as just one among a complex of values that may be considered in any given situation, does not render institutional racism not only possible, but very likely in historically institutionally racist societies. In some ways, the point here is quite simple. To say of one social value (the right to self-ownership) that it is incompatible with racism (institutional or otherwise) is not to say of a society in which that social value is not considered to be of absolute importance that it is not, or cannot be, institutionally racist. This is true in the quite straightforward sense that even if we conceded that a certain conception of self-ownership is indeed incompatible with institutional racism, if self-ownership itself can be overridden in some situations by other social values, then there is no reason to expect that such a society is necessarily immune to institutional racism. But this is not only true to the extent that the other social values that are given priority over self-ownership at some points do not exclude institutionally racist outcomes. It is also true with social values that may be subordinated to self-ownership but are also held highly in society that do not exclude institutional racism.

Now, having established that because self-ownership in Van Parijs's theory can be overridden by other values sometimes it cannot exclude institutional racism in society if those other values do not exclude institutional racism, let us examine whether it could be said to rule out institutional racism if it were the case that it could not be so overridden. I

argue that Van Parijs's conception of self-ownership is in itself compatible with institutional racism, even when fully implemented and when it cannot be overridden by other values. The classical case in which the lack of self-ownership produces or is coextensive with a clearly institutionally racist society is slavery. A "slavery society", such as the United States of America in the 1800s, is by definition institutionally racist, and is also by its nature anti-self-ownership (for some at least). It is institutionally racist precisely because some people in it lack self-ownership. To be a slave is to not own oneself, that is, to not have self-ownership. Could we then argue, following this background, that slavery societies would cease being institutionally racist once they cease being slavery societies, that is, once everyone in it is self-owning in the Van Parijsian sense? It is obvious that we cannot say this, because although self-ownership is inconsistent with every instance of slavery, self-ownership is not inconsistent with every instance of institutional racism. To see how this is the case, consider that for Van Parijs self-ownership is essentially the right to self-control, but this right to self-control does not include the right to income. If what this means is that persons are free to decide for themselves toward what form of self-exertion they will commit their energies, but are not entitled to the fruits that result from such self-exertion, it seems obvious that adherence to the right of self-control by itself does not render institutional racism impossible. There is no reason based on Van Parijsian self-ownership per se why racial biases could not permeate whatever framework is chosen for the distribution of the fruits of the labour of all members of society. The point being made here amounts simply to saying that there is no reason why being self-owning, where that is not taken to entail an entitlement to the income that results, should preclude institutionally racist outcomes in incomes. Defining

self-ownership to include a right to the products of one's labour would not prevent institutional racism either, since just as institutional racism can manifest in access to property being racially skewed the same can go for access to work that produces a high-value output.

4. INSTITUTIONAL RACISM AND VAN PARIJS'S LEXIMIN PRINCIPLE

Having argued in the foregoing section that none of the other main aspects of Van Parijs's theory of distributive justice exempts his theory from the core claim of this chapter, which is that Van Parijs's central distributive mechanism, the leximin principle, does not exclude institutionally racist distributive outcomes, the task of this section is a simple and straightforward one. I aim to demonstrate here simply that Van Parijs's theory of distributive justice is insensitive to economic racial disadvantage, and therefore to institutional racism as a whole in so far as the theory's only means of detecting institutional racism is by detecting its manifestation in economic racial disadvantage. This, as I have outlined at the start of this chapter, will be achieved by showing that a person choosing between two societies, one of which is institutionally racist in certain specified ways and another which is not, would have no basis in Van Parijs's leximin principle to prefer the non-institutionally-racist society to the institutionally racist one.

According to Van Parijs, the maximally just society is the society that is identified by the application of the leximin principle subject to security and self-ownership. Recall, as we saw in chapter one, a society satisfies the leximin principle if its least well-off members (or more correctly, the members of its least well-off group) end up with more or at least as much as they would have in any alternative feasible society. Where the least well-off

groups in both societies being compared end up with the same amount, we compare the penultimate groups. Where those also have the same, we compare the groups above them, and so on. The underlying point here is that between two societies, the society which leaves the least well-off best off is the most just society.

Applying this leximin criterion to the above mentioned scenario produces an outcome which most of us will believe is unpalatable from the point of view of a theory of justice. To restate the scenario, consider two societies, x and y . Let us, for simplicity, suppose that society x and society y each have only two distinct social positions, say, rich and poor, with the rich supposed to have an annual monetary income of i (representing a significantly higher amount of opportunities)²² and the poor are supposed to have an annual monetary income of j (representing a significantly lower amount of opportunities). In other words, the rich in both x and y have i income, and the poor in both x and y have j income. Suppose also, significantly for this discussion, that the only difference between x and y is that in x race is a predictor of whether a person ends up with i or j , while race is not a predictor of income in y . Put another way, in x a greater proportion of the membership of one racial group than of the other have income j , whereas in y the proportion of each racial group who have income j is the same.

Society x , on this account, is institutionally racist on the conception of institutional racism discussed above, as long as we assume that the different proportions of the two races who have income j in society x can be said to be the result of a set of racist beliefs and attitudes

²² This phrase could be replaced by “higher number of opportunities” or else “larger opportunity-set”. Likewise for “lower amount of opportunities” in the next sentence.

being widely held in x, which produce an outcome that sees one race dominating another. As we discussed earlier, it does not matter to the question of whether or not this is a case of institutional racism that the members of society are or are not conscious of the set of beliefs that are producing the outcomes they have. Conversely, we assume y is not institutionally racist. Clearly, the choice between both societies, if dictated only by the leximin principle will be a difficult one. Both societies are exactly the same in terms of what incomes occupants of the two distinct income strata end up with, and the leximin principle only ranks societies on the basis of which outcomes leave the incomes of the least well off best off. Nothing in the leximin principle allows a person choosing on its basis to consider the reasons why the people who occupy the different income strata end up where they are.²³

²³Charles Mills makes a roughly similar argument against Rawls' Difference Principle when he says "the difference principle cannot handle the issue because it is too weak. It is targeted at the "least advantaged", and as such, will not extend to middle-class blacks who are better off than their "underclass" brothers and sisters, but who nonetheless are worse off than they would have been without the legacy of racial discrimination against their ancestors" (Mills 2007:132). This is not, strictly speaking, the argument I have made. I have argued that Van Parijs's leximin principle is not equipped to take racial injustice into account in determining whether a particular situation is more just than an alternative, whereas Mills is suggesting that the difference principle is too weak to be able to do anything about racial injustice. There is an unstated assumption operative here for Mills, namely, that this is the case because the difference principle cannot dictate the fact that everyone in society is not historically similarly situated in terms of all forms of injustice. In this last respect it is remarkably close to the argument I am making. I should add that although Mills might be correct in the point he makes about the outcome of Rawls's Original Principle, it seems at least arguable that Rawls adapted his difference principle enough in later statements of it to at least begin addressing this problem. In *Justice as Fairness – A Restatement* Rawls (2001:65-66) talks about a "special form of the difference principle", which he explains by saying: "As far as possible, then, justice as fairness appraises the social system from the position of equal citizenship and the various levels of income and wealth. Sometimes, however, other positions may need to be taken into account. If, for example, there are unequal basic rights founded on fixed natural characteristics, these inequalities will single out relevant positions. Since these characteristics cannot be changed, the positions they define count as starting places in the basic structure. Distinctions based on sex are of this type, and so are those depending upon race and culture. Thus if, say, men are favored in the assignment of basic rights, this inequality is justified by the difference principle (in the general interpretation) only if it is to the advantage of women and acceptable from their standpoint. And the analogous condition applies to the justification of caste systems, or racial and ethnic inequalities." I say Rawls adapted his difference principle to begin addressing the problem because it is not clear what this special form of difference principle entails in full. Would he, for instance, have three different difference principles for

Imagine the leximin chooser in this thought experiment as a computer program, whose sole programming is to choose strictly on the basis of the leximin principle, with every other possible consideration taken as illegitimate. There is no doubt that the computer program will not automatically rank the institutionally racist society below the non-institutionally-racist society because, from its programming, racial economic disadvantage is not a legitimate consideration in determining the ranking of the societies being compared. In fact, if we adapted the scenario a bit to give the least well-off group in x an income that is a fraction higher than the incomes of the least well-off group in y , the leximin chooser (or computer program) would be forced to prefer x to y , despite x being institutionally racist.

Our thought experiment invokes an exceedingly simple scenario to make the point, but this example can be generalised to any case where any number of comparable societies have a roughly identical number of income strata with roughly identical incomes, but where in one of societies as a result of institutional racism higher proportions of members of one racial group are in the lower stratum than the proportions of members of another racial group that are in that stratum, whereas in the other societies the proportion of members of each racial group in each stratum is the same. Again the leximin principle will not favour any of the societies, so the theory of justice as a whole will be blind to the racial disadvantage present in one but absent in the others.

income and wealth: one comparing the groups in each society on the basis of which inequality is justified if it is to the advantage of the worst off racial group; one comparing the gender groups and where inequality is justified if it is to the advantage of the worst off gender group, and one comparing the worst off income stratum, and apply them lexicographically?

Now, saying that Van Parijs's theory would not rank lower an institutionally racist society in the scenario offered, is not to say that his theory would not support a non-institutionally-racist society in a scenario where such society is the society that leaves the least well-off members of society the most well off among the societies being compared. That is no doubt possible. One might even argue that there are economic and social reasons why non-institutionally-racist societies would be more likely to produce better outcomes for every member of society, including the least well-off people, than institutionally racist ones. The underlying point being made by the experiment is that there is something more to justice than simply where people end up on the distributive ladder; it also matters why they end up there. If a person ends up at the least well-off position in society because they are black, or a woman, or transgender, it matters that they have ended up there because of those characteristics of their person. And this itself is just as much a matter for a theory of justice as the question of what incomes people in different strata in society end up with. The justice of people of particular categories ending up where they end up has little to do with whether or not there are people in other comparable societies who happen to have ended up in worse positions than the worst off group in the present society.

The blindness to institutional racism of Van Parijs's theory of justice which the thought experiment shows is a serious problem for Van Parijs's theory even outside the context of the comparison sketched above. A society would be unjust (or not as maximally just as possible) if it is institutionally racist, even if the alternatives leave their least well-off members worse off than the worst off members in that society. In other words, even if we stipulated that the institutionally racist society in our scenario left the least well off better

off than they would in all other feasible societies, it would still be an unjust society, and Van Parijs's theory's inability to recognise that basic point is a significant flaw. What this means is that the basic income offer that results from Van Parijs's theory may improve the situation of the least well off, but if justice includes racial justice then it cannot lay claim to maximising justice. Similar arguments can of course be run for gender justice or for justice regarding any other protected categories of person, but I will continue to focus specifically on racial justice in this thesis.

In the next chapter, chapter three, I will consider the arguments that may be offered on Van Parijs's behalf against the argument of this chapter. In chapter 4, I will offer adaptations to Van Parijs's theory which will allow it to take into account the reasons people end up where they are, therefore allowing the basic income offer that results from it to maximise justice.

CHAPTER THREE

1. INTRODUCTION

In chapter two, I argued that Van Parijs's theory of distributive justice is blind to institutional racism, which is a form of racial injustice. I demonstrated this by showing that given the choice between two societies that are similar in every respect except in terms of the distribution of people of different races across opportunity strata, i.e. sections of the population defined by having the same amount of opportunities, a person choosing between them using Van Parijs's leximin principle would not prefer a non-institutionally-racist society to an institutionally racist one. This, I suggest, is a serious charge to be brought against a theory of justice. And insofar as Van Parijs's theory of distributive justice is the basis of his universal basic income offer, this blindness to racial injustice also implicates the basic income offer. If the theory of distributive justice that grounds the basic income offer is blind to institutional racism, it can be argued that it follows that the basic income offer itself that results is similarly problematic vis a vis institutional racism.

In this chapter, I consider and respond to three rebuttals, which Van Parijs could offer to my argument in chapter two.

2. VAN PARIJS'S AS A THEORY OF RELATIVE JUSTICE

There are at least two ways that a Van Parijsian might approach rebutting the criticism we have offered to Van Parijs's theory of justice. They might, on the one hand, deny that

Van Parijs's theory is guilty of the charges we have laid against it. That is, they might argue that the theory is not (or not as) susceptible to the charge of blindness to racial injustice. On the other hand, they may concede that Van Parijs's theory is indeed guilty of the charge of blindness (to racial injustice) to one extent or other, but then argue that such guilt does not rule the theory out as offering a suitably useful account of justice. The rebuttal that we will focus on in this section takes this second route. On this rebuttal, our argument in chapter two only shows that Van Parijs's theory is unsatisfactory as a theory that picks out an absolutely just society (i.e. a theory of absolute justice), that is, a society devoid of any injustice including racial injustice, not as a theory that orders any two societies as more or less just (i.e. a theory of relative or comparative justice). In other words, the rebuttal suggests that even if we are correct in saying Van Parijs's theory of justice is blind to racial injustice in its account of a perfectly just society it does not follow that Van Parijs's theory is not a satisfactory theory of relative justice. And as a theory of relative justice, it remains useful for grounding the idea of a universal basic income.²⁴

The backdrop to the idea that Van Parijs's is a theory of relative justice is the idea that theories of justice may approach the idea of justice in one of at least two ways. They may aim to identify what absolute justice looks like, that is, they may aim to identify the criteria for an absolutely just society. They may do this under the assumption that identifying absolute justice will enable them to rank different societies at different positions relative to absolute justice, that is, that they will be able to ascertain the relative justice of actual situations or societies by measuring how close each comes to absolute

²⁴ It is noteworthy that at least one thinker has suggested that what Van Parijs's theory is interested in is "ideal justice" not comparative justice (Birnbau 2004).

justice. But they need not identify criteria for absolute justice in order to rank societies as more or less just, which leads us to the second way that they may approach justice. They may seek to identify criteria for ranking situations or societies in terms of their relative justice in comparison to each other. On the rebuttal we are considering, Van Parijs's theory of justice follows the latter approach. It is able to help us rank any two societies in terms of justice, even if it is not able to lay claim to telling us what justice in its fullness looks like. To be sure, the two approaches are not necessarily incongruent. As we have already indicated, it is possible to conceive of the second approach as utilising something like the assumption that identifying absolute justice helps us compare situations or societies relative to the absolute. Or on the other hand, one may also assume that a framework for ranking existing or possible situations or societies implies, if only in theory, the possibility of ranking every possible situation or society in such a way as could lead one to identify the most just possible situation or society, although identifying the most just society out of all possible societies is not the same thing as identifying an absolutely just society. At any rate neither of these possibilities affects the rebuttal. On the rebuttal, we need not identify absolute justice to be able to identify the relative justice of distinct situations or societies. And *qua* a theory of relative justice, Van Parijs's theory of justice is suitably useful for grounding improvements in the justice of present-day societies.

To see why the distinction between absolute justice and relative justice is so important for this rebuttal, notice that if Van Parijs's goal is to formulate an account of absolute justice, successfully indicting it of blindness to some injustice renders the justice it leads (or is likely to lead) to less than absolute, which means the theory fails. What grounds in

Van Parijs's work does a Van Parijsian rebuttalist have for saying that Van Parijs does not aim to offer a theory of absolute justice? Perhaps the clearest grounds for this is that, for Van Parijs, the goal of a theory of justice is to formulate an account of a society whose members are all “as free as possible” (RFA 25). The lack of absolutism in his formulation of justice seems self-evident. Moreover, his choice of the leximin principle (as opposed to “a purely aggregative formula” or “a more egalitarian formula”) lends itself further to that lack of absolutism (RFA 25). The leximin principle is a tool that comes into its own when utilised for pairwise comparisons and so indirectly identifying the most just of a given set of societies, rather than in identifying some absolutely just society. Van Parijs makes this clear when he explains the leximin principle thus:

in a free society, the person with least opportunities has opportunities that are no smaller than those enjoyed by the person with least opportunities under any other feasible arrangement; in case there exists another feasible arrangement that is just as good for the person with least opportunities, then the next person up the scale in a free society must have opportunities no smaller than the second person up the scale of opportunities under this arrangement; and so on. (RFA 25).

To put this more simply, the leximin principle fundamentally identifies the *most just* society out of a range of societies or what Van Parijs calls 'feasible arrangements' by identifying the society whose least well-off members are best off among the range being compared. It does not identify any society as absolutely just. The claim that Van Parijs's theory blindness to institutional racism damns it *qua* a theory of justice, the rebuttal goes, is based on misconstruing his theory as a theory of absolute justice.

It is useful to flesh out the approach to justice that underwrites this Van Parijsian rebuttal. A plausible approach to conceptualising this approach is to look at it from the vantage point of what Amartya Sen identifies as a distinction between a transcendental approach to justice and a comparative approach to justice (Sen 2006). On Sen's approach, the proper objective of a theory of justice is not to identify the perfectly or ideally just, as most mainstream theories of justice have taken to be the case. Accordingly, the question of "different ways of advancing justice in a society (or in the world), or of reducing manifest injustices that may exist, demands comparative judgements about justice, for which the identification of fully just social arrangements is neither necessary nor sufficient" (Sen 2006:217). Theories of justice, therefore, ought to aim to "identify reforms that involve justice-enhancement, or injustice-reduction, even if the results fall short of perfect justice" (Gilbert 2012:39). The concern for justice, on this account, begins from questions about how to improve on particular existing situations. How do we ameliorate actually existing hunger, human trafficking, racism, etc. A crucial plank of the search for justice, therefore, is the search, not for the perfectly just but for the justice-increasing. According to Sen's comparative account, we should concern ourselves with trying to find what feasible arrangement, which is attainable given present circumstances, would be injustice-eliminating or justice-increasing. Or more accurately, we should compare all feasible arrangements which are attainable given present circumstances for which of them is the most injustice-eliminating or the justice-increasing. To do this, we need not already know what absolute justice looks like. In other words, the most just of a range of options need not be identified by identifying which of the available options is situated closest to some absolute. This is what Sen's comparative approach to justice

amounts to: the search for the most justice-enhancing or injustice-eliminating out of a given range, as opposed to a search for the absolutely just.

It is clear how Sen's comparative approach allows a Van Parijsian to effect the theoretical move involved in the rebuttal being considered. To say of Van Parijs's theory that its leximin principle does not preclude designating as absolutely just an institutionally racist society, is not to say of it, at least on this account, that it fails to designate the most just society from a range of options.

But in many ways this rebuttal is beside the point. The form of our argument in chapter two takes as given this character of Van Parijs's theory, that is, we take for granted that his is a theory of relative justice. In our thought experiment in chapter two, we utilise the leximin principle to compare and rank two societies. In fact, our criticism of Van Parijs is couched in terms suggesting that what is wrong with it is precisely its inability to rank the societies presented there as more or less just. Simply pointing out that Van Parijs's is a theory of relative justice might allow the rebuttalist to bypass the problem the theory encounters by not being able to preclude judging an institutionally racist society to be absolutely just. But it does not affect the theory's inability to rank the societies being compared. And that choice is the crucial aspect of our criticism. The Van Parijsian rebuttal misses its mark because my objection stands even when we understand Van Parijs's theory as an account of relative justice.

The underlying attitude of Sen's argument is that theories of justice ought to care about the real issues that actually give rise to the discussion of justice or even injustice: real situations in which we can all agree that some injustice is taking place, and for which we

need solutions to improve the situation. Among the injustices that motivate our discussion of justice are “‘iniquities of hunger’, poverty, illiteracy, torture, racism, female subjugation, arbitrary incarceration, and medical exclusion” (Kukathas 2013:199). The injustice that is the focus of our criticism of Van Parijs's theory of justice, institutional racism, is clearly a central injustice with which a comparative approach to justice must aim to grapple, according to Sen and many other social theorists. So, the choice between two societies that are similar in every way except in terms of institutional racism is one possible choice that one could be subjected to in discussions of comparative justice. And our objection is that Van Parijs's leximin principle fails to make a choice under the conditions described in the experiment.

Now, to see the issue from the rebuttalist's point of view, in what way could understanding Van Parijs's theory as an account of relative justice aiming for the justice-enhancing or injustice-reducing shield it from the charge we bring against the theory? It could perhaps be said that the leximin principle, since it aims to maximise the outcomes for the least well-off members of society, maximises the outcomes for the racially disadvantaged, even though it does not completely eliminate racial inequality. In other words, even if one racial group ends up on average worse off than other groups in a society chosen in a comparison with another society through the leximin principle, by virtue of being chosen using the leximin principle it follows that the worst off members of the less well-off racial group are in such event at least as well off as they would be in any other competing society. As Van Parijs argues, although the leximin principle is not “the most egalitarian criterion compatible with efficiency, it does constitute, among all criteria compatible with efficiency, the one that is most heavily biased in favour of the victims of

whatever inequalities are allowed to subsist” (emphasis added, RFA 28-9). Viewed in this way, it appears that a society chosen in a comparison between itself and another using the leximin principle would also be the most justice-enhancing or injustice-eliminating of the two societies.

But this misses a major point. To frame matters in that way is not to answer the question of what a leximin chooser would do when presented with a choice of two societies in which the least off members are equally well off, but where one of those societies is institutionally racist and the other is not. Van Parijs's march into the realm of relative theory does not affect the leximin principle's incapacity to allow consideration of the racial makeups of the constituents of least well-off groups to be part of the choice. The leximin principle can only consider the outcomes of the least well off devoid of their racial identities. And where the least well-off members of both societies being compared are equally well off the leximin chooser has no way of preferring the non-institutionally-racist society to the institutionally racist society. Being incapable of factoring in the concentration of one racial group in the less well-off stratum, let alone the racist ideology which is the cause of this, the leximin chooser still cannot grasp the real difference between both societies.

3. EFFICIENCY-SENSITIVITY AND THE LEXIMIN PRINCIPLE

A second rebuttal to our criticism of Van Parijs's theory might begin by pointing out that Van Parijs's is a 'soft' egalitarian theory. In this connection, Van Parijs suggests, “when pursuing leximin opportunities, the egalitarian situation that can serve as a baseline relative to which inequalities in real freedom need to be assessed is one in which all have

an 'equal' real freedom" (RFA 53). One of the things that egalitarianism (a soft egalitarianism, at any rate) entails is that an egalitarian theory admits of, among a few other possibilities, an efficiency-sensitivity justification for inequality. By 'efficiency' I mean here Pareto-superiority. One distribution is Pareto-superior to ('more efficient than') a second one if at least one person is better off and no-one is worse off in the first than in the second. Applied to societies, one distribution is more efficient than a second one if at least one group is better off and no group is worse off in it than in the second. On this definition of efficient it is a comparative term: we can never say that a society is simply 'efficient', only that it is more or less efficient than another society. On this account then, a theory of justice is 'efficiency-sensitive' if whenever one society is more efficient than (is Pareto-superior to) another then the theory will rank it as more just than the other, i.e. the theory is 'sensitive' to the Pareto-superiority of one society over another. Van Parijs' theory is efficiency-sensitive in this sense because it ranks an unequal society as more just than another unequal society when "sustainably narrowing the gap [in the first unequal society] would involve an unreasonable cost" for the least well-off people (Van Parijs 2009:4), whereas it is possible to sustainably narrow the gap without incurring unreasonable costs in the alternative unequal society. "Unreasonable costs" here means worsening the situation of the worst off. So in the case of Van Parijs's theory, inequality in terms of opportunities is permitted to the extent that it leaves the least well off better off than they would be if opportunities were equalised. The rebuttal we will consider in this section suggests that the fact that Van Parijs's theory of justice takes efficiency seriously requires us to conclude that someone choosing between the non-institutionally-racist society and the institutionally racist society in the scenario painted by our thought

experiment would invariably prefer the non-institutionally-racist society, on the grounds that that the non-institutionally-racist society is superior to the institutionally racist society on efficiency grounds. One way to show this is to suggest that an institutionally racist society would be almost definitionally less efficient since it does not provide the best conditions to allow as many people in it as possible to maximise their income. The (fair) assumption is that an institutionally racist society involves inequalities in the distribution of income that make it less efficient than a non-institutionally-racist society. For example, an institutionally racist society could be said to hinder the ability of a portion of the population to put their talents to use in production. The distributive shares that some members of society (the racially disadvantaged) end up with can be sustainably increased in an institutionally racist society (simply by reducing the institutional racism of that society) without making any other members worse off. In other words, the non-institutionally-racist society is superior to the institutionally racist society on efficiency grounds and a Van Parijsian leximin chooser would surely prefer the former to the latter on those grounds.

This is a reasonably strong rebuttal, but it is based on a misunderstanding of Van Parijs's theory. A question that captures this misunderstanding is, does Van Parijs choose the leximin principle because it produces efficient outcomes, or does Van Parijs's theory of justice require the chooser to make their choice between possible alternative societies based on efficiency as an additional condition? Is efficiency accounted for in the leximin principle itself or is it a stand-alone consideration which we must take into account over and above the leximin principle? The rebuttal appears to be based on the view that Van Parijs's leximin principle requires a leximin chooser of the kind invoked in chapter two

to have efficiency as a factor in their choice over and above the leximin principle itself. On this rebuttal, the chooser would have to make the leximin decision and the efficiency decision as separate ones, such that even if they cannot prefer the non-institutionally-racist society on the leximin choice they can and would prefer it on the efficiency choice. This is what is required for such a chooser to prefer the non-institutionally-racist society on account of its greater efficiency. But to view matters in this way is to get Van Parijs's theory fundamentally wrong. The leximin principle in Van Parijs is the product of a concern for efficiency; efficiency is not a factor in his theory over and above the leximin principle. Efficiency-sensitivity is a factor in his theory only to the extent that the leximin principle produces the choice of a society that satisfies the efficiency-sensitivity requirement. The leximin principle encapsulates the role efficiency has in Van Parijs's theory. This fact is most pointedly captured when Van Parijs says “real-libertarianism can be viewed, along with other left-liberal positions, as an attempt to articulate the importance we ascribe to liberty, equality, and efficiency...[A]nd equality and efficiency are combined in the leximin criterion” (RFA 28-9). If one society is more efficient than another then it will automatically be ranked above the other on the leximin criterion. This means that if it is indeed the case, as we showed in chapter two, that a Van Parijsian leximin chooser could not prefer the non-institutionally-racist society to the institutionally racist one, meaning that both societies satisfy the leximin principle to the same extent, it follows that neither society is superior to the other on efficiency grounds.

To put it slightly differently, although it is correct to say that the institutionally racist society is inferior in terms of efficiency to the non-institutionally-racist one, the leximin principle as we argued cannot spot the respect in which this is the case because it cannot

spot the differences in the kinds of reasons persons end up where they are. It cannot spot that some end up worse off than they can be because of systematic oppression, which if reduced or removed can improve their fortunes without worsening the fortunes of anyone else. On the leximin principle, both societies are exactly equally efficient because the reasons people end up where they do does not factor into the decision.

The crucial aspect of our thought experiment is that the least well-off people in the two societies being compared are exactly equally well off. In other words, the idea that the least well-off members of the institutionally racist society would be better off if efficiency is given added importance is irrelevant in terms of the two particular societies being compared. It may indeed be the case that if the institutionally racist society were to become non-institutionally-racist, open up possibilities thereby creating more wealth, and then redistribute wealth to the worst off, then the resulting society would satisfy the leximin principle better than the institutionally racist one. But that is not the comparison we are interested in here. We are interested in the comparison between the institutionally racist one and a non-racist one with an identical set of income strata. The crucial point of the thought experiment as originally outlined is that the leximin chooser does not have the capacity to prefer one society to another one on grounds other than how well off the least well-off people in them are (or the group above them if the least well off are equally well off, etc.). However egregious the racial inequality in either system, a leximin chooser is not able to make that a criterion in their choice of society. Van Parijs's theory of justice is fundamentally blind to racial inequality, and thus to institutional racism and is therefore problematic on that account.

4. LEXIMINNING OPPORTUNITIES VS INCOME

A third possible rebuttal that can be put forward by a Van Parijsian to my argument is one based on the idea that in an institutionally racist society each member of a racially disadvantaged group will be aware that they (themselves and other members of their racial community) are discriminated against because of their race and this awareness will by itself demoralise them, and this will in turn have an opportunities-reducing effect. The point of this rebuttal seems to be that the worst off group (as a whole) in the institutionally racist society will therefore be less well off in terms of opportunities than the worst off group in the non-institutionally-racist society even if they are equally well off in terms of monetary income. The mechanism by which the demoralisation of the racially disadvantaged results in a loss of opportunities is not central to this argument nor will it be to our response, so we will not outline it in any detail. It seems though that we have to clarify an element of our thought experiment in chapter two.

There is an implication in the rebuttal that the least well off group in the institutionally racist society overlaps significantly with the least well off racial group, such that to speak about the opportunities of the least well off group is to speak about the opportunities of the least well off racial group. We had stipulated there that one society is institutionally racist because it has an over-representation²⁵ of one racial group in the least well-off income stratum as a result of the prevalence of racist ideology in that society. Strictly speaking, not very much hangs on the question of how much of the membership of the

²⁵ A racial group is 'over-represented' in a stratum if the proportion of members of the racial group who are in the stratum is higher than the proportion of non-members of the racial group who are in the stratum.

lowest stratum do one racial group make up compared to those not in that racial group, except perhaps to say that their over-representation should not be thought to be too slight. If for example 32% of members of the less well-off racial group are in the lowest stratum and 30% of non-members of that racial group are in the lowest stratum, it might be possible that other factors (beside institutional racism), including some potentially benign factors can explain that. So for our original thought experiment to be meaningful we might add here that the degree of over-representation in the ranks of the least well-off stratum of members of the less well-off racial group is significant. But the formulation of the rebuttal seems to require that their over-representation in that stratum be thought to be overwhelming because the rebuttal seems to suggest that there is a significant degree of overlap between the least well-off group and the less well-off racial group, to the extent that if the opportunities of each member of the less well-off racial group is said to be reduced it follows that the opportunities of each member of the least well-off group is similarly thought to be reduced. For this reason, we will stipulate on behalf of this Van Parijsian rebuttal, that in the thought experiment all those in the lowest stratum in the institutionally racist society are members of the less well-off racial group. There does not appear to be any substantive difference with regard to the outcome of our arguments in chapter two or in this chapter to granting this though. Even if everyone in the lowest stratum is a member of the less well-off racial group the theory will not find the society to be any less just than one where the proportion in the lowest stratum is equal to the proportion in the population as a whole.

To return to the rebuttal, does the argument that the opportunities of the least well-off group in the institutionally racist society are reduced because they are demoralised by

racism mean that the leximin chooser would therefore prefer the non-institutionally-racist society? A Van Parijsian would say, yes, because what is being leximined in our thought experiment is monetary incomes and what Van Parijs really wants to leximin is opportunities, to which monetary income contributes but to which there are also other contributors.²⁶ Once the other contributors to opportunities are taken into account the non-institutionally-racist society will be leximin-superior to the institutionally racist society even if they are leximin-equal in terms of monetary incomes alone.

There is something intuitively appealing about this argument as it stands, but there is much to unpack in it. Throughout the previous chapter, we treated monetary income as an approximate measure of opportunities. But strictly speaking, opportunities are what Van Parijs wants to leximin, not incomes. In defining the leximin principle, for example, Van Parijs says “in a free society, the person with least opportunities has opportunities that are no smaller than those enjoyed by the person with least opportunities under any other feasible arrangement; in case there exists another feasible arrangement that is just as good for the person with least opportunities, then the next person up the scale in a free society must have opportunities no smaller than the second person up the scale of opportunities under this arrangement; and so on.” (RFA 25). But throughout we have taken it to be the case that income (in the sense of monetary income) represents the bundle

²⁶ It is important to note that when accused by a critic of reducing what people need to actualise their real freedom to monetary incomes, Van Parijs does not run away from the charge. He says “I do not believe there can be any plausible and workable conception of social justice that can dispense with the measurement of some quantities...how poorly a person scores in terms of the various conditions for leading a worthy life may not matter because of the distance that separates her fate from that of others, but it should matter greatly in terms of how great a priority she should enjoy in the allocation of scarce resources” (Van Parijs 2001:107). This is, however, not to say that for Van Parijs monetary incomes are the end of the story. They are only a measure of what we really care about, namely, the opportunity to do what we might want to do.

of goods with which one could aim to do whatever they might want to do and therefore provides a measure of the amount of opportunities one has to do what one might want to do. This approach is not unfounded in Van Parijs's theory. The underlying intuition that establishes the approximation between monetary income and opportunities is captured when Van Parijs says, "if I am penniless, I am not really free to join the cruise; if I have no option but to starve or to accept a lousy job, I am not really free to turn the latter down. I shall call opportunity the third component of freedom which these examples point to" (RFA 22). And in terms of leximinning income, it is clear that under the stipulations of our thought experiment there is no basis on which the leximin chooser could prefer our non-institutionally-racist society to our institutionally racist society.

So the question is, how could the alternative approach to the thought experiment, based on opportunities and not incomes, be fleshed out then? And, perhaps more importantly, does it successfully demonstrate that the leximin chooser would prefer the non-institutionally-racist society? A Van Parijsian could argue that what our treatment of income as a measure of opportunities misses is the fact that Van Parijs treats income as merely a means to provide opportunities. Income is not considered exactly identical with opportunities. Access to food gives you the capacity to perform many actions, and income gives you access to some food, yet income and the capacity to perform that range of actions are not strictly identical. Likewise, when it comes to one's health. Access to proper health provision gives people the capacity for actions they would not be able to perform if they were sick or disabled. And income provides access to healthcare. Income is a means to opportunities; it is not itself opportunities. What this formulation gestures to is that opportunities have to do with more than income. Perhaps a good way to grasp this

point is to consider what Van Parijs says about the things that are properly freedom restricting. He says:

Any restriction of the opportunity-set is relevant to the assessment of freedom. For example, I can lack the real freedom to swim across a lake despite my being the full owner of myself, not just because I would not be granted permission by the private owner of the lake, but also because my lungs or my limbs would give in before reaching the other side... Thus, the conception of real freedom presented above does not merely refuse to confine freedom-restricting obstacles to coercion—whether defined as self-ownership-violation or as right-violation. It also refuses to confine them to obstacles external to the person concerned, or to obstacles that are produced deliberately, indeed produced at all and/or removable by other human beings (RFA 23).

Real freedom, on this account, and specifically the opportunities aspect of real freedom is concerned with at least two kinds of capacities (or indeed incapacities). On the one hand, as we have already indicated, it is concerned with access to the resources to live as one might want to live. Assuming the physical ability to swim, permission to swim in the lake is an example of this. This example is not as unlike access to housing, food, education, etc. as it might first seem. Access to the lake as well as access to food, shelter and education are often mitigated by other people's ownership rights over those things and consequent entitlement to regulate access to them or determine the terms of legitimate transfer of ownership. A second kind of capability to which this conception of real freedom refers is physical or one might say biological. A person who cannot swim

because they have not learnt to float or because they are injured or disabled is not free in this respect, for Van Parijs. There is perhaps an additional element to this; a psychological element. A person who cannot swim because they had a near-drowning experience in the past and can no longer bear to be submerged in a body of water would fall under this physical aspect of real freedom. Precisely because Van Parijs often uses incomes as a stand-in for the “bundle of goods” that people can acquire, it is fair to say that income is most directly related with the resources-related aspect of opportunities. But this means that, according to this rebuttal, the physico-psychological aspects of opportunities are ignored as a result of the use of income to represent opportunities. On the rebuttal being considered, members of the less well-off racial group will, on account of institutional racism, be demoralised in a way that could plausibly be said to represent a limitation to their opportunities in a sense analogous to someone who cannot swim because they have had a near-drowning experience that causes them to panic when submerged in a body of water. Therefore, in an institutionally racist society, members of the less well-off racial group, who compose the whole of the least well-off stratum (defined in terms of income) have less opportunities than the least well-off members of the non-institutionally-racist society. Therefore those in this stratum as a whole will have less opportunities than those in the lowest stratum of the non-institutionally-racist society, even though the two lowest strata have the same monetary income. This means that the leximin chooser will have to prefer the non-institutionally-racist society to the institutionally racist society.

Obviously, since we treated income as a measure of opportunities and we stipulated that the income of the occupants of the least well-off groups in both the institutionally racist and the non-institutionally-racist societies are equal, it is open to us to simply respond to

this rebuttal by suggesting that the adjustment from income to opportunities go both ways. In other words, the rebuttal's appeal disappears once we reformulate the thought experiment and stipulate that both least well-off groups are equally well off in terms of opportunities, as opposed to just income. Once we switch from incomes to opportunities in our thought experiment, the leximin chooser would once again have no reason to prefer the non-institutionally-racist society to the institutionally racist one. And this would be the case even if we accepted that members of the less well-off racial group have less opportunities than they can have because they are demoralised. Their opportunities may be less than they could be, but in the relevant case they are equal to the opportunities of the people in the non-institutionally-racist society. As we have already established elsewhere, the leximin chooser can neither make their choice based on the racial composition of the least well-off group in either society nor on the basis of the reasons those who end up there do. In other words, they may well agree that members of the less well-off racial group are made worse off than they could otherwise be because they are both discriminated against and are demoralised by that discrimination. But given they, as the least well-off people in the institutionally racist society, are just as well off as the least well-off group in the alternative society, the leximin chooser cannot prefer the alternative society. The leximin chooser is only able to take into account the amounts of opportunities available to those who occupy the different strata in each society, not the reasons the people who end up in each stratum end up there or who they are.

CHAPTER FOUR

1. INTRODUCTION

Our overarching attitude toward Van Parijs's distributive justice basis for the idea of a basic income outlined in chapter one and criticised in chapter two has been constructive. What is meant by this is that we have tackled it not with a view to showing that it fails in its goal of grounding a basic income. It does not. It is to suggest that the basic income it grounds could be said to be one that fails to address the fact of institutional racism, which arguably permeates all or at least most societies in the West. We have seen that Van Parijs's theory as it stands is subject to the critique that it is insensitive to institutional racism, which is a form of racial injustice. The job now is to see if there is a way to reconfigure Van Parijs's theory in such a way that it is not susceptible to this critique. We will do this by subjecting the key elements of his theory of distributive justice - leximin and real freedom - to what is in essence an Original Position test, incorporating a "racial stipulation". The goal of this exercise is to compare the core elements of Van Parijs's theory with variants of those elements by applying to them an Original Position test with an in-built racial stipulation, and argue that the parties in that decision mechanism would prefer some other variants of these core elements of Van Parijs's theory to the ones Van Parijs offers. We shall also argue that the revised theory using the variants that they will choose is exempt from the insensitivity to institutional racism we argued that the original theory was susceptible to. This goal will be achieved by putting the revised theory through the same thought experiment which we used in chapter two to show that Van Parijs's

theory is insensitive to institutional racism. We will be able to show that the revised theory prefers the non-institutionally-racist society to the institutionally racist one in that exercise. We shall consider what this means for a basic income proposal in the conclusion to this work.

The choice of the Original Position device is motivated first by the fact that mainstream contemporary political philosophy in the West remains firmly in John Rawls's clutches. Theorising about institutional racism or racial justice using the rubric of the social contract tradition, which John Rawls's theory of justice is said to have revived in 1971 with the publication of the monumental *A Theory of Justice*, allows one to theorise racial disadvantage within the mainstream of political philosophy. The social contract tradition and Rawls's important contribution continue to dominate political philosophy in the analytic tradition to this day and engaging with it, if only pragmatically, has the advantage of placing issues of race and racism within the mainstream of thought in the West and avoids what Charles Mills terms the “theoretical ghettoization” of race concerns (Mills 2007:79).

Additionally, the intuition underlying the Original Position in Rawls's work seems sensible enough as a way to approach dealing with what we have said are the problems with Van Parijs's theory. If the fault with Van Parijs's theory is that it is blind to the fact that some racial groups may be treated worse than other racial groups, it is fair to conceive of the solution as incorporating something like a device that, in theory at least, is geared toward choosing principles of justice that do not favour one group over another. In answering the question of what is just, involving varying groups with varying interests,

preventing people from making such decisions from a position of full knowledge of what is specifically advantageous to themselves or those they represent, is significantly appealing. The most charitable interpretation of the job of the Original Position involves at least acknowledging that it seems designed to theoretically prevent members of one group putting in place principles of justice that advantage them.

It should be said at the outset that in using the Original Position, we are not interested in the principles of justice that Rawls derives from it. Adopting the Original Position for the purposes of dealing with Van Parijs's theory's insensitivity to institutional racism does not mean we assume that the principles of justice that Rawls derives from the device are themselves sensitive to institutional racism. We are only interested in the Original Position as a decision device. In fact, we assume that, without at least one alteration, the device itself is susceptible to a version of that charge. Although, as we shall see, theorists of race have argued that Rawls's theory fails to capture the important dynamics of racial injustice, it seems to me that Charles Mills (2013) is right when he says that it can be salvaged (or retrieved) for racial justice ends. We will need to adapt its terms to make it do that job more effectively. The elements of Van Parijs's theory – the leximin principle and real freedom - could be given varying interpretations, and it is our goal to determine which of the proposed interpretations of those Van Parijsian conceptions persons within an Original Position decision procedure would choose, in roughly the same way Rawls makes his Original Position decision-makers choose from among the main sets of principles of justice in Western political culture.

In order to set this task up, I shall first consider the likely resistance to my attempt to remedy Van Parijs's blindness to racial disadvantage by using a device - the Original Position - which itself has been viewed with some suspicion by race theorists on similar grounds to what I have argued is the case with Van Parijs's theory. I shall defend the use of the Original Position, albeit accept an adaptation to it (what I have called the racial stipulation), which I suggest makes it suitable for choosing principles of justice that are not blind to institutional racism. In the second section, I shall apply the adapted Original Position to Van Parijs's theory and argue that the outcome is versions of the Van Parijsian conceptions of leximin and real freedom, which transform the racial justice implications of Van Parijs's theory. In the final section, I shall reconsider the thought experiment we used to demonstrate the blindness to institutional racism of Van Parijs's theory in chapter two, with a view to showing that the problems we identified with his theory do not apply to this new formulation.

2. RETRIEVING RAWLS FOR RACIAL JUSTICE

A survey of the racial justice literature suggests that race theorists have had a tumultuous relationship with Rawls's theory of justice. This is largely because while Rawls lived and worked in a society founded on racial violence against Native Americans, and built using slave labour, and parts of which were racially segregated deep into the 20th century, he does not have much to say about racial disadvantage in his writings about justice. That he did not feel the need to do so has been interpreted by many as more than simply a major oversight. To many theorists, it reflects the overwhelmingly white orientation (and of course the consequent overwhelming concern for issues that affect white people) of

modern political philosophy, despite the discipline's theoretical pretensions to the contrary. In this connection, although "the Original Position is designed to be a fair and impartial point of view that is to be adopted in our reasoning about fundamental principles of justice" (Freeman 2019), race theorists disagree on whether it succeeds in achieving that end. Some, like Elizabeth Anderson, on the one hand, have argued that race theory should completely jettison seeking a path through Rawls's principles of justice to racial justice. Rawls's theory, she suggests, holds no merit as a theory of justice that can ground any account of racial justice. On the other hand, Charles Mills argues that Rawls's theory can be adapted in ways that make it suitable for identifying racial justice and injustice.²⁷ In this section, I shall explore the lines of thought epitomised by both thinkers (although by no means suggesting that they exhaust the expanse of thinking on the subject), with a view to identifying some basis for using Rawls's Original Position as a way to cure Van Parijs's theory of justice of its blindness to racial disadvantage. I ultimately agree with Charles Mills' that we can correct Rawls enough to allow us to use it to identify the presence or absence of racial justice.

The argument against using an aspect of Rawls's theory of justice to deal with racial justice questions seems straightforward enough. As Elizabeth Anderson sees it, it is primarily a question of why we have discussions about racial (or indeed any) justice to begin with. We talk about justice because there are things that obtain in the world that we

²⁷ Thinkers like Mills occupy something of a middle ground, suggesting that while Rawls's theory is not suitable for addressing racial injustice, it does contain the facilities to do so if adapted enough. There are, however, thinkers on the opposite extreme to Anderson, who, like Shelby (2004), argue that Rawls's theory is perfectly able to address racial injustice without any adaptations. Shelby argues that the Rawlsian "fair equality of opportunity principle" addresses racial injustice. I have ignored those arguments in this work because they take us quite far from the specific kind of use to which I want to put Rawls' theory in this thesis.

strongly believe are problematic from a justice point of view. Our conceptions of justice ought therefore to arise out of those specific problems. Anderson's approach captures the prominent divide in political philosophy between ideal theory and non-ideal theory, with ideal theory concerned with crafting principles that should govern the distribution of social goods as though from an initial moment absent any of the contingencies of real human societies. Non-ideal theorising starts from issues that arise in real societies and aims to offer conceptions of justice that take into account the history of the given society, the nature and character of the historical and current parties in the given society, etc. (2010:4).

For Anderson, the project of justice should be based firmly within the non-ideal domain. Rawls's theory of justice, however, approaches justice from the point of view of ideal theory. While for Anderson non-ideal theory should take its lead from actually existing societies and actually existing social issues, Rawls suggests that to get at the heart of what is really wrong in situations perceived to be unjust, we need to abstract from specific instances of them. It is, however, precisely for this reason that Anderson argues that Rawls is of no use to a project of theorising about racial justice. Given the unjust inequalities that she believes are the order of the day in most Western societies, she takes it to be the case that theorising about justice must be done under an assumption that the key question must involve how to rectify actually existing injustices.

To be sure, Rawls does not altogether ignore non-ideal theory. He suggests that it is necessary to begin with ideal theory and only after identifying what justice outside of the contingencies of real societies consists in, applying the resultant conceptions of justice to

real societies (Rawls 1971:175). For Rawls, ideal theory is the “only basis for the systematic grasp of these more pressing problems” (1971:8). For Anderson, the path from ideal theory to non-ideal theory is not as straight as Rawls makes it seem. Non-ideal theory is not simply a matter of modifying or populating the principles defined by ideal theory to apply to non-ideal societies. With respect to whether a non-ideal theory of racial justice could be derived from an ideal theory, Anderson argues,

when we assess whether a society is deviating from ideal justice, we still assess it from the standpoint of representative positions in the ideally just society. Since no racial positions exist in the ideal society, they do not define a standpoint from which to assess racially unjust societies. Hence, ideal theories that make race invisible fail to supply the conceptual framework needed to recognize and understand contemporary racial injustice. The principled color blindness of ideal theory is epistemologically disabling: it makes us blind to the existence of race-based injustice (2010:5).

Anderson’s argument seems to imply that the principles of justice that result from some ideal theory need to be able to map onto the contours of real-world problems in order to be of any use to us with respect to those real-world problems. In essence, her criticism of Rawls is that his theory is simply blind to racial injustice because the structure of the theory is unable to grapple with the real-world problem of racism and institutional racism. She illustrates this by reference to the phenomenon of middle-class black Americans being unable to buy houses in white neighbourhoods, and therefore continually being kept out of the referral systems that reinforce the framework of advantages that whites enjoy

and blacks do not have access to. In many cases, blacks are kept out of those neighbourhoods as a result of unwelcoming behaviour by their would-be white neighbours; racist behaviour that would be allowed on free speech grounds and therefore unproblematic in the face of ideal-theory principles of justice that make no reference to race or racism. She argues, “viewing this phenomenon through the colour-blind lens of ideal theory, we would assess it not from a racial position, but from an individual or class position” (2010:5).

Now, while Anderson is largely right that our philosophising about justice ought to take its cue from real issues in the real world, it is not at all clear that Rawls's view about the relationship between ideal and non-ideal theory cannot accommodate this intuition. An ideal theory does not need to contain, at any rate explicitly, the same categories as a non-ideal theory that results from it. Or put another way, a non-ideal theory does not have to match in a like-for-like way the ideal elements of the ideal theory it derives from. The principles of justice that result from Rawls's ideal theory were always unlikely to mention race or racism. For one thing, although Rawls seldom engages with race across his writings, there is no reason to think that he diverged from the understanding already established when he wrote *A Theory of Justice* (1971) that race is not to be considered an essential aspect of persons. With the understanding that Ideal theory only concerns itself with aspects of society and human beings that are not contingent and given that ideal theory abstracts from such contingent matters, it is easy to see why he neither mentions race nor racism in the terms of his principles of justice. Mentions of race encroach on the contingent and allusions to racial injustice imply contingent aspects of society. And a theory ceases to be an ideal theory of justice if it wades into either. Rawls makes this

point in answering the question of why distinctions of race are not explicitly included among the differences between people. He says “the answer is that we are mainly concerned with ideal theory: the account of the well-ordered society of justice as fairness” (Rawls 2001:64). But although his theory does not mention race or racism in the way Anderson demands in order for it to be able to apply to discussions of the non-ideal, his theory does not need to mention either race or racism in order to be considered applicable to real world racial injustice. If we think of each principle in his theory as representing the version of itself appropriate for identifying an ideally just society, it becomes clear how non-ideal theory can productively build on his ideal theory and do so in a way that is perfectly consistent with the initial ideal theory. We can meaningfully ask the question, how should Rawls's principles of justice be modified to apply to an imperfectly just society? It is conceivable for example that racism is explicable from the vantage point of unequal basic liberties of which there may be many possible forms. Without delving into this issue, it seems clear to me that Rawls's theory (or ideal theory more broadly) does not have to map on literally to the contours of a non-ideal society in order to be applicable to it. What matters is that it can substantively accommodate the relevant issues.

What, then, is an alternative approach to Rawls as a basis for racial justice theorising? Charles Mill’s proposed approach to racial justice incorporates a possibility. Rather than jettisoning Rawls altogether, Mills aims to retain and adapt Rawls's theory of justice to make it responsive to racial disadvantage. He begins by suggesting that modern Western societies “through a mixture of force and ideology, subordinate women and people of color under the banner of a supposedly consensual contract” (2007:87). The Original Position is a theoretical representation of such a contract for Mills. Recall that Rawls

intends his Original Position to produce a set of principles that are supposedly not arrived at in a way that favours any one group and which members of society regardless of their position may agree to. As we will see in more detail in the next section, Rawls aims to achieve this objectivity by stipulating that people in the Original Position would not be aware of the history of their society. So, the general facts about society which Rawls stipulates that people behind the veil of ignorance would be allowed to know clearly do not include the facts about historical racial subordination in their own society (Mills 2007:95). This, Mills argues, shows that despite Rawls's apparent default non-racialism in the formulation of his principles of justice, the fact that the parties in the Original Position are ignorant of the historical exclusion of “non-white” people from the status of personhood suggests that, without an explicit grappling with race and racism within it, by default, only whites seem to be accommodated in the Original Position.

The implication of this is that the ideal formulation of the contract misses important aspects of the background context in which the discussion of social contracts is being had, namely, that those who are considered less than persons could not, by default, have been part of the supposed historical contract of which Rawls's contract is a theoretical representation or if they were, they could not possibly have engaged in it on equal footing with others. This is the thought that clinches Mills' criticism of Rawls. Denying knowledge of their society's history to the parties in the Original Position, it seems, only serves to extricate the beneficiaries of oppression from any kind of compensatory responsibility to the oppressed. Or put more broadly, casting the contract ideally and without explicit engagement with the inequalities that seem baked into our society leads to an outcome that leaves untouched, or tackles only superficially, the core social

frameworks that create and maintain inequalities. And, for Mills, part of the relevant context which Rawls misses is the fact “that people of color have generally been excluded from equal status in liberal thought, and have been seen (in my phrase) as ‘subpersons’ rather than full persons, thereby justifying their subordination in the various racialized sociopolitical structures” (2007:88). Mills suggests that although Rawls and most liberal social contract theorists would probably reject such an accusation and argue that their theories are designed to achieve a conception of a society devoid of all oppression, they continue to endorse “an underlying factual picture, a version of history, and a set of assumptions about society that continue to reproduce the inequities and obfuscations of the historic contract, and, correspondingly, an apparatus that retains many of its deficiencies” (2007:91).

To remedy this flaw of the Rawlsian contract, Mills proposes a normative contract (what he calls a 'radical contract' or 'domination contract') that starts from an acknowledgement of the fact that for almost the entirety of history, some group or other has been treated unequally in every society. More specifically, it aims to start from the knowledge that all of the societies between which the parties in the Original Position are choosing are racially unequal. Mills argues that we should not be bound by Rawls's stipulated ignorance, suggesting instead that the people making the choice of the principles for ranking societies in order of how much they would like to live in them in the Original Position must carry knowledge of the histories of the different societies they would be choosing from into the decision situation, including especially knowledge of racial disadvantage in those societies. And their job in the Original Position will involve explicitly engaging with those inequalities of which they are taken to be aware in the

domination contract (2007:94). For Mills, “what makes radical contract theory better suited to make use of the device of the veil is its demystified, non-idealized view of recent human history as largely a history of social oppression” (2007:96). Mills argues that the principles for ranking societies chosen in an Original Position reoriented in this way would be principles that are consistent with racial justice. So Mills adopts Rawls's Original Position formulation, but stipulates that the persons in that situation will be aware of the histories of the societies they are ranking and of the inequalities that exist therein, and that being so informed they will choose principles that are truly fair to all people, including those who have been excluded from society and are excluded from the supposedly fair historical contract. This stipulation (or a slightly leaner version of it) is what I shall call the “racial stipulation” which I shall add to Rawls's Original Position in my use of it in the next section.

While I fundamentally agree with Mills' core point above, it seems to me that we should limit, as much as possible, the scope of the knowledge needed. As I see it, the people in the Original Position need not be thought to know the actual racial history of the different societies they would be choosing from. That seems to overshoot the mark somewhat. If the objective of stipulating historical knowledge is to ensure they agree on principles for ranking societies that address racial disadvantage, it suffices to stipulate that they are aware of the possibility that racial disadvantage exists in human society. This is the version of the racial stipulation that I shall adopt. The racial stipulation is the stipulation that the parties in the Original Position, alongside all that Rawls stipulates about them, are also aware that there may be racial disadvantage in the societies which the principles they choose will be used to rank. This stipulation, I think, is consistent both with Rawls's

stipulation that the decisions in the Original Position should not be made using knowledge of the actual history of their own society (Rawls 1971:137) and Mills's intuition that in order for the Original Position to produce decisions that address racial disadvantage, it needs to take the history of the different societies they would be choosing from into account. The knowledge that racial disadvantage is a possibility in society could be seen as drawing from knowledge of these histories but people in the Original Position could have access to the first kind of knowledge without the second. But importantly, the racial stipulation is framed thus because we intend for it to remain within the realm of ideal theory and therefore remain consistent with the orientation of Rawls's use of the Original Position. I shall apply this racial stipulation to my use of Rawls's Original Position in considering the elements of Van Parijs's theory in the next section.

3. VAN PARIJS'S THEORY IN THE ORIGINAL POSITION

The goal of this section is to apply a version of John Rawls's Original Position that incorporates the racial stipulation to the main elements of Van Parijs's theory of justice. The purpose of this task is to arrive at a version of Van Parijs's theory that people, whatever their situation, might agree to and which can be said to be exempt from the charges of blindness to racial disadvantage we levelled against Van Parijs in previous chapters. We will first discuss, somewhat briefly, the structure of John Rawls's Original Position. Then we will apply the Original Position with the racial stipulation we have described to each of the two main elements of Van Parijs's theory. Our use of the Original Position maps Rawls's own use of it very closely. It is useful to keep in mind that Rawls does not use the Original Position as a tool for coming up with principles of justice from

scratch. He describes it as a tool for working out “which traditional conception of justice, or which variant of one of those conceptions, specifies the most appropriate principles of realizing liberty and equality once society is viewed as a fair system of cooperation between free and equal citizens” (1993:22). So he uses it as a tool for choosing from among a list of existing conceptions of justice. In like manner, in this chapter we will utilise the Original Position to work out which, within a suggested range of interpretations of the key elements of Van Parijs's theory of justice, namely, the leximin principle and real freedom, persons in the Original Position would choose. In each case, we will proffer an alternative version of the same element and consider which of the two versions a person behind our veil of ignorance would choose.

There are three main elements to the Original Position: (i) the veil of ignorance, (ii) the conception of rationality and (iii) the maximin decision rule. In the next few paragraphs we will discuss each, but it should be noted that the first of these - the veil of ignorance - is the device at the heart of the Original Position, which, according to Rawls, ensures that the decisions made therein are impartial between different conceptions of the good life, different positions in society and different personal characteristics. Rawls's conception of rationality and the maximin decision rule provide the rules that guide the decision-making process.

The veil of ignorance is a tool that shields participants in the Original Position from access to certain knowledge. The particular kind of knowledge that they are shielded from is determined by what knowledge could theoretically prejudice their decisions in their own favour. In other words, parties in the Original Position are shielded from information that

would help them calculate or determine which principles of justice would be specifically advantageous to them. For this reason, Rawls stipulates that the veil of ignorance shields the occupants of the Original Position from knowledge of their position in society or of their talents or skills, which in turn shields them from being able to calculate what their position would be in any of the societies which the principles they choose will be used to rank. They are also not allowed to know what kind of life they would like to have or what kind of life they judge to be the best kind of life. They should likewise not know what their race, gender, religion is (Rawls 1993:24-25).

The veil of ignorance does not, however, affect every possible kind of knowledge. Some general knowledge which allows them to understand how things (humans, politics, economics, etc.) work are permitted to occupants of the Original Position. Rawls formulates these partly in terms of the circumstances of justice, by which he means that they know that humans are roughly similar physically and mentally and that resources in society are moderately scarce. This last condition I take to mean that resources are not abundant enough to render the question of who is entitled to what a moot one (Rawls 1971:119). And as we discussed earlier, we shall add to Rawls's veil of ignorance the stipulation that parties in the Original Position are aware of the possibility of racial disadvantage: what I have called the racial stipulation. This can be covered under the stipulation that allows the parties to be aware of the general workings of society as well as the basics of psychology. They are taken to be aware that some aspects of human psychology could possibly (whether or not they have actually done so in any actual history) conspire to systematically produce worse outcomes for persons of one race to the advantage of persons of another. Because we, like Rawls, are doing ideal theory, it is

taken to be the case that the racial stipulation incorporates the supposition that parties in the Original Position are not aware of whether racial disadvantage is a feature of their own society. Because they do not know their own race or their status in the societies which the principles they choose will be used to rank, this knowledge does not help them make choices that advantage them over others in any way. In addition to the other elements of the Original Position discussed below, it only forces them to choose in such a way as to take into account the possibility that they could end up being in a disadvantaged racial group.

Rawls likewise stipulates that the occupants of the Original Position are rational in a “thin” sense. This stipulation is drawn out of the idea that people's plans of life are reached using rational thought. Although they are not allowed to know exactly what their plan of life is in the Original Position, they are allowed to employ their rational capacity within this decision setting. By rationality Rawls means the capacity to determine what is in their interest and what their ends are. Rationality also helps them work out the things that promote those interests and ends (Rawls 1971:142). A rational person, on Rawls's conception, is “thought to have a coherent set of preferences between the options open to him. He ranks these options according to how well they further his purposes; he follows the plan which will satisfy more of his desires rather than less, and which has the greater chance of being successfully executed” (1971:124). But of course a difficulty that is likely already apparent arises. If rationality is their capacity to work out what will enable them to achieve their goals, how are persons in the Original Position, who are not allowed to know their conception of the good, supposed to use their rationality? Rawls, in response to this, stipulates that everyone in the Original Position assumes that it is in their interest

to want more rather than less of a set of what he calls 'primary goods' (1971:123). For Rawls, primary goods include income, wealth, and powers and prerogatives attached to social positions (1971:62). Another important stipulation with respect to the rationality of those in the Original Position is that they are thought to pursue their interests in a mutually disinterested way (Rawls 1971:125). This means that they are not out to thwart or outmaneuver each other; they are not out to undermine each other's interests. It also means that they are not out to promote the interests of others in the Original Position. They simply seek what is good for themselves.

The last element of Rawls's Original Position is the maximin decision rule. In short, this mechanism mandates the parties in the Original Position to make their choices between different options with the goal of maximising the amount they will receive in the worst case scenario that would result from that option.

It is on the basis of choice in the Original Position conceived in a way that incorporates these three elements (and that also includes the racial stipulation) that we shall consider the main elements of Van Parijs's theory of justice in what follows. In the remainder of this section, we shall consider what version of leximin and real freedom (in this order) will be chosen in the Original Position. On the leximin principle, I shall consider whether the parties would choose Van Parijs's leximin principle over what I shall call a "filtered leximin" principle. I argue that they will prefer a filtered leximin principle. Van Parijs's conception of real freedom will be compared against an alternative conception that I shall call "modified real freedom" in which the effects of racism are considered as freedom limiting in the same way Van Parijs considers the lack of money, or a physical disability

or other psychological impediments to be freedom limiting in terms of his conception of real freedom. I shall argue that the parties in the Original Position will choose this more expansive conception of real freedom.

(I) Leximin

On Van Parijs's leximin principle as it functions in his theory of justice, a society is more just than an alternative if the least well-off people in that society in terms of opportunities are better off than the least well-off people in the alternative society. In case of ties, one such society is more just than the other if the social stratum above the least well-off one is better off in that society than the comparable group in the alternative, and so on (RFA 25). On what I am calling a filtered leximin principle, a society is ranked as more just than an alternative if the gap between the median amount of opportunities²⁸ of the most well-off racial group and the median amount of opportunities of the least well-off racial group in that society is smaller than that gap in the alternative society.²⁹ And, in the event of a tie between two societies on this first criterion, the basic (Van Parijsian) leximin principle is applied to rank one society as more just. The filtered approach uses the size of the gap between the median amount of opportunities of the most well-off racial group and the least well-off racial group as a measure of how much racial inequality exists in a society. In other words, the filtered approach begins by comparing two or more societies in terms of racial inequality. It takes it to be the case that there may be cases in which

²⁸ I am assuming that the 'amount of opportunities' available to someone can be expressed as a single number, so that the concept of the median of two or more amounts of opportunities is valid.

²⁹ For the purpose of the principle, monetary income can serve as a measure of amount of opportunities, and we can calculate the median of a set of monetary incomes quite easily.

there is a tie between societies, for example, where we are comparing two or more societies that have no racial inequality, that is, where there is no gap between the median amount of opportunities of the racial groups. There may also be a tie if we are comparing two societies that are exactly equally racially unequal, that is, two societies in which the gap between the median amount of opportunities of the most well-off and least well-off racial group are exactly the same. In case of these kinds of ties, the filtered approach then applies the basic leximin principle by comparing both societies in terms of how well off they leave the least well-off people among all members of society taken together (or the people above then, and so on). Throughout the above, 'well off' is to be understood as short for 'well off in terms of opportunities'

The use of the median in effecting the comparison between societies in terms of racial disadvantage is motivated by an understanding that members of racial groups are likely to be spread across different opportunity strata. The most well-off persons in one racial group may even be as well off as the most well-off people in the other racial groups. The gap between the least well off and the most well off in one racial group may also be exactly the same as the same gap in the other racial groups in a given society. The utility of using the median is that it allows us to avoid the temptation of believing that the above means that both racial groups are just as well off as each other. In terms of income and wealth, the most well-off white people and the most well-off black people in contemporary South Africa are roughly equally well off, and the gap between the most well-off white people and the least well-off white people is roughly the same as the gap between the most well-off black people and the least well-off black people in that country, but none of those things should negate the fact that South Africa is a racially unequal

country in terms of the distribution of income and wealth. The median compares the person in the middle of either racial group so it is a good measure of how well off those in one racial group are overall compared to those in another racial group.

It seems that parties in the Original Position, with the racial stipulation, would prefer the filtered leximin principle to Van Parijs's leximin principle for a number of reasons. First, the racial stipulation would require them to prefer the filtered leximin principle because it leads to the choice of either a society without racial disadvantage or the society with the least amount of racial disadvantage among those on offer. Second, the filtered approach will likely be preferred by them on account of the fact that it combines this racial criterion with the basic leximin principle. In other words, it does what the leximin principle does but it also offers leximin choosers a way to avoid (as much as possible) being victims of racial disadvantage. Third, the parties in the Original Position are likely also to choose the filtered leximin principle because, wherever they end up in society, the parties would certainly want to ensure that they can, through their own efforts, improve their own fortunes. By contrast, because the basic leximin principle does not register racial disadvantage, it could not serve to minimise or eliminate the chances of choosing a society in which there is racial injustice. It seems sensible to assume that they would be more eager to minimise the effect of whatever disadvantage would accrue to them for their race (which they cannot change), than they would for things they can change so as to improve their lot overall. In sum, the parties in the Original Position would want to minimise racial disadvantage because it is a sign that the society prevents those in certain racial groups from altering their lot, and they would want to be in a society where they

can alter their lot. Furthermore, they would prioritise this above ensuring that they will be as well off as possible if they turned out to be in the worst off opportunity stratum.³⁰

(II) Real freedom

Let us now consider which version of real freedom parties in the Original Position would choose. Here I shall compare Van Parijs's conception of real freedom against what I shall call “modified real freedom”. The main difference between real freedom and modified real freedom is with respect to what is considered a possible hindrance to freedom, more specifically to the opportunity component of freedom. For Van Parijs, freedom requires not simply the lack of hindrance in terms of what one is allowed or permitted to do. It requires access to the means to do the things one might want to do. As we saw above from his example of swimming (RFA 23), Van Parijs extends the range of things that are considered freedom-restricting to include not only the lack of means but also biological and psychological incapacity.

As I indicated in the last chapter, we should consider this extension of what has traditionally been considered the range of freedom-restricting obstacles to include psychological limitations as well. As mentioned above, nothing Van Parijs says prevents us from assuming, for example, that I am unfree to swim across a lake if, rather than my

³⁰ There is probably an additional question of whether the parties in the Original Position would be likely to treat the lexicographic priority of minimising the gap in the median amount of opportunities between racial groups over maximising how well off the least well-off group end up as being ‘soft’ rather than ‘hard’. It makes sense to say they would treat the lexicographic priority as soft so as to permit choosing a society in which the least well-off group overall is exponentially better off than the least well-off racial group, where the vast majority of the members of the worst off racial group are also part of the least well-off group overall and where the gap between the median opportunities of different racial groups is very small over a society in which the gap between the least well-off group and the group above them as well as the gap between the least well-off racial group and the racial group above them is within what one might consider a normal range.

lungs and limbs giving way, I suffer from a panic attack as a result of a past near-drowning incident which makes me unable to control my bodily functions once submerged in water. So real freedom has a most expansive conception of what can be considered freedom limiting. Modified real freedom proposes to add to the list of things that real freedom considers freedom-limiting those hindrances to do what one might want to do that arise from racial disadvantage. These include (1) basic racial disadvantage (say, a person prevented from attending a particular school or renting a house in a desirable part of town), and (2) the psychological and other knock-on effects of this (say, that person ending up with a low sense of themselves and not aiming to reach higher levels of attainment as well as losing out on material opportunities they may have if they attended a good school or had the comforts associated with good housing). Modified real freedom says that I am unfree if I am prevented from doing what I might want to do because I am a victim of any one of these kinds of racial disadvantage. And like real freedom, modified real freedom includes the psychological effects of racial disadvantage, such as demoralisation, self-censorship and socialisation among the things that can limit freedom in the sense relevant to modified real freedom. Also, as with Van Parijs's real freedom, it does not need to be the case that someone in particular was responsible for racial disadvantage for it to be relevant to the characterisation of modified real freedom. Nor does it need to be the case that someone could have prevented said racial disadvantage.³¹

³¹ A possible Van Parijsian objector might say to this that Van Parijs, in explaining his conception of real freedom, says that "any restriction of the opportunity-set is relevant to the assessment of freedom" (RFA 23) and so automatically includes restrictions resulting from racial disadvantage. Therefore modified real freedom is the same thing as VP's real freedom. But, as we have shown, the core element of Van Parijs's theory (the leximin of real freedom) cannot pick out the qualitative difference between an institutionally racist society from a non-institutionally-racist one. It is clear that Van Parijs does not have racism in mind as

We have reason to believe that parties in the Original Position would prefer opportunities as defined in modified real freedom to Van Parijs's conception of real freedom as the conception of opportunities to be used in applying the filtered leximin principle. Not knowing whether their society is indeed one in which racial disadvantage exists (although they know it is possible), following the maximin rule's concern with maximising the opportunities of the least well off, the parties would likely choose the conception that takes into account the effects of racial disadvantage on racial groups. It seems clear that the parties would want to ensure that should their society turn out to be one in which there is racial disadvantage and should they themselves turn out to be members of a racially disadvantaged group, that in applying the filtered leximin principle a conception of real freedom, more specifically of opportunity, is used that takes into account the full spectrum of things that limit their freedom, including racial disadvantage. The choice of Van Parijs' original conception of real freedom would not give them this. And should it turn out that their society is not one that has racial disadvantage, if they are in the least well-off position, they would be just as well off under the modified real freedom conception as they would be under Van Parijs's original real freedom conception.

The upshot of the discussion of this whole section is a version of Van Parijs's theory of justice that has two main elements:

something that can restrict freedom, even if we give him the benefit of the doubt that he thinks of racism as something that is bad and unjust in other ways.

1. Filtered leximin principle: A society is more just than an alternative if the gap between the median amounts of opportunities of the best off and worst off racial groups within it is narrower than the corresponding gap within the alternative society. Where there is a tie, one of those societies is more just than the alternative if the least well-off people in that society in terms of opportunities are better off than the least well-off people in the alternative. And if the least well-off groups are equally off, the next up groups are compared (and so on until a difference is found).
2. Modified real freedom: The opportunity component of real freedom is defined such that limitations on freedom incorporate not just physical and psychological hindrances but also specifically hindrances resulting from racial disadvantage.

In the most important respects, this theory is a version of Van Parijs's theory of justice since the two new elements replace Van Parijs's versions of those elements. One concerns the distribuendum, that is, what is being distributed, the other concerns how the distribuendum is to be distributed.

4. COMPARING SIMILAR SOCIETIES

In this section, I shall attempt to apply our version of Van Parijs's theory of justice to the thought experiment we discussed in chapter two to see if it fares better than Van Parijs's original theory of justice. A useful note in advance of that discussion is that in chapter two we distinguished the strata in the two societies being compared in terms of the monetary incomes of the occupants of those strata. In responding to one of the rebuttals

put to my argument, we, in chapter three, reformulated the thought experiment directly in terms of 'opportunities'. The statement of the thought experiment that we will use in this section will be based on the reformulated thought experiment and instead of incomes we will speak about opportunities.

To recall, the thought experiment imagines two societies with the same two income-strata (or as we shall now say opportunity-strata) with opportunity levels of i (higher) and j (lower). One of the societies (x) is institutionally racist so that members of one race are over-represented in the lower opportunity-stratum of that society, while the other society (y) is not so that the proportions of each race in the lower opportunity-stratum are the same.

We argued in chapter two, and defended the argument in chapter three, that a person choosing using the leximin principle could not prefer the non-institutionally-racist society to the institutionally racist one. We assume that the non-institutionally-racist society is more just than the institutionally racist one on any defensible conception of justice. The leximin principle would not lead the chooser to prefer the non-institutionally-racist society because it only leads to choice based on how well off the least well-off people are (or if the least well off in both societies are equally well off, then the next stratum until a difference is found in terms of how well-off people are). The leximin chooser will not take the institutional racism that exists in one of the societies into account in their choice.

The first thing to notice is that, almost by definition, the theory of justice I have developed leads the filtered leximin chooser (that is, a person choosing using the filtered leximin principle) to consider the institutional racism in x society in making a choice between x

and y in that they would look first of all at its level of racial disadvantage. They would now consider not just how well off the occupants of the least well-off stratum are in both societies; they would prior to that notice that in x one racial group is worse off in terms of median opportunity level than the other in a way that they are not in y, over and above what may or may not be the difference in terms of how well off the occupants of the least well-off stratum are. It seems straightforwardly apparent that the gap between median opportunities of members of different racial groups in x is wider than in y. In fact, in y, there is, by stipulation, no gap at all. In x, because the proportion of one racial group in the lower opportunity stratum is higher than the proportion of the other racial group in that stratum, the median amount of opportunities of the first racial group will be lower than that of the other. In other words, the filtered leximin principle captures quite crisply the difference in terms of racial disadvantage between x and y in a way that the basic leximin principle is unable to. In sum then, the first part of the filtered leximin principle will rank y as more just than x, even though the second part, the basic leximin principle, would not have differentiated them.

It is true that in some cases the median amount of opportunities may be the same for both races even if their proportions in the lower stratum are different. For example if 80% of race 1 have the lower amount of opportunities j and 60% of race 2 have amount of opportunities j in x, then the median amount of opportunities will be j for both races. In this case the difference between the two races' median amount of opportunities in x will be zero. To deal with this, the filtered leximin principle would need to have three parts rather than two, as follows. In ranking two societies in terms of justice:

(1) Rank as more just the society with the smallest difference between the median amount of opportunities of the best of and worst off racial group.

(2) If both societies have the same difference in median amount of opportunities, break the tie by ranking as more just the society with the smallest difference between the *average* amount of opportunities of the best off and worst off racial group

(3) If both societies have the same difference in average amount of opportunities, break the tie by applying the basic leximin principle.

I have shown that the filtered leximin principle is not blind to the difference between the institutionally racist and non-institutionally-racist societies in the thought experiment. The implication of this, furthermore, is that the filtered leximin principle will find any institutionally racist society to be less just than one that is non-institutionally-racist, in so far as by stipulation institutional racism leads to disadvantage in terms of opportunities. It will also rank institutionally racist societies as more or less just than each other using the gap between the median opportunity levels of the best off and worst off races, which seems a reasonable measure of the degree of institutional racism in a society.

Modified real freedom comes into play outside the scope of our thought experiment, but it is just as directly relevant to the question of whether the theory of justice is responsive to institutional racism as the filtered leximin principle. To see why it was necessary to adapt the other element of Van Parijs's theory (real freedom) notice that Van Parijs's theory could still be credibly accused of blindness to institutional racism if we simply swapped out his leximin principle for the filtered leximin principle but left the opportunity component of his conception of real freedom intact. The filtered leximin principle cannot

perform its role in the theory correctly with just Van Parijs's basic conception of real freedom. The idea that the gap between the median amounts of opportunities of the racial groups in a given society is a measure of how much racial inequality and thus racial disadvantage there is in it, is inoperable without an adaptation to the conception of opportunity involved. The basic conception of real freedom does not provide an adequate metric by which the filtered leximin principle can measure the gap between the amounts of opportunities of different racial groups because it does not consider the possibility that some people's opportunities may be limited because of racial disadvantage. In order for the filtered leximin principle to be truly sensitive to institutional racism, there is therefore a need for the conception of real freedom to be adapted.

To summarize, I have shown that (1) parties in an Original Position with the racial stipulation would choose the filtered leximin principle and modified real freedom over the basic leximin principle and Van Parijs's original real freedom conception, and that (2) a revised version of Van Parijs's theory with the filtered leximin principle and modified real freedom is sensitive to institutional racism.

CONCLUSION

What implications then do our revisions of Van Parijs's theory have for the basic income offer that results? The filtered leximin principle makes maximising the opportunities of members of the least well-off racial group lexically prior to maximising the opportunities of the least well-off group overall. The filtered leximin principle would rank a racially equal society with a certain income distribution above a racially unequal society where people in the bottom opportunity stratum are better off than in the bottom opportunity stratum in the racially equal society. Although economic or income inequality does not comport with many of our conceptions of justice, racial inequality likely comports with none of the conceptions of justice that would be considered legitimate or acceptable in the West today. For one thing, on some mainstream conceptions of justice, some people may well be said to be deserving of poverty, whereas no acceptable conception of justice contains the belief that some races deserve to be treated unequally. Moreover, as I suggested in responding to one of the rebuttals in chapter three, this is because a racially equal society is, all things being equal, one in which people's fate depends more on their own decisions about their lives than on how people or social institutions treat them because of an immutable characteristic of theirs. It is inarguable that a racially equal society satisfies this criterion more than a racially unequal one.³² The theory that has

³²I am assuming that the arguments outlined across this thesis apply with more or less ease to ableist injustice, gender injustice and transphobic injustice (and others) so that the filtered leximin can be interpreted as identifying as unjust any and all inequality emanating from what one might call immutable characteristics (although that is obviously more complicated in the transphobia case), as lexicographically prior to identifying as unjust the more general economic inequalities that we argued the basic leximin principle can capture.

developed from my revision of Van Parijs's is a theory of comparative justice in the truest Senian sense. Rather than aiming to identify some conception of an absolutely just society, it is more concerned with what is “justice-enhancing” or “inequality-reducing” with respect to the most obvious inequalities that we all agree do not comport with our sense of justice (Sen 2006). Racial inequality is just such an inequality, and my goal is a theory that identifies it as unjust and grounds policies that begin to reduce it.

In terms of the basic income, there are at least two possibilities as to what the filtered leximin principle can be said to mandate:

- (a) Modifying capitalist society to first of all eliminate as far as possible all racial inequalities and then only subject to that introducing a basic income. The basic income is here treated in the way Van Parijs treats it, that is, as a way to raise the opportunities of those at the bottom. The elimination of racial injustice is to be sought in other ways.
- (b) Or alternatively, introducing a basic income that is designed so that it has the effect of reducing racial inequalities in the first instance.

I take the latter route, because making significant modifications to capitalist society implicates the same institutions that are implicated by the introduction of a basic income. The gap between both envisioned by the first approach does not exist in reality. To be sure, it may be pointed out that it is still the case that the filtered leximin principle ranks dealing with racial inequality ahead of dealing with general economic inequality, which suggests that we should first aim to eliminate racial inequality in society as a whole, and then deal with economic inequality by introducing a basic income. In this telling of the

story, a basic income is not as necessary a feature of a maximally just society as anti-racial-inequality policies targeting the broader institutions of a capitalist society. What this argument misses, however, is that nothing prevents the basic income itself from being our way of eliminating racial inequality in capitalist economies. This is one way my basic income proposal differs from Van Parijs's. Whereas it is a means to deal with economic inequality in Van Parijs, the basic income is a means to deal with racial inequality in mine. I additionally take it to be the case that because the basic income is universal in character, it would have just as much of an effect on economic or income inequality as Van Parijs's basic income would. The main consequences of using the basic income to deal with racial inequality comes in terms of how it is funded and how some of it is given. Although I shall not go into what my account of basic income looks like in detail in this thesis, I shall highlight three things below that a basic income offer that draws from my revision of Van Parijs's theory (i.e. from the filtered leximinning of modified real freedom) would include.

Whereas Van Parijs argues that if we are serious about leximinning people's real freedom (or more specifically, their opportunities) in our capitalist societies we must introduce a basic income, I suggest that if we are serious about dealing with racial injustice in our capitalist society a basic income is unavoidable. The basic income Van Parijs's account leads to will no doubt be one that is not designed in any way to address racial inequality and so is likely to leave it unaffected. On my account, taking the filtered leximinning of people's modified real freedom as our measure of justice, that is, taking seriously racial injustice, and the fact that some people's opportunities are limited by racial injustice,

requires introducing a universal basic income that reduces or eliminates racial injustice in the broader structures of our capitalist society.

Below are three general elements of the universal basic income account that results from my revision of Van Parijs's theory of justice. It should be said beforehand, that what may be significant revisions in theory do not have to translate into significant revisions in policy or institutional implication. The goal of determining the policy or institutional implications of a distributive justice theory is not one of producing like-for-like worldly equivalents of elements of the theory. Often it can be as simple as thinking of ways to make the world that already is somewhat more amenable to a world based on the values proposed by the distributive justice theory, even if one would have come up with something entirely different if they were given the chance to build a new world. Some of my suggestions below as to what derives from my revision of Van Parijs's theory will vary only so slightly from Van Parijs's proposal for that reason. I aim to inject the value of reducing racial inequality into the policy and institutional thinking around basic income, rather than to create an entirely new kind of basic income specifically designed to reduce racial inequality. The core contribution of my research is in terms of the distributive justice theory discussed in the rest of the work, not in terms of the proposals for the institutional implications of that distributive justice theory discussed below. I do not below, then, delve into the policy debate about the specific efficacy of my proposals. They are based on my intuitions about what might be said to follow from the theory I have developed. The strength or weakness of this research overall does not depend on the strength or weakness of the proposals made in this conclusion.

1. For Van Parijs, the basic income should be given at the highest sustainable level. This is crucial because, as he argues, “if we are concerned with the real freedom of all, it is clearly inadmissible to give away society’s wealth now, in the form of a basic income, at the expense of economic collapse tomorrow” (RFA 38). This is an important point and one that I adopt fully. For the basic income to be as fruitful a way to reduce racial injustice, it needs to be established in a way that both enables society to continue giving it in the long term, and financed in a way that does not undermine the economy overall. The crucial question here then concerns how we can sustainably maximise the tax yield so as to enable the highest sustainable basic income. To be sure, there are other things that affect how high the basic income ends up being beside the tax rate, including how many people there are in society, whether younger members of society get a smaller basic income than adults, etc. We will disregard these more circumstantial elements. Under the assumption that maximising the tax take is causally related to maximising the level of the basic income, Van Parijs argues that incentives are the most important aspect of our consideration of the highest sustainable tax rate. According to Van Parijs, taking for granted that persons cannot be forced to expend their time and effort in any particular way and that capital in society is largely privately owned, the tax rate should be set in such a way as to incentivise continued productivity (RFA 39). I argue that in a racially unequal society, incentivising productivity among the current productive classes through the tax rate should not be the only main consideration. I suggest that the concern for maintaining the current incentive levels of the most productive should be balanced

against a concern to unlock the productive potential of those who are currently unproductive but who are unproductive because they have been disadvantaged by racial inequality. The underlying concern for Van Parijs and myself is to maximise productivity overall as a way to maximise the overall tax yield. In my view, this might entail setting the tax rate at a point beyond what we may have determined to ordinarily be the threshold for maintaining current levels of incentive in those who currently have the largest incomes, if it is judged that the gains from unlocking the productive potential of those who have been disadvantaged by racial inequality will more than make up for the loss to the tax yield of the reduction in productivity of those currently with the highest incomes. I assume that unlocking the potential of the racially disadvantaged will lead to an expansion of the tax base and to more people making it into higher tax brackets, all of which would increase the overall tax yield sustainably. It is important to note, though, that the proposal here is not significantly different from Van Parijs's, at least not in terms of its possible outcome. Van Parijs argues for a basic income that is as high as possible. He also argues for a tax structure that would produce the highest sustainable yield. The main difference with him, as I have discussed above, is in terms of the assumptions that underwrite the tax structure. My concern for using the basic income to reduce racial inequality makes me more alert than Van Parijs to the fact that current levels of productivity across different parts of society are partly a product of racial inequality themselves. The adaptation is admittedly minor, but reflects a grasp of racial inequality that is not present in Van Parijs.

2. I agree with Van Parijs about sourcing the resources to fund a basic income from the value of society's natural endowments, from taxing the value of gifts and bequests at 100 percent and from taxing jobs (RFA 27, 101, 108). I would add to these, something that might be called a "community building" tax targeted at highly profitable industries or sectors with disproportionately high white ownership and management staff (in the US and UK these may include, finance, mining, agriculture, video gaming, etc.). The money that is drawn from this would be used to raise the level of the basic income for all. This proposal is based on the fact that many of the most profitable industries in the US and the UK (and indeed across the West) have a disproportionately high percentage of its owners and top-level management staff who are from one racial group compared to the racial composition of the rest of the population or other industries. This tax may be discontinued for an industry or in total if the ownership and top management of one or all of the industries subject to the tax change sufficiently enough to reflect the composition of the society as a whole. It could serve as both a way to fund a basic income and a way to incentivise change. It seems fairly straightforward how this suggestion follows from my filtered leximinning of modified-real-freedom opportunities' theory of distributive justice. It makes funding the basic income subject to a requirement that the funds are at least partly sourced in a way that addresses racial injustice. As I have indicated, the community tax will incentivise racially unequal industries/sectors to work toward becoming less racially unequal, while at the same time funding the basic income. It seems clear that on this account the basic income (or more specifically, the framework for funding it)

works towards eliminating racial inequality. The institution of this tax should, however, take into account what we said about maximising the tax yield as a way to maximise the level of the basic income. The level of this tax should not undermine mid to long term productivity for instance.

3. Finally, social and public services should be a big part of the universal basic income delivery framework. That is, a significant proportion of the basic income should be given in the form of universally needed public services. I suggest that doing this will enable society to reduce the racial inequalities that derive from inequalities in access to basic necessities. Van Parijs allows that some of the basic income should be given in the form of services by suggesting that there are some services that everyone needs which can be more cheaply delivered if they are delivered universally through services (RFA 31). Furthermore, Van Parijs argues that some of the basic income should be given in the form of services in three main kinds of cases, namely, where such services advance people's formal freedom (such as the police and courts), when the free or subsidized provision of such services would have the effect of increasing people's opportunities in society (such as education and healthcare) and finally services to supply "items of which it is plausible to assume that no one in her right mind might not want to buy them out of her basic income" are supported (RFA 42-43). I agree with Van Parijs's grounds for arguing that part of the basic income should be given in the form of services. I suggest, additionally, that universal provision of services that meet

those criteria could also reduce racial inequality in society because racial inequality currently manifests, among other ways, in the form of unequal access to such services. By unequal access here I mean both unequal access to the economic opportunities that would enable them to accrue the resources with which to purchase those services; unequal access to the social infrastructure to enable them to take delivery of those services (take people living in shanty towns in South Africa without proper plumbing or wiring, for example) regardless of whether it is currently delivered free as a public service, and often unequal treatment in the delivery of those services even when they are delivered free as a public service (take the unequal health outcomes for ethnic minorities in England despite the National Health Service being free at the point of use). Delivering those services universally and monitoring the institutions tasked with delivering them to ensure they are treating everyone equally on an ongoing basis can help reduce racial inequality in society overall. My suggestion here is based on the intuition that providing everyone equal access to the things that everyone needs will serve as a great leveler.

A significant amount of work is needed to flesh out much better not only the nature and form of these three possible institutional implications of my theory of distributive justice theory but to also identify the other policy implications of treating the basic income as a racial inequality-reducing programme. This is a research path I hope to follow more seriously in the future.

To conclude, in this thesis, I have argued that Van Parijs' theory of distributive justice, which grounds his basic income offer, is blind to racial inequality, and therefore to racial injustice. I revised his theory to make it insusceptible to charges of blindness to racial injustice as well as suitable for grounding a basic income that can help reduce or eliminate racial inequality. According to Van Parijs' theory, people's freedom should not only incorporate the absence of hindrance in doing what they might want to do. It should also include their real access to the opportunities to do what people might want to do, hence he defines freedom as critically including a principle of the leximinning of real freedom, or more precisely, of opportunities. I have argued that on this account, a leximin chooser would be unable to consider a racially equal society as more just than a racially unequal society. That is, Van Parijs' theory is blind to racial injustice. To deal with this, I argued for racially-sensitive versions of leximin and real freedom. I proposed a filtered leximinning of modified real freedom theory of distributive justice. And as I have suggested earlier in this conclusion, this theory will ground a basic income offer, albeit with close resemblances with Van Parijs's, that can help eliminate or at least reduce racial inequality.

POSTSCRIPT

1. INTRODUCTION

*In the thesis, I proposed a distributive justice theory that would ground basic income as a racial inequality-reducing policy. That approach to grounding the basic income remains, to my mind, the most pertinent. But there are other viable approaches. As I wrote this thesis, the covid pandemic struck and changed the world as we know it, upending social contact and personal incomes with similar gusto. This postscript is my attempt to make a case for a basic income that is based on the social effects of the covid pandemic. The postscript argues for a universal basic income on the grounds of the idea of society as a collective endeavour in which everyone has a stake. This idea can be invoked by governments wedded to neoliberal ideology. This illustrates a different approach to the justification of basic income from the one examined in the thesis. Combining this justification of basic income with an awareness of racial inequality (which I take to be a situation in which people of some races have less of a stake in their society than people of other races) would ground the same kinds of modifications to a basic income proposal as I have just proposed above. A version of this postscript has been accepted under the title “Why the Post-Covid World needs a Universal Basic Income” for an upcoming 2021 book *Thinking Beyond Neoliberalism* (Palgrave Macmillan, edited by Neal Harris and Onur Acaroğlu).*

Income inequality is a feature of neoliberalism in theory and in practice. In theory, neoliberal economists have argued that a free and unfettered market would make the most

efficient use of resources (Friedman, 1962; Hayek, 1944). It purportedly does so by rewarding actors proportionately on the basis of the unequal effort and ingenuity they demonstrate in their market behaviour. In practice, neoliberalism has grown income and wealth inequality to levels unseen since the gilded age. Thomas Piketty's (2014) *Capital in the Twenty-First Century* extensively catalogues the evidence for this. Piketty also highlights the clear disjunction between how neoliberal theory explains and justifies inequality and how and why inequality typically develops and flourishes under actually existing neoliberal regimes.

The Covid-19 pandemic has given rise to new questions about inequality. One such question concerns whether, or how, neoliberal theory could explain the massive widening of the income gap generated, not by the market 'doing its job', so to speak, but by the pandemic necessitating the suspension of certain ways of working, to the detriment of certain portions of society. And more than how neoliberal theory might explain it, a pressing question is how neoliberal politics would propose to deal with it. This is the central question of this postscript. I seek to explore how we can deal with the economic inequality that has resulted from lower-earning people losing income and taking on more debt during the pandemic, while simultaneously, higher-earning people retained a greater portion of their (disposable) income and grew their savings throughout the pandemic.

I argue that it is politically and economically possible, within the parameters of the dominant neoliberal order, to deal with this inequality by giving everyone a regular cash payment. This would be available to all people, regardless of whether they work, or want to work, and regardless of where, or with whom, they live. I argue that a truly universal

basic income (UBI), funded by taxing higher-income individuals at the requisite level, is required to stem the economic and social impact of what I shall call “pandemic inequality”. It would do so by raising the incomes of those at the bottom of the economic ladder. I further argue that neoliberal politics can birth such a basic income, enabling a gradual, feasible move beyond the current neoliberal order. My approach is similar to that advanced by Van Parijs in his most recent tome titled *Basic Income: A Radical Proposal for a Free Society and a Sane Economy* (2017). He argues that a basic income can be defended from the standpoint of every mainstream liberal political theory. The approach of this chapter maps his by showing that a basic income can be advanced on the basis of a conception of society that is available even in the context of neoliberal policy dominance. In the first section, I consider a characteristic of neoliberal politics, namely its adaptability (or malleability), which may potentially allow for the establishment of a basic income. In the second section, I argue that deep inequality combined with the idea that everyone should have a stake in society can justify the adoption of a basic income. In last section, I demonstrate the feasibility of instituting a Universal Basic Income by providing a positive appraisal of recent trials of UBI style projects across different cultures and contexts.

2. THE ADAPTABILITY OF NEOLIBERAL POLITICS

Following a tradition of grounding arguments in imagined starting points popularised by John Rawls (1971) and Ronald Dworkin (1981), I will begin by sketching the picture of (the origins of) society implicit within the neoliberal imagination. Imagine you and other people suddenly find yourselves on a never-before inhabited island. You have no

memories of a life before you all showed up there and you know nothing about each other, although you all recognise there is natural equality amongst you. You are all rational, purposeful human beings and have the capacity to create concepts, not just about what your lives (individually and collectively) can be, but also about what they should be. Each person is equally endowed with the propensity for self-advancement, although of course, it is not certain that all of you will decide to pursue it, or will be inclined to pursue it in the same way. Also, imagine that the new inhabitants of the island, despite not knowing much else, have a certain level of awareness about how the human body functions: we get hungry and we need to eat, otherwise we perish, for example. There are animals on this island with whom humans do not stand a chance in one-to-one combat, and our islanders are aware of this fact. They are also aware that there is day and night, and humans need to sleep a certain amount (whether it be during the day or night) in order to continue functioning. The island itself contains a limited range and amount of natural features and resources (every feature is arguably a resource, depending on what the people on the island end up making of them), from fertile ground to rich waters full of fish, to fruit bearing trees of all kinds, and trees useful for their wood, etc. Now, it remains to be seen what the first communal action would be once each new islander discovers the presence of other people on this island. But it is at least conceivable that their drive to self-preservation and self-advancement will result in some of them (if not indeed all of them) autonomously beginning to acquire what they believe themselves to need from the island's natural environment, which, given their limited nature, will result in a great deal of competition. It is also conceivable that these initial self-preserving and self-advancing actions by each of them will result, perhaps after much trial and error, in a collective

(explicit or tacit) decision to settle on a formula for appropriating, exchanging and/or using the natural resources on the island.

Something akin to the above story is what neoliberal theorists tell about individual and social life. Of course, for neoliberal scholars like Hayek and Friedman, neoliberalism is the formula that should be chosen by the island-dwellers in the story. For neoliberals, we are all individually endowed with talents and the propensity for hard work. We possess a drive to self-advancement and strive to achieve our own interest in competition with other people striving to achieve theirs. As George Monbiot (2016) argues, neoliberals believe that competition is the ‘defining characteristic of human relations’. Or, put another way, in society, to the extent that neoliberals will admit to the existence of one, ‘men and women need only follow their own self-interest and compete for scarce rewards’ (Metcalf 2017). Neoliberals view society as a kind of “universal market” and the human beings in society as “profit and loss calculators” (Metcalf, 2017). The goal, as they see it, is the most efficient use of natural resources present in the world, and for this to happen, they argue that we need a market. But not simply any market. What is presented as crucial is a market that is unfettered by the state and allowed to function as freely and competitively as possible. Without state interference, neoliberals argue, markets will, almost naturally, ensure that optimal use is made of all of society’s resources; resources will end up with those who need them the most, or can take the most advantage of them. Price is a crucial concept in this connection. As Metcalf (2017) suggests, ‘prices are a means of allocating scarce resources efficiently, according to need and utility, as governed by supply and demand. For the price system to function efficiently, markets must be free and competitive.’ In a free market, the worker will earn what the labour market can clear, that

is, the employer will pay nothing but the wage a worker will accept (which could end up being as low or as high as competition for scarce or plentiful jobs require). The wage for a job will thus be set by the demand for that job. If a few of the islanders in our story above want the same job, the market-clearing price for that job is the least amount one of them will accept in order to do it. In theory, at least, those with the highest incomes are those in jobs with the smallest pool of qualified candidates, or those who have created a business and figured out ways to make lots of money from exploiting legitimate market forces. On the neoliberal matrix, these would be the highly-skilled and the entrepreneurs. The reverse is also true. Where one falls in that matrix depends on what one has made of their natural endowments: how hard they've worked, which skills (and at what level) they've acquired, and how ingenious they are in navigating the market. There is no moral facet to the neoliberal account, except perhaps to the extent that interference in the market order is seen as a stifling of the rights of individuals and is possibly immoral on that account (Bloom 2017).

There is a significant gap between this neoliberal theory and the political practice of 'neoliberal governments', that is, governments that operate under the banner of neoliberal ideology. For example, 'theoretical' neoliberals might complain that most markets in the West are regulated to some extent, including regulations that permit (or at least do not outlaw) labour organising, an activity, which from a neoliberal point of view could "distort" the pricing of labour. Minimum wage laws would be seen to have the same effect. Although they may clandestinely undermine the laws around these, neoliberal politicians seldom explicitly argue against them. There is likewise a significant gap between why people actually end up where they do economically, and the reasons

neoliberal theorists offer for why people end up where they do. It might be observed that luck (including being lucky to be born at a particular time, place, or into a particular ethnicity or family, or even with certain talents) plays a crucial role, for example. Historically, access, or proximity to, power, political or social, has similarly been shown to dictate market outcomes. And neoliberal politicians are at least sometimes solicitous about some of these other reasons. But broadly speaking, despite this disjunction between theory and reality, the ideological (Friedrich Hayek and Ludwig Von Mises) and political (Margaret Thatcher and Ronald Reagan) godparents of neoliberalism have arguably achieved what they set out to achieve, namely, ‘lower taxes on the rich, deregulation of labour and product markets, financialisation, and globalisation’ (Stiglitz 2019).

So what has neoliberalism’s dominance produced? As Nobel Prize winning economist, Joseph Stiglitz (2019) points out, this multi-decade experiment has led to economic stagnation and has seen disproportionate amounts of incomes ‘accrued ... [at] ... the very top of the income scale’. In some ways that was, of course, very much what the godparents of neoliberalism (the true believers) expected. Once the state is out of the way, the market will sort us all out depending on what we bring to it, and how well we operate within it. There will be winners and losers. The game is not wrong just because some people lose. Losers don’t get a right to end the game just because they lost. This attitude compliments the neoliberal pioneers’ approach to state welfare. They saw welfare policies as dependency-generating and enslaving, and made it their mission to dismantle the welfare policies of previous, more collectivist governments.

But more recent neoliberals, especially those in the political arena, seem more willing to make exceptions for policy programmes aimed at pulling up previously disadvantaged communities, or at ensuring the most destitute do not simply wither and die. George Bush's No Child Left Behind Act 2001 (Dillon & Rotherham 2017) is an aptly named (if significantly badly designed) example of this. The law included provisions that would allocate extra resources to schools with significant proportions of disadvantaged kids (including racial minorities). Tony Blair's 2003 London Schools Challenge (Kidson & Norris 2014) was aimed at supporting the improvement of previously underperforming secondary schools, which on the whole tended to be schools with above average numbers of minority ethnic students, is another such example. This policy was explicitly aimed at narrowing the attainment gap between white and minority ethnic students. Even though they are by no means enthusiastic about them, neoliberal governments have also acquiesced to welfare policies that aid the unemployed, if only for a limited time, after they lose their jobs, even though they have also actively cut the sums people receive over time. In many ways, the Universal Credit programme devised by Ian Duncan Smith (the UK's Secretary for Work and Pensions between 2010 and 2016) is a prime example of such a welfare programme. It reflected the idea that the state should help those who are badly off financially, even if it aimed to make the provision of such help as palatable to neoliberalism as possible. It folded together six different welfare benefits into one and placed a cap on what people can receive (in neoliberal shorthand: 'simplifying' welfare programmes and limiting the 'sprawling' state). The chancellor of the British exchequer Rishi Sunak's furlough scheme that saw the state pay 80% of furloughed workers' wages during the pandemic is a significant recent example in this connection as well. Notice that

each of these support policies is designed in such a way as to suggest that the state is, by way of those benefits, giving people an opportunity to become economic agents by providing them help to get an education, or to get a job.

The grudging acceptance displayed by more recent neoliberal politicians of the need for at least some policies that support the “losers” may stem from the knowledge that society’s provenance is in fact much more complicated than the one described in our story above. And it displays a character of adaptability in contemporary neoliberal politics. To recast this character of neoliberal politics vis a vis the story we told at the start about how neoliberalism sees the world, we could say that recent neoliberals recognise, or at the least they believe it is an unalterable feature of the zeitgeist to hold, that we do not simply show up on a virgin island without complex backstories as individuals, rather we arrive as groups. We acquired the distribution of wealth and incomes we possess, not because some were more ingenious, or harder-working, than others in the marketplace. Rather, we ended up where we are because for centuries some people were forced to take part in the market only as resources to be traded, as opposed to as agents to trade. Or in many cases, some were simply kept out of the market altogether. Or because the rules of the markets have historically been rigged by those with power in ways that benefitted them and produced results heavily skewed toward them and their descendants. Or for a host of other reasons not congruent with the story told by classic neoliberal thought about the equitable origins of initial social inequality. Regardless of whether the above-mentioned policy adaptability arose as a result of a sublimated cognitive dissonance, or from a wily pragmatism, neoliberal policy-makers have long shown themselves willing to stray from dogmatic free-market policies as a way to survive and remain relevant.

There is of course no suggestion that these departures from the neoliberal orthodoxy have necessarily succeeded in achieving a reduction in inequality, or even the far less ambitious (and noble) objectives that their architects set for them. One can convincingly argue that such policies primarily served to provide a veneer of respectability to neoliberalism, and thus functioned to entrench, rather than abate, the structural inequalities it produces. This section does not pretend that the neoliberal actors at the centre of creating and executing these reparative policies had any more noble intentions than to retain some semblance of stability in the economy in a bid to protect the investments of the rich and protect their own electoral chances. But it is on precisely that evident tendency among neoliberal governments to adapt to contingent developments that I intend to draw in this postscript. My working assumption is that neoliberal ideology is likely to remain the order of the day in most Western nations' post-pandemic policy-making; the question is thus how to transition beyond it while sensitive to this probability. This is not an assumption of the inevitability of neoliberalism, either from a logical or from a historical vantage point. Much can change in how societies arrange themselves and much can change in relatively short order, as the COVID-19 pandemic testifies. But a radical change in the principles that govern how most Western societies are organised does not appear to have been triggered by the economic upheavals brought on by the pandemic, even though it should have, and even though similar upheavals in the past have triggered radical change (consider the New Deal in the US, and the post-war welfare state in the United Kingdom). Such a radical change may no doubt be triggered by a less dramatic event in the near future. But as of now, our project must involve, alongside conceptualising new and different ways of seeing the world, seeking to pry out of neoliberal governments policies

aimed at bandaging deep inequalities. Thinking beyond neoliberalism involves a thorough analysis of neoliberalism itself.

3. THE NEED FOR A BASIC INCOME

With a keen awareness of the policy departures from neoliberal dogma by neoliberal politicians mentioned in the previous section, it is clear that just like the emergency furlough scheme was needed to deal with the spread of Covid, a permanent basic income is needed to deal with the grave and historic expansion of income inequality that has resulted from the pandemic. To see how this argument may be outlined, it is helpful to consider the rationale offered for the furlough scheme by Rishi Sunak and then explore whether a similar case to that which he made for it may be made for the introduction of a universal basic income. This demonstrates how a UBI could offer a qualitative change of policy under a neoliberal government, without necessarily requiring a normative revolution.

In his speech on 20 March 2020 announcing what he called ‘The Coronavirus Job Retention Scheme’, Chancellor Sunak said “[T]o all those at home right now, anxious about the days ahead, I say this: you will not face this alone.” He further added:

We have closed schools. We have told people to stay at home to prevent the spread of infection. We are now closing restaurants and bars. Those steps are necessary to save lives. But we don’t do this lightly – we know those measures will have a significant economic impact. I have a responsibility to make sure we protect, as far as possible, people’s jobs and incomes... We want to look back on this time and

remember how, in the face of a generation-defining moment, we undertook a collective national effort - and we stood together.

Two rationales for the scheme emerge most forcefully from his speech: (1) the scheme was needed to protect people's livelihoods following steps taken to curtail the spread of the Coronavirus and (2) it was needed to protect society as a collective endeavour in which we all have a stake.

The first rationale seems very straightforward. Regulations brought in to limit contact between people, and therefore to limit the spread of the virus, would have a profound effect on the livelihoods of people whose jobs and livelihoods depend on contact with others. Economic support for them was necessary to provide the conditions for the rules to be obeyed. But more straightforwardly, people could simply not be left to starve and die, although many, disproportionately refugees and migrants, were in fact left in peril (Saltmarsh 2020).

But, crucially, on the story we have told about neoliberal dogma up to this point, there is no essential reason why the furlough scheme should naturally have followed from the government's social distancing rules. To a dogmatic neoliberal, there is no reason why it should naturally be considered to be the government's duty to support people financially through the pandemic, whether they are employees or employers. People could have been left to use their ingenuity to find ways to earn a new living in the current context. The winners would be those who find ways to do so. For example, the billionaires who have grown their wealth several times over the period of the pandemic (Neate, 2020). The losers would be those who could not 'make things happen' for themselves. The furlough

scheme is a major divergence from neoliberal dogma. The most significant indication of this is in the fact that Sunak invokes the idea of society to justify it, bringing us to the second rationale.

The idea that the people who have been dealt a tough hand during the pandemic would “not face this alone” and that when all is said and done, the story of our response to the pandemic should be that “we stood together.” In other words, the very idea of society as a collective endeavour in which all have a stake justified the furlough scheme. Here, I am defining the notion of 'a stake in society' in terms of both being a beneficiary of society and being an active agent in society, that is, being a participant in social decision making. Sunak was implicitly justifying the furlough scheme on the basis of the idea of society as a collective endeavour in which we all have a stake in both these economic and the political senses of the word. On this account, the government has a responsibility to help those living through tough times because it was to the advantage of all of us as a society that there are no people who are left destitute within our society.

This argument is a moral one. That is, it is not simply presented in terms of the advantages that are derived from the public health of the population (although that is an important factor) but in terms of the advantages of our ability to see ourselves as members of a society. In other words, there is an advantage for us in being able to look ourselves in the eye, so to say, at the end of this crisis and being able to say we functioned as a society. A certain notion of what a society is, namely a common endeavour in which we all have a stake, is being invoked that should result not simply in “the small business who does everything they can not to lay off their staff” or “the student who does a shop for their

elderly neighbour” or “the retired nurse who volunteers to cover some shifts in their local hospital”, but, perhaps most surprisingly, in a neoliberal government that pays people money despite their not doing anything to “earn” it. One can see a mutability to the foundational neoliberal norms and values, a flexibility progressives should be open to exploiting to the advantage of the most deprived in society.

The question one might then ask is, does such a notion of society as a collective endeavour in which we all have a stake justify, and thereby presage the possibility of, a basic income? Before attempting an answer to this question, let us consider what the post-pandemic context is likely to be. The context for the furlough scheme was millions at risk of losing their jobs and their livelihood. What will the relevant post-pandemic context be?

A much-ignored development during the pandemic has been the startling inequalities that have deepened around savings and debt. A House of Commons Library briefing document released in January 2021 captures the raw data. Savings across the entire British population has grown during the pandemic, with household savings ratio (savings as a proportion of disposable income) going from 9.6% between January to March 2020 to 29.1% between April and June of the same year. This was the highest household savings ratio since at least 1987. Moreover, households also paid down their debt over the pandemic (Francis-Devine 2021:4). But peer inside the data and the real story is significantly different, and in many ways unsurprising. According to Bank of England, these savings have been heavily skewed towards households in the higher income quintiles, with the lowest income households actually increasing their debt during the pandemic (ibid, 5). According to the report, “as the first lockdown continued, there was

growing economic inequality, as more low-income individuals reported reduced incomes, working fewer hours and being less able to save for the future compared with high-income individuals. This trend continued after some easing of restrictions throughout May and June” (2021:6). Lower income households also reported higher spending on essential household items, with “54% of adults in families from the lowest income fifth borrowed more in March-June to cover everyday costs like food and housing” (ibid 10). There were inequalities within these inequalities, with minority ethnic people being on average more affected than whites, the disabled being more affected than people without a disability, the young being more affected than the old, and renters being more affected than homeowners. What this means is that the economic structures of pre-pandemic times, which disadvantaged those groups, meant that they were also disproportionately affected by its effects. As the Low Pay Commission suggests, minimum wage workers, within whose ranks the most affected groups are overrepresented, “are more likely than average to work in sectors most affected by the pandemic, particularly hospitality and non-essential retail” (ibid 7).

The numbers are very clear, something that can be called “pandemic inequality” exists. We can define pandemic inequality not only as inequality in the immediate impact of the pandemic, but also inequality in what the pandemic means for the future for each group. For example, as Nariman Behraves (2020), Chief Economist at consulting firm IHS Markit suggests in an interview with the World Economic Forum podcast, “Skill and labour-intensive industries are very worried about the vulnerability to viruses of all kinds, so you’ll see greater emphasis on robotics, which creates its own challenges.” A report by the McKinsey Global Institute (Lund et al 2021) also echoes a similar point:

Covid-19 may propel faster adoption of automation and AI, especially in work arenas with high physical proximity...The mix of occupations may shift, with little job growth in low-wage occupations...Compared to our pre-COVID-19 estimates, we expect the largest negative impact of the pandemic to fall on workers in food service and customer sales and service roles, as well as less-skilled office support roles. Jobs in warehousing and transportation may increase as a result of the growth in e-commerce and the delivery economy, but those increases are unlikely to offset the disruption of many low-wage jobs.

In other words, not only will lower income people have borne the deepest brunt of the pandemic, they will likely bear the brunt of whatever changes the pandemic is likely to have brought into our labour processes. And this is likely to have long term economic and social effects, affecting people today, but also affecting their children, in terms of their educational and health outcomes. The broader effects of pandemic inequality are likely to begin showing up as soon as the worst of this iteration of the Covid pandemic is behind us. But more than this, the long-term effects are likely to be a worsening of inequality, as many higher-income people are likely to join the rentier classes as a result of their sizable savings, becoming small-time stock market investors and/or landlords and growing those savings further over time. Eventually, the advantages acquired as a result of the specific inequalities birthed during this pandemic will be handed down to the next generation through education, access to a higher quality of life, and unequal access to income enhancing opportunities such as family and social networks. In other words, these advantages spread out across every aspect of social life.

The question is, does this context justify a basic income? If so, how? It seems evident to me that it does. Firstly, it would seem that the same idea of society as a collective endeavour in which we all have a stake which Rishi Sunak invoked to illustrate the need to help each other out during the pandemic requires now that the rich contribute toward ensuring that we do not end up living in a society in which the gap between those who can and cannot afford to have a decent standard of living widens so absurdly that it would be a stretch to say we live in a society at all, much less one in which we all have a stake. But this last point captures what I think provides the clearest case for a basic income as a response to pandemic inequality, namely, the idea that we should all have a stake in our society.

Let us briefly return to the story with which we started this chapter. Imagine that the island society whose onset we described has proceeded along neoliberalism's preferred lines. The market is a free for all, where competition rules the day and how people end up is purely a result of how ingenious, talented, and skilled they are, and how well they have been able to negotiate the contours of the market. Imagine, even, that the inequality we have today is straightforwardly a result of this market doing what the market is supposed to do. In its current state, our society has developed into a grossly unequal society. Those at the top are rich enough to lead whatever lifestyle they might want to lead. Moreover, they are able to utilise their excess wealth to further advantage themselves and their offspring both in the marketplace and in other parts of society, such as in politics, education, healthcare, and social life. And they do in fact utilise their resources for these purposes, for it seems sensible that that is one of the ways that their ingenuity is likely to play out. At the other end of the economic spectrum, people can barely afford to feed

themselves and their children. Over 20% of the population are either moderately or severely food insecure and 19% of the children live in households that are food insecure (Pereira et al. 2017). Tragically, 7% of people live in the deepest poverty and about 22% live in some poverty (Social Metrics Commission, 2020). Their ability to access the very basis of survival is dependent on other people being charitable, or on their capacity to work for the most well off. And given those in the highest income bracket have already used their ingenuity to buy control of the economy, the politics and the education system, what those at the bottom end up with over time depends less on their hard work, talent, ingenuity and dedication, and more on what those at the top are willing to dispense with, and they are not too keen on dispensing with much, otherwise they would soon cease to be rich enough to occupy the highest income bracket (or at least so most of them think). In other words, the neoliberal ideal ends up producing the seeds of its own subversion. The inequality it produces and encourages lends itself to the rich skewing the system to their advantage. Also, the aspects of human nature that it is designed to reward make this path inevitable. The resulting society, like actual neoliberal polities today, is not one in which every member has as much of a stake as every other member, and arguably it is not a society in which some members have a stake at all.

What does it mean to say this is not a society in which everyone has an equal stake? By that we mean that it is not a society in which everyone has an equal share, interest, or involvement. Clearly, the interests of the rich play an outsized role in how the lives of the poor turn out. The fate of the poor remains in the hands of the rich. And the rich play an outsized role in how society itself ends up being arranged and in the system that determines how people end up regardless of how those people themselves choose to live

their lives. What I have just described is Britain (and the United States) in a nutshell and there is no doubt that not only did the poor have little to no stake in this society before the pandemic hit, they are now likely to have even less of a stake in it going into the future. And surely this is a situation that would justify a collective effort like the one Sunak summoned us to in response to the pandemic to raise the bottom high enough to give those that occupy that social stratum more of a stake in this society. Equalising people's stake in society clearly does not necessarily require equalising their incomes. It requires raising those at the bottom high enough so that their fate is no longer almost entirely controlled by what those at the top view as their interests. And a universal basic income does this by taxing the rich and using the proceeds to provide a high enough basic income to everyone.

The universalist character of the idea of a basic income is somewhat counterintuitive. If the objective is to raise the bottom, why not simply give money to those at the bottom? The answer is quite simple. The policy, or policies, by which we aim to give everyone a stake in society should not itself detract from everyone being viewed as equal members of society. Part of what giving everyone a stake in society entails is doing it in a way that preserves the self-respect and sense of dignity of those at the bottom. The basic income cannot therefore be given in the spirit of charity or welfare. It should be given in the spirit of a right, a societal right. That is, it should be held as something to which you are entitled as a member of this society and which gives you a significant stake in how this society is organised and how it develops. It should also be given regardless of whether you work, or are interested in working, regardless of where you live and with whom, and regardless

of how you plan to spend it. It should be at a level high enough to not only allow subsistence but to allow a degree of leisure and recreation.

3. COULD BASIC INCOME REALLY GIVE EVERYONE A STAKE IN SOCIETY?

The short answer to this question is ‘yes’! In this section, I shall explore the evidence from several basic income pilots. As will become clear, not only does a basic income improve the quality of life of those at the bottom, it also gives them more control over their own lives. In other words, because it reduces how much the fate of the least well off depend on the actions (and/or on the interests) of those at the top, it correspondingly increases their stake in society.

One clear case in which those involved do not have a stake in society is the case of homelessness. According to the housing advocacy group, Shelter, in 2019 there were over 280,000 homeless people in the UK (The Big Issue 2021). In the US, the number of homeless people in 2018, according to the White House, was over 550,000 people (Council of Economic Advisers 2019). Homelessness encompasses two general types of people: the person, on one hand, who has no fixed abode but is able to access support from family, friends or even the state that keeps them off the streets, and, on the other hand, the person who cannot access such help and is forced to sleep on the street at least some of the time. The numbers of the latter kind of person, who is usually called a ‘rough sleeper’, are over 10,000 and almost 200,000 in the UK and US respectively (The Big Issue 2021; Council of Economic Advisers 2019). It is hard to think of a group of people more on the fringes of society than rough sleepers. In a quite visceral way, rough sleepers live their lives almost entirely at the mercy of everything and everyone from drunk youths

on a night out to a rainstorm to property or business owners who seem to think that the mere sight of them devalues their property or business, to authorities who routinely feel a special sense of impunity in their conduct toward them (Crisis UK 2017). Their lack of a stake in society is most poignantly, albeit not exclusively, captured in the fact that because they do not have a fixed address: most rough sleepers end up unable to register to vote and are therefore left unable to influence the choice of who leads society in the most basic of ways.

One of the earliest experiments in the UK with the idea of a basic income showed that giving rough sleepers money to cover their needs had a transformative effect on their material lives and it also gave them a clearer stake in society. In 2009, Broadway, a London-based charity ran an experiment that involved giving 13 veterans of the streets £3000 in spending money without conditions (Bregman 2016:49). They could spend the money on whatever they wanted. The money came with no strings attached. They did not have to get a job, get sober (for those of them that may have been addicts), or acquire any set skills. Financial advice was made available to them if they chose to use it, but choosing not to use it did not have an impact on whether or not they got the money. These were thirteen rough sleepers who, between them, had lived on the streets for decades. Some of them had lived on the street for up to forty years. So what were the results of this experiment?

A year and a half after the experiment began, seven of the 13 rough sleepers had a roof over their heads. Two more were about to move into their own apartments. All 13 had taken critical steps toward solvency and personal growth. They were

enrolled in classes, learning to cook, going through rehab, visiting their families, and making plans for the future. It empowers people,” one of the social workers said about the personalized budget. “It gives choices. I think it can make a difference” (Bregman 2016:51).

The outcome was clear. They gained significantly more control over their lives than they previously had as a result of the grant and doing so gave them more of a stake in society than they previously could claim to have. They were now both beneficiaries of society and were changing their lives in ways that gave them more agency in society. And the changes that took place in their lives were almost entirely due to decisions they were now in a position to make. The idea that to help such people society needs to weave them into a complex maze of social programmes with job or skill acquisition requirements was shown to be less than optimal by this experiment, prompting *The Economist* (2010) to conclude that the “most efficient way to spend money on the homeless might be to give it to them.”

But cases of the chronically homeless, like the one just discussed, only make up a tiny fraction of those to whom a basic income would give a stake in society. The vast majority of the people to whom a basic income would support are the long-term unemployed, or those who fall within what has been called ‘the working poor’: people who work full-time or live in households in which one or more people work full-time (or are part of some other kind of work arrangement) but can barely make ends meet. Annie Lowrey captures this problem in the United States as follows, ‘We no longer have a jobs crisis, with the economy recovering to something like full employment a decade after the start

of the Great Recession. But we do have a good-jobs crisis, a more permanent, festering problem that started more than a generation ago. Work simply is not paying like it used to, leaving more and more families struggling to get by' (2018: 33). The basic income experiments that have taken place, or are taking place, in Finland and Kenya, to name just two, address precisely this problem and in each case the basic income showed a remarkable ability to increase people's stake in society.

In Finland, the government trialed giving the sum of \$635 to 2000 random unemployed people on a monthly basis for 2 years (ending in December 2018). Among the many benefits generated for those in receipt of the payment were a significant increase in their trust in societal institutions as well as toward other people, according to Kela, a government institute. The basic income grant did not make people less likely to re-enter the workforce as opponents feared (Samuel 2019). By far the largest basic income trial in the world, run by US-based charity, Give Directly, is currently ongoing in Kenya (Arnold 2018). It is scheduled to run for 12 years and involves giving more than 20,000 Kenyans roughly \$22 every month (different segments of the trial involve variations in the sums given or how regularly it is given). There are as yet no conclusive results, but participants are already speaking to its effects on their lives. As one participant, Jael, observes, "this has made me believe that I can commit and be able to pay school fees for my children and I am also confident of saving money to improve my business" (Ibid 2018). In all the cases cited, it was clear that a basic income would give everyone, especially those at the bottom, a stake in society by making them a beneficiary and more of an active agent within society. Under the deep inequality in most Western societies, no other policy on

the horizon would give people more of a stake in society than the basic income has been shown to be able to do.

4. CONCLUSION

When we attempt to ‘think beyond neoliberalism’ we seek to give all actors a stake in society. We seek an end to irrational and inequitable wealth distributions, where billionaires routinely pay less in tax than their cleaners, and where the homeless are criminalised for their poverty. Progressive activists and academics must be sensitive to the internal contradictions of today’s neoliberalism. Sunak’s speech initiating the UK government’s furlough scheme spoke at least implicitly of giving everyone a stake in society. This normative position offers the potential for further, more permanent, progressive transition. The same guiding principles which ostensibly enabled the furlough scheme to come to fruition may also enable the birth of a Universal Basic Income (UBI).

The unjustifiable inequalities of neoliberalism have been exacerbated by Pandemic Inequality. There is a need for immediate and permanent action to prevent generations of the most vulnerable entering cycles of immiseration as a result of the hardships and inequalities sustained during the Covid Pandemic. By pushing hard on the normative tensions within the reality of actually existing neoliberalism a Universal Basic Income is a true possibility, a policy which is practicable, feasible and urgently needed. For those invested in thinking beyond neoliberalism a politically, socioeconomically and morally clear demand needs to be shouted: the post-Covid world needs a universal basic income.

Reference list

Allingham, M 2014, *Distributive Justice*, Routledge, Taylor & Francis Group, London.

Anderson, E 2010, *The Imperative of Integration*, Princeton; Oxford Princeton University Press.

Atkinson, AB 1995, *Public Economics in Action: The Basic Income/Flat Tax Proposal*, Clarendon Press, Oxford.

Barry, B 1996, 'Real Freedom and Basic Income', *Journal of Political Philosophy*, vol. 4, no. 3, pp. 242–276.

— 2003, 'Real Freedom and Basic Income', in A Reeve & A Williams (eds), *Real Libertarianism Assessed: Political Theory after Van Parijs*, Palgrave Macmillan, Basingstoke.

Basic Income Recipients Experienced Less Financial Insecurity 2019, viewed 7 March 2021, <https://www.kela.fi/web/en/news-archive/-/asset_publisher/IN08GY2nIrZo/content/basicincome-recipients-experienced-less-financial-insecurity>.

Behraves, N 2020, An economist explains what COVID-19 has done to the global economy, viewed 7 March 2021, <<https://www.weforum.org/agenda/2020/09/an-economist-explains-what-covid-19-has-done-to-the-global-economy/>>.

Berlin, I 1958, *Two Concepts of Liberty*, Clarendon Press, Oxford.

Birnbaum, S 2004, 'Real-libertarianism, Structural Injustice and the Democratic Ideal', in BIEN's 10th Congress - The Right to a Basic Income: Egalitarian Democracy.

Bloom, P 2017, *Ethics of Neoliberalism: The Business of Making Capitalism Moral.*, Routledge, London.

Bonilla-Silva, E 2010, *Racism without racists: color-blind racism and the persistence of racial inequality in the United States*, Rowman & Littlefield Publishers, Lanham.

Bregman, R & Manton, E 2016, *Utopia for realists: The Case for a Universal Basic Income, Open Borders, and a 15-hour Workweek*, The Correspondent, Netherlands.

Buchanan, J 1985, *The Limits of Liberty*, University of Chicago Press, Chicago.

Carrie, A 2018, Money for nothing: the truth about universal basic income, Nature.com.

Cohen, GA 1997, 'Where the Action Is: On the Site of Distributive Justice', *Philosophy Public Affairs*, vol. 26, no. 1, pp. 3–30.

Constant, B 1819, *Liberty of the Ancients Compared with that of Moderns*.

Cunliffe, J & Erreygers, G 2003, “‘Basic Income? Basic Capital!’ Origins and Issues of a Debate”, *Journal of Political Philosophy*, vol. 11, no. 1, pp. 89–110.

Cunliffe, J & Erreygers, G 2004, *The Origins of Universal Grants: An Anthology of Historical Writings on Basic Capital and Basic Income*, Palgrave Macmillan Ltd, New York.

Cutting out the middlemen 2010, *The Economist*, viewed 15 June 2021, <<https://www.economist.com/britain/2010/11/04/cutting-out-the-middle-men>>.

De Wijze, S, Kramer, MH & Carter, I (eds) 2009, *Hillel Steiner and the Anatomy of Justice: Themes and Challenges*, Routledge.

Dillon, E & Rotherham, A 2017, ‘States’ Evidence: What It Means to Make “Adequate Yearly Progress” Under NCLB’, *American Institute for Research*, viewed 2 May 2021, <<https://www.air.org/edsector-archives/publications/states-evidence-what-it-means-makeadequate-yearly-progress-under>>.

Dworkin, R 1981, ‘What is Equality? Part 2: Equality of Resources’, *Philosophy & Public Affairs*, vol. 10, no. 4, pp. 283–345.

— 2002a, *Sovereign Virtue: The Theory and Practice of Equality*, Harvard University Press, Cambridge.

— 2002b, ‘Sovereign Virtue Revisited’, *Ethics*, vol. 113, no. 1, pp. 106–143.

— 2004, ‘Ronald Dworkin Replies’, in J Burley (ed.), *Dworkin and his Critics*, Blackwell, Oxford, pp. 339–395.

Farrelly, C 1999, ‘Justice and a Citizens’ Basic Income’, *Journal of Applied Philosophy*, vol. 16, no. 3, pp. 283–296.

Francis-Devine, B, Powell, A & Foley, N 2021, *Coronavirus: Impact on the Labour Market*, House of Commons Library.

Freeman, S 2019, *Original Position*, *Stanford Encyclopedia of Philosophy*, Metaphysics Research Lab, Stanford University.

Fried, BH 2004, ‘Left-Libertarianism: A Review Essay’, *Philosophy Public Affairs*, vol. 32, no. 1, pp. 66–92.

Friedman, M 1962, *Capitalism and Freedom*, University of Chicago Press, Chicago.

— 1968, ‘The case for a negative income tax: A view from the right.’, in K Widerquist, JA Noguera, Y Vanderborght & J De Wispelaere (eds), *Basic Income: An Anthology of Contemporary Research*, Wiley Blackwell, Chichester, pp. 11–16. (2013).

Garcia, JLA 1996, ‘The Heart of Racism’, *Journal of Social Philosophy*, vol. 27, no. 1, pp. 5–46.

Gilbert, P 2012, ‘Comparative Assessments of Justice, Political Feasibility, and Ideal Theory’, *Ethical Theory and Moral Practice*, vol. 15, no. 1, pp. 39–56, viewed 7 December 2021, <<https://www.jstor.org/stable/41474505>>.

Hayek, FA 1944, *The Road to Serfdom.*, University of Chicago Press, Chicago.

Hayek, FA 1960, *The Constitution of Liberty*, Routledge & Kegan Paul, London.

Hayek, V & William Warren Bartley 1988, *The Collected Works of Friedrich August Hayek. Vol. 1, The Fatal Conceit: The Errors of Socialism*, Routledge, London.

Henderson, T 2017, ‘Real Freedom for All Revisited – Normative Justifications of Basic Income’, *Basic Income Studies*, vol. 12, no. 1.

How has the Covid pandemic affected jobs? n.d., Bank of England, viewed 7 March 2021, <<https://www.bankofengland.co.uk/knowledgebank/how-has-the-covid-19-pandemic-affected-jobs>>.

Hunyadi, M & Mänz, M 1998, ‘Does “Real-Freedom-for-All” Really Justify Basic Income?’, *Swiss Political Science Review*, vol. 4, no. 1, pp. 43–63.

Jean, M 1798, *Esquisse d’un tableau historique des progrès de l’esprit humain; ouvrage posthume de Condorcet.*, Chez Agasse, An VI, Paris.

Juan Luis Vives 1526, *De Subventionem pauperum.*, Lugdunum.

Kidson, M & Norris, E 2014, *Implementing the London Challenge*, Institute for Government.

Kukathas, C 2013, ‘On Sen on Comparative Justice’, *Critical Review of International Social and Political Philosophy*, vol. 16, no. 2, pp. 196–204.

Lowrey, A 2018, *Give People Money: How a Universal Basic Income Would End Poverty, Revolutionize Work, and Remake the World.*, Crown Press, New York.

MacCallum, G. C. Jr., 1967, ‘Negative and Positive Freedom’, *Philosophical Review*, vol. 76, pp. 312–34.

Matthews, D 2017, What happens if you replace every social program with a universal basic income, *Vox*, *Vox*.

Mckay, A 2005, *The Future of Social Security Policy: Women, Work and a Citizens' Basic Income*, Routledge, London.

McKinsey Global Institute 2021, *The future of work after COVID-19* | McKinsey, www.mckinsey.com.

Metcalf, S 2017, 'Neoliberalism: the idea that swallowed the world', *The Guardian*.

Mills, C 2003, "'Heart' Attack: A Critique of Jorge Garcia's Volitional Conception of Racism', *The Journal of Ethics*, vol. 7, no. 1, pp. 29–62, viewed 7 December 2021, <<https://www.jstor.org/stable/25115748>>.

— 2013, 'Retrieving Rawls for Racial Justice', *Critical Philosophy of Race*, vol. 1, no. 1, pp. 1–27.

Monbiot, G 2016, 'Neoliberalism - the ideology at the root of all our problems', *The Guardian*.

Monnier, J-M & Vercellone, C 2014, 'The Foundations and Funding of Basic Income as Primary Income', *Basic Income Studies*, vol. 9, no. 1-2.

Neate, R 2020, 'Billionaire's wealth rises to \$10.2 trillion amid Covid crisis', *The Guardian*.

Nell, G 2013, *Basic Income and the Free Market: Austrian Economics and the Potential for Efficient Redistribution*, Palgrave Macmillan, New York.

Nozick, R 1974, *Anarchy, state and Utopia*, Basil Blackwell, Oxford.

Oliver, MB 2003, 'African American Men as "Criminal and Dangerous": Implications of Media Portrayals of Crime on the "Criminalization" of African American Men', *Journal of African American Studies*, vol. 7, no. 2, pp. 3–18.

Paine, T & Foner, PS 1969, *The Complete Writings of Thomas Paine*, Citadel Press, New York.

Painter, A, Cooke, J, Burbidge, I & Ahmed, A 2019, *A Basic Income for Scotland*.

Pateman, C 2003, 'Freedom and Democratization: Why Basic Income is to be Preferred to Basic Capital', in K Dowding, J De Wispelaere & S White (eds), *The Ethics of Stakeholding*, Palgrave Macmillan, Basingstoke.

Pateman, C & Mills, C 2007, *Contract and Domination*, Polity, Cambridge.

Pereira, A, Handa, S & Holmquist, G 2017, *Food Insecurity among Children across the Globe*, UNICEF Office of Research.

Piketty, T 2014, *Capital in the Twenty-First Century*, Harvard University Press, Cambridge.

Raventos, D 2007, *Basic Income: The Material Conditions of Freedom*, Pluto Press, London.

Rawls, J 1971, *A Theory of Justice*, Harvard University Press, Cambridge.

— 1999, *A Theory of Justice: Revised Edition.*, The Belknap Press of Harvard University Press, Cambridge.

— 2001, *Justice as Fairness: A Restatement*, E Kelly (ed.), Belknap Press of Harvard University Press, Cambridge.

Reeve, A & Williams, A 2003, *Real Libertarianism Assessed*, London Palgrave Macmillan Uk.

Rough sleepers being targeted by legal powers designed for antisocial behaviour 2017, Crisis UK, viewed 28 May 2021, <<https://www.crisis.org.uk/about-us/latest-news/rough-sleepers-beingtargeted-by-legal-powers-designed-for-antisocial-behaviour/>>.

Samuel, S 2019, In Finland, giving people free money boosted happiness, not employment, Vox, Vox.

Sen, A 2006, ‘What Do We Want from a Theory of Justice?’, *The Journal of Philosophy*, vol. 103, no. 5, pp. 215–238, viewed 7 December 2021, <<https://www.jstor.org/stable/20619936>>.

— 2009, *The Idea of Justice*, 1st edn, Belknap Press, Massachusetts.

Shelby, T 2002, ‘Is Racism in the “Heart”?’’, *Journal of Social Philosophy*, vol. 33, no. 3, pp. 411–420.

— 2014, ‘Racism, Moralism, and Social Criticism’, *Du Bois Review: Social Science Research on Race*, vol. 11, no. 1, pp. 57–74.

Social Metrics Commission 2020, *Measuring Poverty 2020: A report of the Social Metrics Commission*, The Legatum Institute.

Špeciánová, J 2018, ‘Unconditional Basic Income in the Czech Republic: What Type of Taxes Could Fund It? A Theoretical Tax Analysis’, *Basic Income Studies*, vol. 13, no. 1.

Steiner, H 1987, ‘Capitalism, Justice and Equal Starts’, *Social Philosophy and Policy*, vol. 5, no. 1, pp. 49–71.

— 1992, ‘Three Just Taxes’, in P Van Parijs (ed.), *Arguing for Basic Income*, Verso, London.

Stiglitz, J 2019, ‘Neoliberalism must be pronounced dead and buried. Where next? | Joseph Stiglitz’, *The Guardian*, 30 May.

Sunak, R 2020, ‘The Chancellor Rishi Sunak provides an updated statement on coronavirus’.

The Big Issue 2018, How many people are homeless in the UK? And what can you do about it?, The Big Issue, The Big Issue.

The Council of Economic Advisers 2019, The State of Homelessness in America.

Unayama, T & Inoue, T 2020, Maezawa Method: Basic Income Social Experiment, Survey Report | MAEZAWA METHOD Basic Income Social Experiment, viewed 8 December 2021, <<https://www.yusakumaezawa.com/en/data/>>.

United Nations High Commissioner for Refugees 2020, Charity sector scrambles to shield refugees as UK COVID-19 crisis deepens, UNHCR, viewed 8 December 2021, <<https://www.unhcr.org/uk/news/stories/2020/3/5e7a4d774/charity-sector-scrambles-to-protect-refugees-as-uk-covid-19-crisis-deepens.html>>.

Vallentyne, P 1997, 'Self-Ownership and Equality: Brute Luck, Gifts, Universal Dominance, and Leximin', *Ethics*, vol. 107, no. 2, pp. 321–343.

Vallentyne, P, Steiner, H & Otsuka, M 2005, 'Why Left-Libertarianism Is Not Incoherent, Indeterminate, or Irrelevant: A Reply to Fried', *Philosophy Public Affairs*, vol. 33, no. 2, pp. 201–215.

Van Der Veen, RJ 1998, 'Real Freedom versus Reciprocity: Competing Views on the Justice of Unconditional Basic Income', *Political Studies*, vol. 46, no. 1, pp. 140–163.

Van Donselaar, G 1997, *The Benefit of Another's Pains: Parasitism, Scarcity, Basic income*, University of Amsterdam Press, Amsterdam.

Van Parijs, P 1990, 'The Second Marriage of Justice and Efficiency', *Journal of Social Policy*, vol. 19, no. 1, pp. 1–25.

— 1992a, *Arguing for Basic Income: Ethical Foundations for a Radical Reform*, Verso, London.

— 1992b, 'Basic Income Capitalism', *Ethics*, vol. 102, no. 3, pp. 465–484.

— 1997, 'Social Justice as Real Freedom for All: A Reply to Arneson, Fleurbaey, Melnyk and Selznick', *The Good Society*, vol. 7, no. 1, pp. 42–48.

— 2001, 'Real Freedom, the Market and the Family', *Analyse & Kritik*, vol. 23, no. 1, pp. 106–131.

— 2002, 'Difference Principle', in *The Cambridge Companion to Rawls*, Cambridge University Press, Cambridge, pp. 200–240.

— 2009, 'Egalitarian Justice, Left-Libertarianism and the Market', in S de Witje, MH Kramer & I Carter (eds), *Hillel Steiner and the Anatomy of Justice: Themes and Challenges*, Routledge, New York.

Van Parijs, P & Vanderborght, Y 2017, *Basic income. A Radical Proposal for a Free Society and a Sane Economy.*, Harvard University Press, Cambridge.

Voltaire & François Grasset 1772, *Collection Complète Des Œuvres De Mr. De Voltaire. ... Mélanges De Philosophie, Par Mr. De Voltaire Tome Cinquieme ...*, Lausanne London Londres.

Williams, A 1999, 'Resource Egalitarianism and the Limits to Basic Income', *Economics and Philosophy*, vol. 15, no. 1, pp. 85–107.