Anton Leist* Equality and Merit. Through Experiments to Normative Justice

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Abstract: When we want to justify claims against one another, we discover that conceptual thought alone is not sufficient to legitimize property and income in the relative and proper proportions among members of a productive group. Instead, the basis for justification should be more based upon motivational states, validated less by rational thought than by an effective behaviour. To circumnavigate otherwise dangerously utopian claims to justice, the social sciences, and especially behavioural economics, are the most reliable basis for normative distributive justice. This article builds on recent findings of experiments, first of all in order to give proof of the extent to which a general behavioural tendency towards equality is widespread among people, and second of all in order to highlight 'desert' and 'need' as the crucial criteria of just distribution, which will then sum up to justified inequality in the economic sphere.

Keywords: moral equality, economic justice, behavioural economics, inequality aversion, reciprocity, meritocracy

1 The Logical Gap

An orthodox philosophical view of the relation between ethics and empirical science holds that empirical knowledge may be of relevance for the application of moral principles, but cannot play a role in the constitution of these principles themselves. If you (for example) want to follow the principle of altruistic help, to empirically know who is most in need and how to help best is certainly necessary. But the principle itself has to be a secure one independent of a search for someone who is in need, and it cannot spring alone from anything similar to empirical states like hunger, thirst, illness and so forth. Several reasons make this view overwhelmingly plausible, and in the present context two appear most relevant.

The first is the philosophical dogma, often depicted as the 'is/ought' distinction. The phrase condenses that knowledge and morality, represented by descriptive and normative statements, are 'categorically' distinct. This kind of distinct-

*Corresponding author: Anton Leist, Ethik Zentrum, Universität Zürich, e-mail: leist@philos.uzh.ch ness means that no connection whatsoever, be it of implication, conclusion, or similarity, can straddle between the logical gulf. One cannot argue conclusively on behalf even of science, for example, towards a moral principle. And this, of course, is also one of the central pillars for the professional attention within different disciplines and their distancing each other. It is deeply entrenched in our thinking: the moral basics are one thing, but scientific laws, facts, observations, experience are a totally different thing. Sometimes, admitted, everyday items like friendship or a promise or cowardice appear to traverse the gap. These are the so-called 'thick' concepts by philosophers which some want to build a larger morality on. But then there are also the critics who are ready to dissect such concepts into the 'thin' elements highlighting the logical gap.

Secondly, by way of illustration of this dogma, one is confronted with a puzzle concerning the idea of 'moral equality'. Obviously human beings come along equipped with endless differences, and not even one of them is totally similar to another one, not even in the case of twins. Nevertheless we come to gather the strong conviction that there is some moral equality among all humans—a conviction widespread meanwhile beyond the Western societies. It seems hardly possible that this belief is reached from empirical observation alone. So it seems that another ontological sphere somewhere in the world must exist, in order for normative equality to be tapped and become deduced from it. It appears that the orthodox view of the logical gap is not only irresistible but also very difficult to disrupt. In the end it also seems politically important.

In the following essay I will devote myself to attempt a demystification of the second case, the idea of equality (and justice), with the help of empirical knowledge. In order that this attempt seems not too strange at the beginning, a word is necessary on the is/ought distinction. My comment here is short. Yes, we must accept the logical gulf, expressed a bit too dramatically however, between different types of statements and sentences. Norms cannot be empirically deduced. They must be *set* by an act of decision, either individually or collectively. Existing norms have to be reconstructed as if they were based on a collective decision, and put into use—fictitiously—by a tacit agreement. But notwithstanding this source of existence through agreement, norms are not arbitrary as looked upon from the model of deductive justification. Rather they are viewed as good or bad norms only if they do or do not meet the interests of the people following them. If moral equality is a norm, this opens up the possible inquiry into its preconditions in terms

of interests, and this in turn will hardly be able to be achieved without empirical data.¹

The attempt to set moral norms, and especially those of justice, on a solid basis of human psychology instead of religiously justified precepts is of course not a new one. It goes back to the days of Hobbes, Hume and Smith. As we can already see from these three thinkers, different psychological foundations may be thought to do work of setting norms, from the stark egoism of Hobbes to the softer moral sentiments of Smith. More recently philosophical contractarians have settled down with the psychological premise of self-interest, whether by borrowing from the rational man of economics (Gauthier 1986) or by being led by the artificial task of foundational justification (Stemmer 2000). Ironically this came to pass during a time when the economic man became more and more dubious in his own original discipline. Beginning with first experiments on the ultimatum game in the 1980s, a much more complex psychology became visible, and intrinsic moral motives were given space alongside self-interest, thereby harmonizing Hobbes, Hume and Smith.²

Meanwhile there exists a wealth of information on how people behave in experiments suitable to show attitudes covered either under 'fairness' or 'altruism', contradicting the traditional profile of dominant self-interest. Economists tried to make use of this new knowledge, whereas putting it to use within normative ethics is so far quite rare. A one-sided, rationalist reading of the is/ought distinction within philosophy may be an explanation for this lack, but in any event the result is unfortunate. Alternatively, an attempt in contractarian spirit is being made here.

This article tries to reconstruct the most basic level of distributive justice in two stages, one of general equality proper, and a second one following with particular criteria of justified inequality. Sections 2 and 3 deal with the first, sections 4 and 5 with the second stage. In *section 2* I run through some conceptual clarifications concerning 'equality', 'justice' and 'fairness', and I also try to give a more elaborate argument for an empirical understanding of normative justification. *Section 3* gives an overview on relevant recent experiments on fairness behaviour, with special attention to an attitude of general equality. Differing to the standard economic literature it tries to show how two pertinent behavioural dis-

¹ The classical talk of 'agreement' is wildly idealizing, of course. That a certain form of agreement is in the background is purely hypothetical, and it is the task of empirical inquiry to give some profile to this. Let it here be a stand-in for the research drawn on below.

² Güth/Schmittberger/Schwarze 1982 was a crucial step. For the history of behavioural economics under the aspect of fairness and motives, see Fehr/Schmidt 2006. For a larger but narrowly inner-economics picture see Camerer/Lowenstein 2004 and Thaler 2015.

positions, 'inequality aversion' and 'reciprocity', can be read in a complementary fashion to cover more comprehensively the motives of fair behaviour. *Section 4* focuses conceptually on 'desert' and 'need' as the two major criteria within reasons for just unequal distributions, and gives a sketch of how these two criteria can be refined within a more elaborate argument of 'luck egalitarianism', which has become a recent debate among philosophers. *Section 5* draws on two unusual experiments in the literature which match the complexity necessary to meet the conceptual level of distributive justice. A position of meritocracy turns out to have empirical primary importance. *Section 6* concludes with remarks on unfinished business in the argument overall.

2 General Equality and Its Justification

2.1 Concepts

In this paper 'equality' and 'justice' will be understood morally and normatively. Equality and justice are ambiguous concepts, overlapping and open, which makes a certain amount of conceptual clarification necessary. First of all, how is the normative (prescriptive) sense of equality different than its empirical (descriptive) sense? In normative use the imperative call to duties and rights (or simply norms) makes itself being *felt*, something which in the empirical use is being only known of. By the normative use one becomes aware that something in one's regular behaviour most likely has to be changed, instead of being merely thought and conceived of. Thought can be additionally stimulated as to determine where the imperative call comes from and why one should follow a specific norm.

The most basic, but elusive distinction concerning 'equality' seems to be this. On the one hand there is a general sense of equality, on the other there is a particular use qualified by criteria making the general sense applicable to human life. Equality in the first, general sense could be stated as 'equality as equal consideration of interests or claims'. This is a minimalistic description of moral equality, not to be misunderstood as a 'formal' equality (as in Gosepath 2007). Formal equality is identified by help of the universalizability principle, 'treat like cases alike!'. This U-principle is truly formal, since it fits to amoral as well as moral actions. It represents of course an important rational condition, but because of its being devoid of content it is not a principle of moral equality. In contrast the 'equal consideration of interests or claims' cuts out typical unequal distributions from a moral point of view, such as for example the unequal pay for women as women. In the context of moral disputes 'equality' always has to be understood with the addendum 'in regard to treatment by others' or 'in regard to claims against others'. The latter makes visible that equality is always part of a reasoning process determining to which extent material equality can be defended and demanded for from others. In the most general sense equality implies at least the conviction that all humans have a right that their claims for treatment must be dealt with equally, meaning equally in respect to the same claims of all others.³

Equality in the particular sense is a basic scheme that includes criteria used to determine the extent of material equality, which has consequences for the actual divide and tension between equal and unequal results. As a relational predicate the concept of equality points into two directions to develop such criteria. It invites the question 'equality *in* what?', if addressed at persons and normatively relevant agent properties. It also invites the question 'equality *of* what?', if asked with an eye on claims to something to have. Interests and claims can be directed at *resources, welfare* or *capabilities* (Sen 1980). Equality then is seen from the beginning as the conceptual backbone of distributive justice. During last years a dispute about the 'metric' or 'currency' in this sense developed extensively (initiated by, among others, Cohen 2011, chs. 1–2). Under the aspect of justification, however, the 'equality *in* what?' question for relevant properties of agents should have priority.

In the context of justice this question could be circumscribed more elaborately by '*in* which properties are (or must be) humans equal in order to relate justly to each other?' Or more narrowly, 'which human properties are relevant for a just distribution?'. With this move equality is placed into the context of justice—so how now are these two concepts related? The answer is: justice encompasses a state including both general and particular equality, or better—as particular criteria meet with unequal properties of most humans—general equality and particular inequality. Somewhat paradoxically this could be stated, putting inequality sensitive criteria like need or desert equally on all men, as leading to unequal results, or to just inequalities.

What about 'fairness', a term widely used in the economics literature? Nothing totally new is being added by this. 'Fairness' refers to the procedural process or achievement of general equality. A 'fair game' is one, which makes sure that conditions of general equality—all participants are treated alike in some way are complied with. Boxing with vastly different weights would be unfair. Or a 'fair

³ In a way this covers the claim within, even if not the reason behind, the French Declaration of Rights of Man and Citizen of 1791: "Men are born and remain free and equal in rights." In the general exposition of moral equality I follow Benn 1967. The error of taking universalizability as minimally moral is widespread in the literature.

wage' is one, which treats workers equally and has been reached by fair procedure. Gender difference in wage is unfair. But since a fair wage need not be just, whether or not fair procedure ends up in justice is an open matter. It is open because justice includes particular criteria of (un)equality, which do not consist of fairness alone. And obviously 'justice as fairness' in Rawls's (1971) sense did not reach a solution of justice accepted on all sides, even if the procedure representing fairness (original position) could be considered a truly fair one.

2.2 The Conceptual Side of Justification

My title includes the term 'normative justice', which signals that I want to put behavioural data to a justificatory use, the second, rational sense of 'normative'. So, something must be said about justification. In a blunt manner, the meaning of 'equality' given, why *should* we treat others as equals? Since my overall aim is to make the justice dispute sensitive to empirical facts, I must split attention into two levels in order to answering. As made clear in the last sub-section, the conceptual comment on 'what is just?' is the object of an on-going dispute, not only among philosophers but among citizen within the general public. Disputes about just solutions to conflicts are endemic in the public world. Is there, within the context of these disputes, an answer hiding as to why others should be equals?

A second line of reasoning comes up, if one wants justice claims to become realistic. Actual behavioural dispositions suggest a more solid basis of normative claims than beliefs and intuitions. By drawing on the experimental findings in the next section the task opens up how these empirical facts can be turned into normative claims. It is of quite some interest whether or not the conceptual approach of justification and a behaviour-based approach somehow cohere, or point into different directions.

What can be meant by a conceptual approach? As a typical representation of a philosophical justification of equality and justice, representative for the second part of the 20th century, I will refer to the reasoning provided by G. Vlastos (1962). Vlastos derives claims to equal welfare and freedom from a shared value property of all men, 'intrinsic human worth', voicing thereby a typical Western metaphysical belief. Vlastos extends this to the equal intrinsic value of what people enjoy, and concludes that "one man's well-being is as valuable as any other" (51). Besides well-being the same is meant to hold for the value of freedom. A claim to general equality in well-being and freedom would then be thought as justified by these presumptions of intrinsic value.

Human worth of course is a philosophical stipulation, but does it have an empirical response within a larger public? Do people really believe, even if perhaps only indirectly, into equality on these terms?⁴ What speaks against such a hypothesis is the fact of large-spread value pluralism within Western culture, and even more so today between globally different cultures. In liberal societies we are becoming more and more diversified as to what we think worthwhile for a life, or what to hold as 'intrinsically valuable'. Happily, however, for the justification of equality this pluralism works in both ways, since it not only destructs the humanist belief in individual worth but it also destructs every sort of classification according to worth, every form of racism, sexism, religious fanaticism or nationalism. The ratio-sceptical mechanism behind value pluralism puts down as well all positive claims in favour of a hierarchical system of human rights.

As a proper slogan for this achievement I suggest 'equality by default'. Among philosophers B.Ackerman comes to my knowledge closest to this position, in that he places a 'neutrality' constraint principle ahead of all fictional disputes about a just society (Ackerman 1980, 11). This principle restricts the reasoner to base his general claims on his individual conception of the good or his individual value status, in full contrast to equal human worth used in Vlastos style. So instead the claims for justice have to start with the certainty that nobody's idea of the good or of his personal value is 'better' than that of any other. So far as reasoning goes, this appears to be the best way to prepare for the conclusion of a general equality among men: There simply are no convincing reasons to the opposite.

What perhaps engages philosophers to speculate about a more positive basis for equality than trusting the indirect result of equality through faulty reasoning is the question still open, if we accept the default position: why engage in rational dispute about common norms in the first place? Referring to our common humanity would not help here, it appears, and so something altogether different than value beliefs is necessary. The Humean contractarian tradition has, in principle, the right answer. It is not common beliefs and intuitions but a shared emotional and needy nature which makes people talk to and reason which each other. To achieve clearness about the details of this nature is of foremost importance for justification, despite the unavoidance of conceptual thinking admitted. What to expect under equality and justice can only be answered now by the knowledge of the real actual behaviour.

⁴ Vlastos himself: "I am bypassing the factual question of the extent to which (1) and (2) [the two presumptions mentioned] are generally believed." (1962, 51 fn.) In a way typical of philosophers of this time he shirks the question of what if such beliefs, popular "myth(s)" or "dogma(s)" called by him (46 fn.), are not widely held. For comment see also Kraut 1994.

2.3 The Motivational Side of Justification

Hume was one of the philosophers warning more than anyone else about the importance of the is/ought gap. On the other hand he was also one who thought about the normativity of justice norms to quite an extent empirically. And so many have interpreted him as a reductive naturalist, which flies strangely in the face of the very distinction itself.⁵ I suggest that the following proposal is compatible to his overall solution. Facts and norms exist in a dualist version side by side, but there must be an ongoing control of the normative level by an empirical one. Norms and factual behaviour, or the normative sense of norms and the descriptive one inherent in widespread actual norm consciousness and behaviour, have to match each other.⁶ Therefore, norms which are not backed up by real behaviour to a sufficient extent become areal norms, norms devoid of relevance, disputed perhaps by philosophers and revolutionaries, but in practice irrelevant or even dangerous.

The way in which moral norms can be seen as being controlled by actual behaviour may be different for different spheres of morality. Two ways of control spring to mind, one constraining and the other one constructive. The constraining one says that a certain amount of compliance of norms is conditional for norms having normative force. In a community of liars you are not bound to behave sincerely. The constructive one says that the normative content in full is derived from an agreement among the interacting agents. The content of an explicit agreement binds the partners in this agreement according to its terms. There has been, of course, never an 'original social contract' and the picture may be seen, as it traditionally has been done, misapplied to a common morality. But again the classical solution is hypothetical reconstruction. Those moral norms are justified, which would be in the interest of all individually, or would be reached by an explicit agreement were that possible in reality.

⁵ See MacIntyre 1969 for highlighting this conflict.

⁶ This relationship is not simply to be compared with the one between empirical and normative expectations, as distinguished for example by Bicchieri 2006, 11, passim; 2016, 69ff. Bicchieri distinguishes by these concepts what people think others *will* choose and what they think others believe that *should* be chosen. Both these expectations are in the ethical sense of 'normative' empirical ones. What has to be added for a fully normative reading is the justification from a normative point of view—and my perhaps exotic suggestion here is that this point of view should be empirically adequate, like the one of reciprocity, but rationally normative nevertheless. This backing by a rational point of view is totally missing in Bicchieri's writings on expectations and norms. I conclude, therefore, that her treatments miss the ethical aspect and remain merely empirical, despite terminology. It is something not being made good by her remarks on moral norms (2016, 71f.).

Within the long life of this tradition two objections also have been imagined to demolish its core idea from the very beginning. Humans are largely egoistic and the norms produced in this way must fall largely behind that which we know of morality. And, since the argument depends on the idea of contract or agreement, why is there just this idea and what if one does not share it? To which extent the first objection is rising from a wrong description of human psychology will become clear in the next section. And psychology provides an answer also to the second objection.

The second objection is indeed a good one: concepts do not have a normative force if they are not based on a corresponding motivation, and this goes especially for the idea of 'contract', as the contract referred to in hypothetical contract arguments is not a real one. Therefore, a behavioural regularity has to be found to substitute the idea, and substitute especially the motivational force, which comes out of a real contract. Such a regularity is well-known for a long time, even though it is hardly being made use of within normative ethics: reciprocity.⁷ Reciprocity is well-studied and widely seen in different social sciences as a basic human attitude underlying many social exchanges. Accordingly it will also show up in the literature dealt with in the next section.

Let me summarize the argument so far with the help of two theses, one formulating the template of a reasoning towards distributive justice, and another on the unavoidability of the approach via behavioural data:

- if we want to decide about competing claims of distributive justice, this can be achieved by help of motivationally based dispositions, shared by most agents within cooperative groups;
- (2) for distributive justice there is no other solid justificatory procedure available than one based on motivation, ascertained and confirmed by actual behaviour.

2.4 Two Constraints

There are two constraints to be mentioned before our look into the empirical research in the next section. One concerns itself with equality and the other one comments on the object focus of distributive justice. It is important to see what is left aside by the focus chosen here.

⁷ Rawls is an exception, he gave the disposition some attention within the 'psychology part' of his theory, see 1971, §§75, 76, but put it into second stage, 'intuitions' reclaiming the first stage. For a deeper treatment of reciprocity and its social relevance see Kolm 2006.

First, in addition to the distinction between general and particular equality there is another one required: Equality in shares/distributions vs. equality in persons.⁸ Equality in shares gives an answer to distribution problems of an elementary, but socially constrained sort: how to share a good being reclaimed by many. Equality in persons, on the other hand, is not constrained to specific conflicts and situations at all, but gives a principled input to all possible conflict solutions within social contexts. Both concepts are different in that the given shares could be equal among otherwise unequal persons, like an occasional equal distribution from masters to slaves. The distinction also makes visible how the ancient philosophers, Plato and Aristotle, could develop the idea of equal shares for persons thought of to be essentially unequal.⁹

Secondly, arising in the 17th and 18th century—being thought of ahead of time by the Stoics—the idea of unfettered equality of persons expands the role of equality claims beyond those of the distribution of goods on to all other norms necessary within a society. Distributive justice in the narrow sense, the distribution of economic goods, is expanded to the distribution of labour, wages, or opportunities, as well as beyond the economic sphere to other spheres like the political and legal one of votes or legal rights. The dynamic of these modern expansions can be studied on basis of more or less fine-grained distinctions of social spheres.¹⁰ Once such stratifications within the field of diversified 'equalities' are made, an overwhelming array of open questions can be addressed which concern their internal dependencies.

This twofold distinction (shares/persons and economic/civil) is both a warning and an invitation. Anthropologically and historically the equality of shares seems to be the most elementary kind of equality, which develops into the others later on. How the idea of equality of persons is achieved is a challenging question, least in the face of racism especially, but this question cannot be dealt with in this paper. Most experimental frames in behavioural economics devote themselves to the distribution of an amount of money, and thereby to equality of shares. To what extent the findings manifest themselves also in a person-directed disposition of equality remains open—and it is largely unasked for. But we will see, there is a field open for speculation between the two equality types, as well as for clues to the effectivity of equality of persons-motivation perhaps to be found.

⁸ The distinction is pressed by Oppenheim 1970, whereas Gosepath 2007 misses it.

⁹ See for short Oppenheim 1970 again. In a way the distinction between share- and person equality is being made also by Frankfurt 1997, even if a bit misleading under the terms equality and respect. Also, his plea for sufficiency justice seems unworkable and palliative to me.

¹⁰ Miller 1999, ch. 2 distinguishes three, Walzer 1983 nine or more spheres. Regarding these differing classifications there is a wide-ranging dispute: Miller/Walzer (eds.) 1985.

3 Inequality Aversion and Reciprocity

3.1 Caveats

Here I start with the attempt to look into the empirical findings of recent research on fairness behaviour, first for the most elementary level of equality proper, and later in section 5 for particular distributive criteria. Behavioural economics is of primary interest within the social-psychology field, since it deals with effective behaviour and not with the reporting of opinions, which are dubiously reliable for behaviour. Despite this advantage, for the interested outsider the behavioural literature of the last 30 years comes with an overwhelming wealth of details and methodological austerities which make necessary a process of qualitative acquisition and interpretation. What is highlighted in the following may be clouded over by some misunderstandings, but hopefully may be a proper beginning.

A terminological caveat has to be cleared up first. As already mentioned, the game-theoretical literature throughout talks of 'fair behaviour' or a 'sense for fairness', as a stand-in for general equality, and sometimes even for justice, and not of 'egalitarian concern' or 'equality orientation'.¹¹ As already explained the talk about equality and fairness can be translated into one another, with 'fairness' pointing to a process and 'equality' to an end-state or norm. Experimentalists are keen to know about behaviour and focus accordingly on the term highlighting a process instead of end-states.

Secondly, games document primarily actual behaviour and not mental states. In some experimental designs the contribution of intentions, suppositions and social knowledge can be speculated about with high plausibility, but there remains a scope for dispute about the actual motives behind behaviour advantageous for cooperating partners.¹² Of course, the mental states are not *per se* indications of person equality.

Thirdly, and most importantly, there is to date no overarching motivational theory among behavioural economists which synthetizes and explains their findings. What is called a 'theory' (see Camerer 2003, 101ff.) is most often simply a

¹¹ See Güth/Schmittberger/Schwarze 1982; Falk/Fehr/Fischbacher 2003; Konow 1996; Bicchieri 2006, ch. 3; Murnighan 2008. There are and have been other terminologies around in the literature, depicting the same more or less, as for example '(pro)social preference', 'strong reciprocity' or 'altruism'. By 'equity' economists think not of equality but of merit-based justice.

¹² Stubborn advocates of the *homo oeconomicus* model tried to interpret results accordingly. For a largely instrumental instead of intrinsic reading of fairness attitudes see Güth/van Damme 1998; Pillutla/Murnighan 2003. A long-standing opponent to intrinsic fairness motivation is K. Binmore.

hypothetical disposition covering the behaviour in important experiments, sometimes with further potential backing through analogous non-human species or evolutionary (ultimate) explanations. Besides several *ad hoc* explananda¹³ it is especially two motivational dispositions which are strongest in agreement with data. These are two motivations sitting awkwardly with each other, 'inequality aversion' and a propensity for 'reciprocity'.¹⁴

For some time these two dispositions have been put as competing with each other.¹⁵ But competition here is not very plausible, first as inequality aversion in contrast to reciprocity—by its proponents is understood narrowly outcome related, whereas the moral relevance of intentions and other contextual elements is undisputable. Second, reciprocity as such side-passes the 'first act' which has to offer itself to be responded to. So it seems much more plausible that both motives are at work and better should be seen as complementary within a more encompassing fairness theory. One could think of them as standing for two necessary jobs: inequality aversion acts against an unequal treatment (ceteris paribus) in a first move, and reciprocity mirrors and strengthens this aversion in case of an on-going sequential exchange.¹⁶

¹³ Ad hoc hypotheses are guilt-aversion, personal identity, internalized norms, pride, or lying aversion. All of these seem to be in need of explanation concerning their moral presuppositions themselves. The unspecific term 'altruism' also needs elaboration, and opens itself more to personal emotions like sympathy than to the fairness typical among strangers.

¹⁴ For highlighting these two as most important see Camerer 2003, 110–117; Bicchieri 2006, ch. 3; Xiao/Bicchieri 2010. An alternative terminology is 'inequity aversion', not being the converse of equity as explained in fn 11. The more recent 'social norms turn' sometimes is associated with the suggestion of leaving behind these dispositions (see, for example, Vostroknutov in this issue). This presupposes an undercomplex concept of social norms. We partly become socialized by help of norms, norms changing our thoughts and wants. And norms partly pressure us in situations beyond, or also against, our internalized normative preferences. Partly we act out of normative preferences—norms turned desire; partly we act out of fear of social sanctions and reproach; and most often perhaps we act out of a combination of these. Elster, 1989, calls reciprocity a norm and he may extend this to the inequality aversion. Conclusively, what the behavioral economists studied under fairness in some sense always has been the study of social norms, even if not identified clearly by help of a specific method depicting the causal role. The Krupka-Weber method also is not specific enough to separate the internal normative from the external normative push in peoples' motivation, and the punishment experiments may be more informative.

¹⁵ See Fehr/Schmidt 1999 and Falk/Fischbacher 2006. Presented still in the same way in Fehr/Schurtenberger 2018.

¹⁶ A further reason to see reciprocity depending on the moral quality of a first act is the possible return of bad intentions or outcomes. Elster is right to call reciprocity only 'quasi-moral' because of its dependence on first moral acts: Elster 2005, 203f.

The attempt of integrating them has to take note of the outcome/attitudedifference between both motives, and before I focus on this further let me add a fourth general remark connected with just this difference. Inequality aversion being outcome oriented and measured by money has the advantage that degrees of inequality can be identified and fairness motives weighed gradually. Similarly reciprocity can be quantified (giving back a specific amount or not) too, but experiments can also be adjusted to cover the intentions of others. Whereas reciprocity always evaluates in its response to intentions, this is less clearly the case with inequality aversion. Besides this difference another one is striking. Both motives imply a different idea of equality or fairness. Inequality aversion is basically oriented at a quantifiable good and its potentially equal division. Reciprocity is basically oriented at equal exchange, restricted to the exchange as such. So, again it seems that both need to be combined, but also that conflicts may arise in doing so.¹⁷

If drawn into a larger perspective, the outcome/intention difference represents the difference between an equal division of a good and an egalitarian attitude towards persons in whole, or between share equality and equality of persons. The inclusion of circumstantial aspects, like intentions, prior achievement or evaluations, will all contribute to fairness tendencies in the experiments—but does not help to definitely transcend the divide between equality of shares and of persons. Personal qualities are then documented as contributing to just shares, to which extent the recognition of partners in the games as such is a motivational component, remains unclear.¹⁸

Before proceeding, another remark concerning terminology: why the negative term 'inequality aversion' and not the positive one, 'motive for equality'? By comparison, the motive for reciprocity is not framed as a negative aversion against non-reciprocity. Explanations for the difference are found to be rare in the literature. One reason seems to be simply causal, as it are primarily states of unequal distribution which spur into action. Another reason could be that inequality aversion as such is an object of degrees, to be studied on different levels compatible

¹⁷ In the experiments the outcome/context difference is not always as important at it might seem, as intentions are also evaluated through outcomes—what else have participants to judge with? But there are many variations in play and a general summary seems impossible. A combination of outcome equity/reciprocity of intention in many games seems unavoidable. See for one Falk/Fischbacher 2006.

¹⁸ Being aware of the person-directed equality should also make one sensitive of the use of money within the experiments. The relation between monetary and non-monetary values is ambiguous. In many people material gain ranges more important than social values, on the other hand there is the well-known crowding-out effect in intrinsic motivation by money (see Frey 2012). This latter effect could not be understood within the inequality aversion disposition alone.

with an inclination towards cooperation. A motive for equality, being less clearly restricted to share equality, would be resistant towards gradual differentiation. So, the term 'inequality aversion' seems more handy in dealing with distributions and invites to allow cooperative relations tolerating a certain amount of inequality.¹⁹ Distributive inequality to some extent is an endemic state—between animals due to environmental circumstances and between humans due to different involvement in the economy. The human toleration of inequality is of course governed by the use of justice criteria and their plausibility, as will be seen in the next section.

If we want to find out about human fairness by help of different types of games one decision has to be made at the beginning. It is hardly possible to inquire into 'the' motivation for fairness outside of, or neutral to, any social context. Something showing itself easily in nearly all experiments is the striking influence of context on behaviour, which raises the danger of contextual pluralism. But some context seems to be unavoidable, if the behaviour to be studied is meant to be 'social'. An elementary distinction seems to be one of single acts addressed to anonymous co-agents not able to respond, and acts towards others allowing to and meant to initiate a response, including an exchange of actions. In everyday life we know both. Responsive action is of course the very substance of our familyand work-life, but single acts like giving tips to an unknown waiter or forging oneself into a parking lot ahead of some unknown other are not too rare events either. Different games mirror these two types of social encounters, and it is not very clear from which type to expect more authentic information about fairness motives.

One could think that single acts let us visit fairness motives more 'purely', as in single acts all interests arising through indirect gains by reciprocation are impossible. According to this the dictator game (DG) would be an optimal scenario to study fairness. But the behavioural profile in the DG is the object of serious methodological doubt. Not only is behaviour in the DG highly fragile and easily being changed into a wide array of alternative outcomes. Also it is not clearly a situation for demonstrating fairness. We are not used to situations of 'manna from heaven' to be shared or not with some unknown other. The task of division in the DG is comparable rather to one of gift-giving or donating than to an occasion of fair sharing.²⁰ In conclusion, the distinction between general equality motives and other supervening ones, which is quite easily drawn conceptually, is in reality much less easy to disentangle. Some sort of relation between social agents seems

¹⁹ This has been studied in monkeys by Brosnan et al. 2010.

²⁰ Worries like these have been voiced by Bicchieri 2006, 126; List 2007; Bardsley 2008; Guala/Mittone 2010.

unavoidable to give fairness a background to start from; but then motives other than those of intrinsic fairness, self-interest especially, begin to play a role.

If looking for a social situation of minimalist fairness-relevant content, two games spring especially to mind: the ultimatum and the trust game. The UG is most famous for supplying early on evidence in favour of an intrinsic fairness motive, but the game is not too handy for inquiring into the two part-motives we are interested in. Also a structural weakness in the UG design, if meant to give proof for intrinsic motives, is fear of rejection in the proposer and an anger reaction in the responder. A punishing response in face of an unequal division can happen fully independent of a sense of fairness, as to be seen in the behaviour of chimpanzees. In most human responders in the UG a sense of fairness will be in play, of course. But a certain amount of anger due simply to a frustrated egoistic expectation, the guiding motive in chimpanzees, may also be involved.

3.2 Inequality Aversion

Now, a group of experimenters tried to isolate the impact of inequality aversion. They did this by help of a 'random income' game first, and then by contrasting behaviour in this game with punishing in a public goods game (Dawes et al. 2007; Johnson et al. 2009). In the random income game money is first distributed at random unequally among groups of four participants and participants are then allowed, at a cost for themselves unproportionally (1 to 3) either to reduce or increase the amount of others. Interactions are anonymous and it is clear that no reciprocation and further cooperation is possible. 68% reduced another player's income at least once, 28% at least five times; 74% increased another player's income at least once, 33% at least five times—all of them to counteract random inequality. The second experiment combined with a public goods game shows a high correlation between subjects with egalitarian concerns in the random income game and the punishment of low-contributors in the public goods game. A relevant part of anger or spiteful motivation behind punishment, both in this kind of experiment or in the UG, can be discarded then.

These are quite interesting results which show a strong propensity among (roughly) two thirds of people to respond (on own costs) towards outcome inequality in a situation uninviting possible reasons in favour of inequality. If contrasted with the standard results in the DG (40% keep the whole sum, 60% share with 20% sharing equally) there is perhaps even more clearly a fairness motive involved. Both situations mirrored in the random game are ones philosophers call 'luck egalitarianism', added perhaps with the speciality of a parallelism in the random income game. This may trigger the impression of a 'common fate' to be

compensated by the greater luck of others. In principle the same goes for the DG, but emotions may not be as easily informed of it.

Taken as such these results are extraordinary ones: Fully out of context two thirds of people respond in a compensating mood towards inequality as such, on their own costs! Luck egalitarianism in moral philosophy is a contested position, partly because of its unsympathetic consequences in case of 'option luck', in contrast to 'brute luck' which is the part represented in the random income game.²¹ On second thought it is not at all clear why chance inequalities should be fully collectivised, beyond the empathy-based degree shown perhaps in the DG results; brute luck is, absent of cooperative relationships, an occasion for solidary help rather than of fair distribution. The results in the random game however run beyond such a solidary interpretation. One has to keep in mind that they are to some degree artificial ones. Purely random distributions are quite rare in real life. Most of everyday contacts involve some potential degree of individual responsibility on the side of the less well-off, which invites for reasons towards legitimate inequality, or in the luck-terminology, for option luck arguments instead of brute luck ones. But all in all, the inequality aversion is impressively documented in two thirds of anonymous agents, representing quantitatively most social relations in a large society.

3.3 Reciprocity

Is there a similar attempt to isolate the reciprocity motive? The best I know of is a sequential DG by Diekmann (2004). Participants receive in a first DG from a partner (unbeknownst to them a computer programme) either 20%, 50% or 60% of a given amount. In a second DG they have the opportunity to distribute towards the fictive partner from the first DG. What is shown is quite a significant increase of distributed sums, if compared to the standard DG. A relevant number of people (41–58%, depending on amount) reciprocate nearly the same amount of money they receive in the first round, in the 60% case often even more! Generalizing one could say that two thirds of participants mirror the generosity they are shown themselves. As reciprocity is depending on preceding behaviour, this seems an outstanding evidence of its potential effects.

²¹ The distinction between option and brute luck was introduced by Dworkin 2000, 73: "Option luck is a matter of how deliberate and calculated gambles turn out—whether someone gains or loses through accepting an isolated risk he or she should have anticipated and might have declined." Brute luck is "a matter of how risks fall out that are not in that sense deliberate gambles". The terminology will become more transparent in the next section. For literature see also there.

3.4 Comparing Inequality Aversion and Reciprocity

So again it seems important that reciprocity and inequality aversion have to be combined to constitute the full fairness sense we are acquainted with. What we do not know of so far is the relative strength of both part-dispositions. To shed light on this Xiao/Bicchieri (2010) studied trust games.²² The TG is singularly apt to study the conflict between both motives and the relative importance of both. It simulates cooperative exchanges with the potential of gain for both partners, something in everyday parlance is called 'win-win' and typical for most employer-employee-relationships ('principle-agent'), even if not only for these. A conflict between the two pro-egalitarian motives in these relationships is endemic, as structurally the employer gathers more means than the employee and reciprocation in the narrow sense adds to a given pre-inequality in the institutional ('capitalist') background of such a relation. So, inequality aversion and reciprocity come into conflict, and how people respond to this is of quite some interest.

Xiao/Bicchieri studied two contrastive experiments, one setting out on equal, another on unequal terms. In the unequal or 'asymmetric' variant investor and trustee govern at the beginning different levels of 'wealth', 80 vs. 40 money units. If the investor sends 10 units to the trustee which are being tripled (simulating cooperative surplus), both end up with 70 units, given the trustee does not send something back. Here now comes the test for the relative strength of inequality aversion and reciprocity on both sides of the social relation: Inequality aversion suggests that the investor should transfer 10 units and the trustee reciprocates zero. Then both end up with 70 units. Inequality aversion neutralizes reciprocity with this result. In the trustee the reciprocity motive may be active nevertheless, but in case she sends something back an unequal end-state comes about. If the trustee sends back 10 units, for example, the investor (back transfers not being tripled) ends up with 80 units, and overall an unequal state of 80/60 comes about.

Results in empirical tests are hardly ever black and white, but of gradual proportion. If equality in the outcome sense would be the sole basis of our fairness capacity, one had to expect in this scenario the inequality aversion winning and no investor receiving anything back. But, in contrast to the outcome defined inequality aversion fairness is a more complex capacity. As highlighted already, reciprocity between human agents is not being able to be defined purely outcome

²² This experiment is the best one to date on the conflict. Bicchieri/Mercier 2013 revisit the 2010 experiment and revalidate it by help of third-party views on the empirical and normative expectations in the game. As interesting as these findings may be, for a normative argument based on behaviour effective behaviour is crucial, *vis a vis* mere expectations.

related, but includes an evaluation of intentions.²³ If we take reciprocity unavoidably being related to intentions, there comes a sort of surplus of 'good will' into the exchange which might explain (my suggestion) why 40% of trustees in the experiment return more than 0 units and thereby leave the investor with a higher amount than themselves. So an effect of reciprocity remains intact, even if to the detriment of equality.

Xiao/Bicchieri nevertheless think the experiment to show that inequality aversion 'trumps' reciprocity in case of conflict, even if they are not ready to state something on the proportional strength of both motives. They base their conclusion on the reduction of 55% reciprocation in the parallel case of equal endowment in investor and trustee, down to 40% reciprocation under unequal endowment.²⁴ This is some effect, of course, even if it is not clear, how to interpret it motivationally.

First of all, let us compare this case with the one setting out with equal endowments, in their experiment 40/40. If the investor sends 10 units and (amount being tripled) the trustee sends 20 back, both end up with 50. Reciprocity would ask of trustee to send back 10, but then the end-state would be 40/60. So inequality aversion and reciprocity are in conflict as well, even if setting out from an equal state. The trustee can either give way to inequality aversion and transfer 20, giving up on 10, or follow reciprocity and transfer 10, not giving up on 10. The alternative to both would be keeping 30 and not transferring anything, but that would be beyond fairness. In their experiment 41% returned 20 and no one more than 20, which suggests being motivated by equality. Overall in the symmetric endowment case 68% returned something, which lets one speculate that 27% are motivated more by reciprocity than inequality aversion. In sum, I read this as reciprocity and inequality aversion together achieving an equal distribution among, approximately, two thirds of those behaving fairly at all, whereas one third of the fair agents is stimulated by reciprocity alone. This would give, different to the Xiao/Bicchieri conclusion, a premium to reciprocity. (Fair agents in the overall collective make again only two thirds, which is in agreement with general observation.)

I take these conclusions to be more reliable than ones from the experiment setting out with an unequal distribution. Again, among the fair agents there will

²³ Xiao/Bicchieri 2010 let reciprocity refer to the 'kindness' of the investor, making the judgement dependent on effective transfers. In more realistic scenarios the choice of the investor may be restricted, which makes interpretations of his intentions necessary. There is no necessary parallelism between kindness and money throughout.

²⁴ They put this contrast as one between a majority of not reciprocating against a majority returning a positive amount. In actual case the contrast is only one between 40% and 55%!

be both motives at work, but the resulting state of equality in part will come about not through inequality aversion, but through a self-interest masked by the moral attitude. If 40% do not reciprocate in the asymmetric case, against 55% in the symmetric, this is not clearly motivated by inequality suppressing reciprocity, but surely in part also because of self-interest.

Secondly there is another, normative reason why one could be hesitant towards the inequality aversion as trumping.²⁵ Besides the ambiguity regarding the two fairness motives, there is a deeper ambiguity in the basic design of the experiment. This ambiguity is becoming visible once one tries to draw a normative conclusion from the proportional strength of the two motives. The distinction between option luck and brute luck helps here. Is the game played with unequal endowment understood as one of brute luck or of option luck? If the trustees take the unequal wealth of the investor as being given fully per chance, why should they think that inequality needs to be corrected? If I, through no activity of my own, receive a gift from my rich uncle, should I share it with my unknown neighbour? Obviously not, nor has my neighbour an inequality averse motive to ask me for sharing. Alternatively, if my uncle sends a gift to me and not to my brother, without any reason for this asymmetry, my brother may ask indeed whether this one-sided gift is fair. He could ask me to share with him, and if I hesitate it will be due to self-interest and not to fairness.

The experiment by Xiao/Bicchieri does not comment on this ambiguity, but the authors seem to presuppose that the intentional variant is the more plausible one. Whether the participants thought so themselves remains in the open. So, maybe what the experiment gives proof to is a reflectively activated inequality aversion, even if probably it is not. The alternatives make visible that the inequality aversion itself is in need of interpretation, and should not be taken by its word—besides objections arising from its outcome restricted conceptualization. Not every state of inequality per se is an acceptable source of aversion, if we include awareness of justified and unjustified inequality in the game. Even if the games under dispute rightly, in order to unearth our most basic sentiments towards equality, exclude reasons like need or desert for justified inequality, they should more clearly have excluded the ambiguity of random distribution. Additional inquiry into justice criteria may correct this deficit, as obviously strong em-

²⁵ As should be obvious from my overall context of invoking the reciprocity disposition as a background for a normative contractarian argument, my motive for pressing the Xiao/Bicchieri experiment is not simply empirical. If the inequality aversion indeed would trump, this would suggest another normative point of view for equality and justice. The alternative point would be rather one of strict egalitarianism, not one of exchange on equal terms.

pirical backing of merit would mitigate the tendency towards luck egalitarianism. This is, as I will suggest in the following, indeed the case.

3.5 Results

Let me put these observations together, so far as empirical findings are concerned. There are two basic motives for fairness at work, inequality aversion and reciprocity. Both are necessary and complement each other. Two thirds of people in an average collective are open to fair behaviour, with different degrees of fairness motivation. All of these are responsive to reciprocation for 'kind' intentions, gradually given through quantitative levels of material goods. Half of all fair agents are strongly motivated by a strict inequality aversion, but are also in need of being corrected by a normative dispute introducing normative reasons. Two thirds of the agents unknown to us but becoming social contacts in one sense or another in everyday life are probably acting fairly, one third will only follow her self-interest. This one third is not to be reached by 'ethical reasons'. If these proportions are roughly correct, we had a confrontation between one third 'natural egoists' and one third 'natural egalitarians', the mediate egalitarians motivated by reciprocity in between. How overall solutions work out will depend on the equality-motivated group in the end, which easily is the more extensive one.

4 Particular Equality and Reasons for Inequality

In *section 2* I tried to argue for the importance of how people act effectively under the concerns of equality and justice on basis of the reciprocity principle especially. The last section gave some detail to reciprocity and its partial correction and purported domination by the inequality aversion. In sum, against two thirds of our co-members we could and should act fairly, trying to achieve equal outcomes, ceteris paribus. The 'ceteris paribus' stands for justified reasons for unequal outcomes, as foreshadowed already with the distinction of brute and option luck. In a second round we now have to ask for the proper selection of such reasons, both on conceptual and empirical grounds. Here come the conceptual ones.

4.1 Desert and Need

In the philosophical dispute desert and need range prominently as criteria for the evaluation of just or unjust distributions, in more or less agreement with common

sense. Both in philosophy as well economics there are still other justice criteria of more academic interest around, as especially efficiency and entitlement. I will not deal with these latter criteria as they obviously are less important.²⁶ Also, I take it as accepted that equality per se ('flat egalitarianism')—not being in need of inequality criteria—is not a sufficient criterion for distributive justice.²⁷

Contrary to first thought, according to one traditional intervention, 'need' is not a justice criterion at all. If you approach distributive justice with the picture of agents within a cooperative group contributing individually to a collective product and if you take justice to answer the job of distributing the product fairly, need is not corresponding the productive role of these agents. As people have needs irrespective of their participation within a cooperative collective, the need criterion seems to fall out of a cooperative frame of distributive justice. Accordingly it often is covered under a different ethical title, for instance 'solidarity', 'humanity' or 'charity'. Western morality has made a decision some time ago that every human being as such has a 'right' to have his or her needs met, 'needs' referring to basic requirements of subsistence like food, clothing and housing. This right is taken as being unconditional and therefore not depending on a cooperative frame. Conclusively, given we think the cooperative frame important, need is not a relevant part of justice—simply because it lacks a functional role within cooperation.

Besides this unconditional treatment of need there is also another one. Sometimes the dependency on disadvantageous circumstances is put as being 'in need' or simply being disadvantaged. Two cooperating people are picking bananas, and one of them is handicapped by having only one arm (Konow 2001). Both are contributing to a common product, but due to circumstances not under individual control their contribution is different. Here the handicap of the one restricts his productivity within cooperation, and it may come in different degrees. Should these cases be bundled together with unconditional need or sorted under justice? The decision should come through how one is related to a productive cooperation. If people are participating in cooperative endeavours somehow, their need states should be sorted under justice, if they fall totally outside—being homeless, dis-

²⁶ Efficiency may be of secondary importance, restricting the application of the basic criteria desert and need. A decision for A and against B as just might be blocked, if the efficiency balance speaks extremely against A. For criticism of entitlement in the libertarian sense see (for example) Olsaretti 2004, chs. 4–6; Miller 1989, part I. Entitlement through production or work would fall into desert.

²⁷ The predicate 'distributive' restricts this statement. Unmitigated general equality may be the fitting principle for civic and political rights, or to what Miller 1999 calls 'civic relationships'. These relationships fall outside distributive justice, since the task within them for individuals is not to distribute, but to respect, tolerate and protect. See also the remarks on Miller below.

abled, foreigners or refugees—their needs would be identified as unconditional needs answered not by justice.²⁸

In conclusion, needs claims cannot be ushered out from under the umbrella of justice. This also shows up in the different extents to which needs claims must be answered. Different to unconditional need, need within cooperation is the potential flip-side of desert, and a sense of justice is undeniably part of peaceful and efficient forms of cooperation. As cooperation consists, largely, in productive contribution, a motivation to contribute and a motivation to evaluate and accept just distribution must be internally connected. To see one's contribution being recognized fairly is part of one's motive to contribute. Desert and need concerning one's productive contribution are essential for on-going productive relations, as uprisings and even wars through rage about exploitation and slavery gave proof to, even if calmed down in more recent times to strikes and merely public protest.

4.2 Luck Egalitarianism

Given that desert and need are two unavoidable aspects of justice, a decision must be made as to how they cohere when applied more concretely. Which one of both has to take priority, or how do they function within an overarching picture of human life? Above all: are we using these criteria within a frame of autonomous and responsible activity or within a frame of fateful events? The more narrowly we depict the kind of cooperation they relate to, the more relevant will become one or the other of these alternatives. If we do not want to restrict our view at the beginning, some general features of human existence, like being active and responsible for one's actions vs. undergoing different events and happenings, are all to start from. Just this is the basis of the recent philosophical dispute under the label 'luck egalitarianism'.

The dispute among philosophers about different versions under this label is wide-ranging and cannot be recounted in full here.²⁹ Starting again with the mentioned distinction of brute and option luck, the basic idea comes from a distinction between what you happen to undergo versus what you are controlling through a decision of your own. Or more simply, as Kymlicka (2006) puts it, from the dis-

²⁸ Admitted, there is a grey zone of how to circumscribe the 'outsiders', as outspoken deniers like terrorists, criminals, prisoners, drop-outs, 'happily unemployed' and so forth are a minority among those not taking part in the working system. But putting these individuals into categories seems unavoidable.

²⁹ See Knight 2009 and Lippert-Rasmussen 2016 for book-length treatments. Critique started especially with Anderson 1999.

tinction between circumstance and choice. What you happen to undergo can lead to inequality to your disadvantage or the disadvantage of others. What you are controlling can lead to equality or inequality in your relation to others. And the answer would be, according to luck egalitarianism (or 'left liberalism' according to Kymlicka), the Dworkinian that justice has to be 'circumstance insensitive' and 'choice sensitive'. What we normally cover under 'need' could fall under both categories: need due either to uncontrollable circumstance or to intentional choice. Whereas the first would give rise to justified claims, the latter would not. Need, responsible choice or action and justice here are connected together. In case this normative structure is implemented in the corresponding social practices, as especially in the working system, we see not only the criterion need as being put into a responsibility frame, but also as being made controllably concrete.

In which sense, to put the question differently, is the circumstance/choice distinction functional? It is functional in that it links up with facts deeply impressed in human lives, fate and choice, or what has to be endured and what can be controlled. However, if implemented empirically the circumstance/choice distinction comes across two serious problems. First, it becomes clear that the two kinds of luck are not categorically distinct but are two extreme points within a spectrum. Second, it imposes on oneself that cases in a competitive society abound where the advantages of the one are to the disadvantage of the other.³⁰ Whereas the first fact has to be considered in institutionalizing luck egalitarianism, the second asks for further embedding of the normative idea itself within psychological conditions.

As Miller points out clearsightedly, in a competitive society my option luck will regularly affect your brute luck. To give up, because of these fateful consequences, on the advantages of the market—or even of evaluative hierarchies in general—, would lean towards moral fanaticism and therefore is out of the question. The luck egalitarian has to remind himself that real people are not motivated by justice alone but also rejoice in the advantages of efficiency. So the luck egalitarian has to look for a kind of compromise between motives of justice and self-interest, and for this he has his criteria better be informed by motivational psychology.³¹

³⁰ For the effect of competitive social background and events with consequences for inequality like gifts, inheritance, prize offers etc. see Miller 2014.

³¹ Also, if the economic inequality which bad luck causes cannot be avoided *in toto*, the weight of these causes of inequality—like natural talent, family upbringing, individual life style, etc.—have to be weighed against one another empirically. A full empirical approach to distributive justice has to bring these causes into empirical comparison. Whether 'community' is a way to side-pass the luck egalitarian problems is another topic to be addressed. G. A. Cohen, one of the inventors

Desert, rightly understood as a criterion, asks not only for the distinction between deserved and undeserved bad luck, but also for structural correction. The politics of correcting bad luck in the long run, as part of a politics of desert, is the politics of 'equal opportunity' (EqO). EqO is not a blind politics of compensation of inequalities, but a politics addressing the deserving agent. Both categories ask for each other. If one thinks the ideal of desert wrong, mere 'ideology' for example, EqO will not do either. But if one thinks desert relevant and cares about equality, unequal conditions to deserve have to be corrected or compensated for. If conditions remain unequal, desert judgments cannot fairly be applied.

Given the argument up to here, could it be improved by empirical knowledge about people's actual attitudes? It does not make sense to ask people about 'theories' of justice, all complexities admitted. Of interest is however, to which extent people go along with the luck egalitarian claims, like compensation for uncontrollable circumstances, the role of natural talents as well as privileged socialisation, and above all the making responsible for individual choice, no matter what the dramatic consequences are.

Why is empirical knowledge here relevant? From my point of view the best way to deal with deserved and undeserved bad luck is based on what the people think, or better yet what matches their decisions in real situations. The normative problem cannot be decided on the basis of conceptual argument and reflection alone—one explicitly clear case of my thesis (2) stated at the end of *section 2*. If a majority is not ready to compensate for the bad outcomes of option luck, it would not be normatively right to compensate for it, and that is simply because there is no solid basis for such a conclusion. To argue on the basis of intuitions or values alone is not sufficient here, but rather that which contains the conditions of an implicit moral contract in one's society or group.

This can be seen as a quite stark proposition and two comments are necessary in order to put it into a milder light. First of all, the refuge to motivational dispositions is proposed for conflicts of distributive justice, and is not meant to be applied in the most general sense of equality concerns. Conflicts on topics of moral status, like those over the equal rights of women or blacks, need not be put to the test of motivational strength since they can be dissolved by help of criti-

of the luck egalitarian topic, was a strong proponent of answering justice conflicts by communal social structures, motivated by his long-standing engagement for socialism. See Cohen 2009, and critical response by Miller 2014a. In line with Miller I take it here as given that community cannot be a realistic alternative to competitive social structures. Cohen also understood luck egalitarianism to be demanding compensation for the bad luck of differing natural talent. Here again I find Miller's judgement the more down-to-earth one, which considers biologically based differences to be morally neutral.

cal argument and end in equality by default. In contrast, the conflicts of material distribution cannot be so decided, since they depend not on pre-given norms but on the widespread balance of giving and taking, especially of giving and taking responsibly.

A second comment relates to the use of 'desert', and indirectly 'merit'. The concept(s) has (have) been used in many different shades, with intentions of diverse quality, from strong egalitarian to one-sided libertarian ones. It is impossible to deal with this richness of alternatives here.³² Instead I rest myself on the sympathetic treatment by D. Miller (1989; 1999) which lets me reduce the point to be decided to this: Should, and if so to which extent, aspects of desert play a role within decisions about just distribution? An otherwise unqualified 'yes' to this question can be read as one pointing out the unavoidability of desert judgements in distribution conflicts, and more specifically as one mandating the task to *develop* a multitude of context related local criteria of desert—in contrast to the supposition of a universalist catalogue of deservingness beyond all ages. Nothing like this should be meant of course. Desert criteria have to be developed (along with EqO conditions) locally and contractually. But as to whether or not this should be part of distributive justice is for empirical research to decide.

5 Experiments with a Productive Phase

In a meanwhile somewhat out-dated report on social psychological literature up to the 1990s by Miller the two criteria desert and need turn out to be, roughly speaking, as central and important, but without any message concerning relative strength or even absolute magnitudes (Miller 1999, ch. 4). According to his report, desert and need also are used as composite criteria, with desert slightly stronger and at times diminishing need as 'undeserved', just in the sense of the typical luck egalitarian argument (1999, 91). But what is lacking in this older research is knowledge of motivational strength based on behavioural observation, including a quantified diagnosis of these relations.

Unfortunately, in contrast to the extreme wealth of studies treating the inequality aversion or reciprocity, experiments answering the luck egalitarian scenario are quite rare. One rare and exceptional source of empirical experiments motivated by the complex justice arguments sketched so far, is the Bergen based group headed by A. Cappelen and B.Tungodden. In Cappelen et al. (2007) they put

³² See Pojman/McLeod (eds.) 1999; Olsaretti 2004; Mulligan 2018. Merit is not necessarily reduced to merit due to moral qualities, the Platonean sense guarded against by Vlastos 1962.

a production phase ahead of distribution and introduced the distinction between three ethical categories, 'strict egalitarians', 'liberal egalitarians' and 'libertarians'. Whereas the first opt for unrestrained equal distribution of the collective product and the last for an unrestricted right of the single agent to a contribution, liberal egalitarians hold an intermediate position of accepting only those inequalities arising from factors under individual control. With the exception of further distinction within individual control, these categories match quite correctly what is under dispute among normative philosophers. The empirical results in the (2007) experiment, however, are not pro desert. With a dominance of 43.5% strict egalitarians turn out ahead of liberal egalitarians with 38.1%, and libertarians with an astonishing 18.4%! To be clear, only two thirds of nearly any collective act on fairness ideals at all. But that nearly half of these react in face of 'earned' inequality with a strict egalitarian attitude, is certainly against normative expectation.

One explanation for this result in a single experiment has been offered: According to Karagözoglu (2012) it is the special form of productive engagement through investing money in the production phase that influences the results.³³ In a later experiment Cappelen et al. (2010) substituted the former investment task by a triadic distinction covering effort/talent/luck: represented by decisions about chosen working time, productivity, and price received per produced unit. In agreement with the contested range of responsibility, they also split the earlier 'liberal egalitarianism' into 'choice egalitarianism' and 'meritocratism'—where the first holds people responsible for effort/choice, the latter for qualities independent of choice, here for talent and productivity.

³³ Karagözoglu also gives a helpful overview on the more prominent joint production experiments up to 2012. He splits his overview into those creating a pie by investment and those with real effort.

Ethical categories	Made responsible for	Not made responsible for
Strict egalitarianism		Working time productivity, price
Choice egalitarianism	Working time	Productivity, price
Meritocratism	Working time, productivity	Price
Libertarianism	Working time, productivity, price	

Tab. 1

The ethical categories distinguished in the experiment correspond to several ethical positions, and also answer to the ambiguity hidden in the vaguer concept of 'liberal egalitarianism'. Choice egalitarianism and meritocracy now represent desert differently: as a narrowly effort-based desert ignoring different talent in the former, and as a wider form of desert including effort and talent in the latter. Both categories base just distribution on desert and exclude responsibility for external luck (represented by price). The narrow desert position (effort only) would represent the luck egalitarian ignoring responsibility for talent, whereas the wider term including responsibility for talent represents the middle position taken for example by Miller. (Inequality through external circumstances for this position would be compensated, locally and long term, through a politics of EqO.) Libertarianism correctly is put as the extreme on the one end, ignoring the moral relevance of luck, as is strict egalitarianism on the other end, ignoring individual responsibility.³⁴

Given these distinctions, what are the results? Behaviour in a DG following the production phase confirms with 18% for strict egalitarianism, 4,6% choice egalitarianism, 47% meritocracy and 30,5% libertarianism. There is still a considerable pluralism involved, but it reduces, as Cappelen et al. argue themselves, if one looks for overlapping tendencies. 81,6% think fairness to relate to working time (effort), 70% find it unfair to hold people responsible for external luck (price). And 77,5% find it fair to relate responsibility also to productivity, that is talents! Cappelen et al. interpret this as corroborating that a 'responsibility cut' is

³⁴ This strict egalitarianism coheres with the inequality aversion of Fehr/Schmidt 1999, which shows that this aversion indeed has to be taken out of context. Within competitive contexts it would represent an extremely one-sided moral attitude.

not to be placed at the control/uncontrol, but at the personal/impersonal factors distinction (2010, 440).

If we generalize from these results, nearly half of those responding under fairness at all are following a personal desert norm (effort *and* talent), complemented by a further third who in addition accept the arbitrariness of external luck and a fifth defending strict equality. The meritocratic agent has to distance himself, then, against both more extensive welfare claims on the one side (strict egalitarians), and more extended resistance against such claims (libertarians) on the other. Between both he reclaims a middle position, optimal for compromise if needed.

A comparable experiment to this one has been conducted by Rustichini/Vostroknutov (2014). Here participants first play both a game of skill and a game of luck, and after that each could subtract money from one of the other participants. The skill game (Hare and Hounds) puts both intelligence and effort on test, the luck game (number guessing) simulates pure chance to win something. To identify 'punishment' behaviour towards earnings in both kinds of games, they include single subtraction phases after each game come up, with knowledge given of the won amount made available. By help of a complex analysis of all the subtractions from earnings in both games, the experimenters deduce information about different attitudes against earnings through personal skill or pure luck.

There are several interesting things to be learned from the results (not all covered by the comment of the authors themselves). As perhaps expected, subtractions are larger from luck than from skill earnings, thus backing as more deserved earnings by skill than by luck. But there is also shown the effect that subtraction amounts increase with the 'income gap' between low and high earnings, whatever the causes of the high ones. The experiment gives proof, you could say, also to an unmitigated inequality aversion whatever the reasons for inequality. In association with this 'nasty' side of the experiment one could put some doubt at the only possible way to demonstrate one's moral attitude through subtraction, and thereby a sort of punishment. The authors do not comment on this, but to some extent the subtraction imitates justified taxation, a form of punishment too. Overall the conclusion is, that if market earnings are due to pure luck, they are seen as justifiably taxed to a much higher degree as through earnings of skill.

Concluding from these two sophisticated experiments decisions about criteria of distributive justice are helped to a solution in a way, I think, not possible by pure normative reasoning alone. First of all, as intuitively anticipated, desert and need range most important within those criteria. And second, if need is transposed into the more refined scenario of being connected with desert, and desert itself internally specified, then the meritocratic position of responsibility for effort and talent wins the day. A majority seem to believe and accept (interpretation!) that talents are to such a degree part of the identity of their agents that they must be covered under what they are responsible for, and accordingly deserve. There are several things open, also, besides the one pressing question of what to make of the existing pluralism. Why indeed do the one put the responsibility cut at one place and not at the other? The above suggestion by help of identity is an interpretation, but not part of the data.³⁵ It would be nice to know what is behind the different attitudes. Also, further, the Rustichini/Vostroknutov experiment documents relative priorities in the skill/luck difference for desert judgements. What is missing are more exact quantitative proportions. Which degree of justified inequality are players ready to accept on behalf of the distinction?

In asking for an additional glance into the reasonings, besides the effective behaviour, of players in such games I may seem to contradict my overall message in this whole argument. But I never pictured the discursive and the affective side to be a quid pro quo. The ambiguity of the DG becomes visible only through contrast with additional surveys (see Bicchieri 2006, 137f.). Also, a margin of 'pathological' attitudes, for example of spite, cannot be excluded if we want to draw normative conclusions. Spite and other pathological attitudes have to be factored out by looking into the mind set of agents. Also, the aversion against an income gap mentioned above seems to be sensitive to how this gap comes about. Motives then cannot be taken in the most narrow sense, but knowledge of reasons behind motives is to be included, in order not to fall back on a global strict egalitarianism.

6 Conclusion

To pull this argument together I will highlight three results. The first one reaches back to my thesis (1) at the end of *section 2*, which summarizes a potential contract on basis of a fairness motivation. If the selection of experiments above is not totally misinformed, two facts spring to our attention. A general equality tendency concerning equal shares is born out by experiments as an intrinsic, non-instrumental disposition to act fairly. To propose moral norms on basis of self-interest alone or to believe in the existence of the 'amoralist' as somehow representative, are conclusively fallacies for which philosophers (besides economists) are prone. Contractarians should, partly following in this also Hume, take note of intrinsic motivation beyond self-interest.³⁶

³⁵ The suggestion comes from Mulligan 2018, 171, within a critique of Rawls.

³⁶ For a pride/humility based interpretation of Hume's justice see Leist 2014.

If one considers oneself to belong to the fairness group, then sharing equally with those sharing equally themselves is the norm to follow. And keeping to a distribution according to desert in agreement with those favouring desert as well is the normative guidance in situations of unequal involvement in cooperation. In practice this will often mean to engage in developing desert standards applicable to a field of cooperation at first, and then to apply them accordingly. More easily to come by are the normative consequences negatively. Resistant organ donors, for example, should not have a *just* claim to receive an organ in a situation of need, which is something the 'club solution' has been asking for a long time. Deniers of vaccinations offered should bear the costs for their treatment in case of illness out of their own pockets. In these and similar cases reciprocity is the partial principle to be justly presupposed also for others, and backed by an empirical knowledge of widespread fairness attitudes for situations of distributing burdens justly.

A second key result is the problem of pluralism. Both the experiments on the inequality aversion/reciprocity agenda as well as the experiments on distributive justice, if one considers them to be very roughly under one head, show intrinsic fairness motives among only two thirds of participants—representing co-agents in a large society—, with further gradually distinct behaviour within the two thirds. Within traditional ethics these proportions are abstracted from, something not as easily done in an empirical approach towards normative attitudes. Here they create a problem. And to me at least the fact comes as a mild shock: to accept that one third of one's social neighbours are not prepared throughout to act fairly, something normally not consciously taken for granted.³⁷

One obvious consequence is that all fairness attitudes and norms have to be conditional and not, as traditional ethics lore has it, unconditional. Fairness is the proper attitude among the two thirds, whereas against and among the one third fair behaviour has to be, if possible, quasi-fair: fair in matching the content of fair behaviour but driven by self-interested motives. Crucial here are (different to emphasis so far) motives and not so much effective behaviour, the *homo oe-conomicus* based critics of intrinsic fairness (see footnote 12) have a point here. Different motives lead to different behaviour only in contrastive circumstances, and a strategic awareness of moral behaviour is of similar relevance as the intrinsic moral convictions themselves. Intrinsic moral motivations and unconditional norms are not rarely the object of hidden second-stage self-interest.³⁸ If, as in the

³⁷ The one third is a statistical group, though. There will be 30% egoists coming up in all situations open to fairness, on average, without the identity of agents. Today's fairness can be tomorrow's unfairness, and vice versa.

³⁸ A typical case in point are the opponents' deontological arguments against the dissent solution for organ donation. Here the interests of the lucky healthy (majority) dominate the interests

somewhat exceptional case of organ donation, a majority is behaving unfairly, hardly more than putting this into the open is an offer. But it may help nevertheless in the long-run. In the regular case of the two thirds majority prone to fairness, they have to close ranks against the one third. The employment for punishment opportunities has been proven extremely effective in public goods experiments.

How to respond to different levels of moral motivation among the two thirds? How to respond, in the Cappelen et al. experiment for example, to 30% libertarians who do not fully agree with 50% meritocrats about collectivising bad circumstance consequences, something the meritocrats accept together with the strict egalitarians? Rhetorical pleas to ideals will not change these motivational differences basically. The tough representative in this selection is indeed the libertarian, as in regard to bad luck due to circumstances not under control he takes an egoistic position, perhaps not untypical also due to exceptionally happy circumstances for himself. He opposes the other two positions on the point of uncontrolled bad luck. Relaxing his attitude by reference to reciprocity will not help, if he does not expect any compensation in case of his own bad luck. The only solution is in his case, which seems feasible to me, falls back to a level of critique, but not with the help of ideals but a more simple critique based on empirical knowledge. If the libertarian is a rich person, statistics will not be able to touch him of course. But if he is not, statistics about the possibility of economic and other catastrophes might move him. Then he becomes aware of the advantages of reciprocity, and he might move towards the meritocrats.

A third result concerns the unresolved question about to which extent the experimental findings are speaking not only to equal share attitudes but also to more global attitudes directed at the 'equality of persons'. To my knowledge the experimental literature is not aware of this distinction, so to focus on the difference is difficult if not impossible within experiments devoted to the sharing of money. Not because of the incommensurability of money and the value of persons, but because a disposition directed at something as open as the 'equality of persons' will be extremely difficult to capture within behavioural parameters.

The traditional terms used to signal an attitude directed at persons as equals are 'respect' or 'recognition'. Both terms are not natural-kind-terms, i.e. they do not refer to one and only one kind of behaviour. Rather they are concepts referring to a seemingly open class of different forms of behaviour. The class must be kept open since there are ever further ways to manifest one's attitude of respect in either sub-attitudes or special ways of acting. Besides fairness in sharing, polite-

of the unlucky needy (minority). Traditional morality is prone to be used as an ideological cover for a one-sided self-interest of the majority, something well-known as a strategic recipe in politics.

ness, sincerity or promise-keeping are expressions of respect, and beyond these there is an open class of other (thinking of all the claims based on 'Würde' in Germany). And, of course, the institutionalized legal rights of equal treatment and equal vote are also expressions, or high-order forms of expressions of respect as equals. And so, at least for the moment, an empirical approach towards the equality of persons may seem beyond any expectations of achieving. On the other hand the equality by default method helps as far as possible with doubtful criticism as to why people should be treated unequally, especially if these doubts are on the same lofty level as the concept of equality of persons itself.

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