PREDISTRIBUTION AGAINST RENT-SEEKING: THE BENEFIT PRINCIPLE'S ALTERNATIVE TO REDISTRIBUTIVE TAXATION

By Charles Delmotte*

Abstract: *The distributive justice literature has recently formulated several tax proposals, with limitarians or property-owning democrats proposing new or higher taxes on wealth or capital income intended to decrease the growing wealth gap. This essay joins this debate on inequality and redistributive taxation through the lens of the "benefit principle for public policy." This principle says that specific rules and institutions are acceptable to the extent that they create benefits for all individuals in society, or at least don't make anyone worse off. This benefit principle opposes wealth accumulation to the extent that wealth was generated through rent-seeking—that is, income unrelated to economic productivity, which is not embedded in mutually beneficial exchanges. I maintain, however, that ruling out rent-seeking requires not ex post taxation, but primarily a more "predistributive corrective policy," that is, reconfiguration of market institutions to prevent wealth accumulation through rent-seeking in the first place. The alternative response is, thus, not to tackle inequality as such but to reform the market to promote the occurrence of mutually beneficial exchange.*

KEY WORDS: benefit principle, inequality, taxation, rent-seeking, predistribution

I. Theories of Justice and Their Redistributive Implementations

The "big trade-off" in tax policy, for Arthur Okun, occurs between efficiency, on the one hand, and equality, on the other: the price of growth is an unequal division of income and wealth; the cost of equalizing economic outcomes is that we will slow the growth of the pie.[1] Today, we have arrived at a worst-case scenario with *both* extreme slow growth and increasing inequality.[2] These twin ills have created a legitimacy problem for the

* College of Law, Michigan State University, Charles.Delmotte@law.msu.edu. Competing Interests: The author declares none. I thank the other contributors to this volume and NYU's Classical Liberal Institute. I also thank David Schmidtz, editor of *Social Philosophy and Policy*, and my anonymous project editor for their insightful comments. All imperfections are my own.

[1] Arthur Okun, *Equality and Efficiency: The Big Tradeoff* (Washington, DC: Brookings Institution Press, 2015).

[2] An important nuance is that inequality has been overstated by influential economists such as Piketty and Saez. *See* George Mechling, Stephen Miller, and Ron Konecny, "Do Piketty and Saez Misstate Income Inequality? Critiquing the Critiques," *Review of Political Economy* 29, no. 1 (2017): 30–46, https://doi.org/10.1080/09538259.2017.1255439; Phillip W. Magness, "Inequality, Prosperity, and Fiscal Policy: A Case for Caution in Interpreting Income Distributions," *The International Trade Journal* 33, no. 1 (2019): 16–30.

doi:10.1017/S0265052523000067

distribution of income and growth in our mixed economies.[3] Backed by empirical data on the widening wealth gap, political philosophers and economists debate the moral foundations of redistribution, which gives rise to different fiscal proposals to tackle wealth inequality.

Growing frustration with wealth inequality is leading to a comeback of the luck-egalitarian idea that unchosen elements of individual circumstances should not define the distribution of resources, which justifies redistributing benefits attributable to luck.[4] Where traditionally only the fruits of brute luck are seen as problematic by luck egalitarians, Nam[5] argues that both inequalities that result from brute luck and those that result from option luck (the luck involved in deliberate calculated gambles) are unjust. Based on this framework, Nam expands the case for luck-egalitarian redistribution, proposing the imposition of several additional tax burdens on the most well-off members of our society and elevated levies on capital income.

O'Neill and Williamson[6] take an explicit cue from John Rawls to critique the distributive tendencies of free markets and revive the idea of a "property-owning democracy"—namely, a society that permits private property but adjusts the underlying structure of ownership to prevent the class divisions that characterize capitalism. To address the "underlying patterns of ownership in society" and "restructure the economic game from the very start," O'Neill proposes an ambitious tax agenda that targets wealth and capital gains with new and/or increased taxes.

Joining the worry that great inequalities in income and wealth undermine the values of democracy and the ideal of political equality in particular,[7] "limitarianism" states that it is "morally objectionable to be rich"[8] and that we have a moral duty not to have "too much"; hence, "the state should tax away any excess money that people have."[9] Whereas luck egalitarians will screen for whether sheer chance was the driver behind wealth accumulations, limitarians argue for an absolute maximum as to what one can own. Machin[10] agrees but proposes to leave what he calls the super-rich with a choice: either forfeit the things that make them super-rich by paying a wealth tax above a certain level or give up their political rights.

[3] Brink Lindsey and Steven Michael Teles, *The Captured Economy: How the Powerful Enrich Themselves, Slow Down Growth, and Increase Inequality* (New York: Oxford University Press, 2017), 3.

[4] Ronald Dworkin, "What is Equality? Part 2: Equality of Resources," *Philosophy and Public Affairs* 10, no. 4 (1981): 283–345; John Roemer, "A Pragmatic Theory of Responsibility for the Egalitarian Planner," *Philosophy and Public Affairs* 22, no. 2 (1993): 146–66.

[5] Jesoo Nam, "Taxing Option Luck," *UC Irvine Law Review* 10, no. 4 (2020).

[6] Martin O'Neill and Thad Williamson, eds., *Property-Owning Democracy: Rawls and Beyond* (Malden, MA: Wiley-Blackwell, 2012).

[7] Thomas Christiano, "The Uneasy Relationship between Democracy and Capital," *Social Philosophy and Policy* 27, no. 1 (2010): 195–217, https://doi.org/10.1017/S0265052509990082.

[8] Ingrid Robeyns, "Having Too Much," in *Wealth*, eds. Jack Knight and Melissa Schwartzberg (New York: New York University Press, 2017), 1–44, at 5.

[9] Ibid., at 29.

[10] Dean Machin, "Political Inequality and the 'Super-Rich': Their Money or (Some of) Their Political Rights," *Res Publica* 19, no. 2 (2013): 121–39, DOI 10.1007/s11158-012-9200-8.

https://doi.org/10.1017/S0265052523000067 Published online by Cambridge University Press

Posner and Weyl[11] updated the left-libertarian philosophy by proposing breaking monopolies and unlocking wealth concentration through taxation. They argue that the current economy, much like what Henry George observed in the late nineteenth century, is being dominated by monopolists who accumulate market power and wealth, which leads to allocative inefficiencies. Hence, they propose a wealth tax whereby every taxpayer assesses the value of his wealth, given that he must be willing to sell his property at that price to any bidder—the so-called common ownership self-assessed tax.

Something is moving in political philosophy. Market institutions are under critique for causing growing inequality, and the literature is proposing the imposition of new fiscal institutions to make sure that market outcomes adhere to standards of justice. The subject of this essay is the performance of markets, yet I will set up an alternative account of justice that will generate a different proposal for market reform. The remainder of this essay proceeds as follows. Section II introduces an operationalizable test for public policy. I will argue for the "benefit principle of public policy": institutions and legal rules that undergird society are acceptable when they tend to benefit every individual who is part of it. Section III outlines that for benefit theorists, income and wealth inequality is acceptable when it results from institutions that generate mutually beneficial exchanges. This means that, in *ideal theory*, market institutions of private property and freedom of exchange satisfy the benefit requirement because they generate economic movements that are mutually beneficial. Section IV discusses a deromanticized image of markets and argues that contemporary mixed economies don't respect the benefit requirement. Based on recent literature in political economy, I will show that rent-seeking characterizes current economic institutions, and that accounting revenue does not necessarily stem from an institutional setting oriented at mutual beneficial exchange. Section V sets out the benefit-theoretic response to the issue of slow growth and growing inequality. The benefit principle requires reform that curbs rent-seeking and transitions to an institutional framework oriented at mutual benefit. I argue that this is a normative maneuver that can be justified toward all positions in the market, including current rent-seekers. Section VI gives the main lines of difference between the perspective on redistribution generated by the benefit principle and the egalitarian policies proposed in the introduction. Benefit theorists distinguish between good and bad inequality and aim to correct the latter but tolerate the former. This position opposes taxing away high income or wealth (that is, the egalitarian position), but its proponents will not simply accept all the unequal distributions that capitalist societies produce (that is, everyday libertarianism).[12]

[11] Eric A. Posner and E. Glen Weyl, *Radical Markets: Uprooting Capitalism and Democracy for a Just Society* (Princeton, NJ: Princeton University Press, 2018).

[12] There is a middle ground between those who oppose inequality and those who think all legal forms of earning income are morally permissible. Murphy and Nagel coined the latter

Benefit theorists will instead look for a predistributive policy response—a reform of market institutions to minimize rent-seeking and to promote mutually beneficial market exchanges.

II. The Justificatory Framework: Benefit Principle for Public Policy

Different normative treatments of market outcomes work with different tests. The proposed framework for this essay is the "benefit principle," which has positive and negative formulations: the political–legal institutions that undergird society must tend to benefit every individual who is part of society and not make any of them worse off.[13] The benefit principle argues that sets of institutions—for instance, market institutions—are justified when they accord with each person's self-interest. This principle can be connected to the contract model of politics: individuals are assumed to consent to institutions the benefits of which outweigh the costs, and to protest when they are made worse off.[14] The benefit principle operationalizes an ideal of society as a cooperative venture: institutions are favored when they generate economic movements that are positive sum, meaning that one creates gains via a chain of events that equally benefits others. The requirement traces back to Thomas Hobbes, who justified the existence of government through an individualistic calculus: all individuals within the social order benefit from the movement from the state of nature to the establishment of a government.[15] So, the justificatory burden that this calculus places on the fundamental rules and institutions—"the constitution" of society in its philosophical sense—is that they generate a net benefit for

---

view "everyday libertarianism," referring to some layman's view that the state has no business correcting market outcomes. However, it's important to note that virtually zero academic libertarians defended that view. So, the middle position that this essay defends is far closer to the classical liberal and libertarian tradition than what Murphy and Nagel make of it. *See* Liam B. Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (Oxford: Oxford University Press, 2002), 15.

[13] Gerald Gaus, *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World* (Cambridge: Cambridge University Press, 2010), 448–546, https://doi.org/10.1017/CBO9780511780844; James M. Buchanan, "The Limits of Liberty: Between Anarchy and Leviathan," in *The Collected Works of James M. Buchanan*, Volume 7 (Indianapolis, IN: Liberty Fund, 2000), 39–44. I use the term "benefit requirement" and not "Pareto norm" because the latter is sometimes interpreted as Pareto optimality, meaning no one can be made better off without anyone being made worse off. The benefit requirement is a much weaker and dynamic form of the Pareto principle and allows for improvements that do not have to "reach" optimality straight away, but rather can hinge to the "Pareto frontier."

[14] Interestingly, this more rudimentary principle, which does not give weight to any group, was proposed by the young Rawls in the 1950s. See John Rawls, "Justice as Fairness," in *Collected Papers*, ed. Samuel Freeman (Cambridge, MA: Harvard University Press, 2001), 47–72; Gerald Gaus and John Thrasher, "Rational Choice and the Original Position: The (Many) Models of Rawls and Harsanyi," in *The Original Position*, ed. Timothy Hinton (Cambridge: Cambridge University Press, 2015): 39–58. Rawls started developing the difference principle in the late 1960s. James Buchanan also worked with the benefit principle. Buchanan, "The Limits of Liberty."

[15] Thomas Hobbes, *Hobbes: Leviathan* (Cambridge: Cambridge University Press, 1996).

every participant.[16] Benefit theorists realize that, when it comes to setting up the rules and enforcing taxes, social improvements *cannot* be reached by voluntary exchange, yet a network of "forced exchanges"—that is, adherence to the rules and taxes to enforce them—leaves everyone better off.[17]

Theorists employ this device to justify the origins of the state, while at the same time its ongoing operation must satisfy the benefit principle.[18] This means that contemporary institutions face the same challenge that the creation of the state does: they must have a general tendency to lead to economic improvements for all members—even though, and perhaps because, their consent was not obtained.[19] The test does not require each participant to win simultaneously, nor can we calculate only one specific effect of a particular set of institutions. Rather, over the whole set of applications, the overall working properties of specific institutions constitutive of the state must be "broadly acceptable" and generate benefits for all members.[20] The focus is then whether the contemporary structure of imposed and enforced rules and institutions promotes mutually beneficial gains and, if it doesn't, how it can be reformed so that it does. At the theoretic level, this exercise comes down to an institutional analysis of whether the current rules that are in place promote social improvements for all. At the empirical level, this exercise compares two moments in time, and screens whether the difference between them satisfies the benefit test, meaning all individuals or groups gained a net benefit. The first moment serves as the baseline to measure benefit and will not be some imaginary state (for example, the state

[16] Richard Epstein, *Takings: Private Property and the Power of Eminent Domain* (Cambridge, MA: Harvard University Press, 1985), 14.

[17] Richard Epstein, "The Ubiquity of the Benefit Principle," *Southern California Law Review* 67 (1994): 1404.

[18] Gerald Gaus, *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World* (Cambridge: Cambridge University Press, 2010), https://doi.org/10.1017/CBO9780511780844; Epstein, *Takings.*

[19] For instance, this can be applied to cases of eminent domain: after the expropriation, "just" compensation must be given to the original owner so as to make them not worse off than before.

[20] This means that we gauge the effects of rules over a broader time window and that we must measure the generalized effects of specific rules on an individual, that is, in the different roles and capacities they have. The latter means, to quote Daniel Russell, we must calculate what "reciprocal benefits" are "in the greater scheme of things." See Dan Russell, "Self-Ownership as a Form of Ownership," in David Schmidtz and Carmen Pavel, eds., *The Oxford Handbook of Freedom* (New York: Oxford University Press, 2016). For instance, the forces of competition might sometimes generate losses for individual business owners in one specific instance, but those business owners benefit from the general increased living standards, for instance in their capacity as consumers. The insight that we should consider the generalized effects of specific rules informed Bramwell's restriction of the "ad coelum doctrine": even owners benefit from limiting their ownership to enable air transportation, in their capacity as citizens, consumers, and so forth. *See* Richard Epstein, "Nuisance Law: Corrective Justice and Its Utilitarian Constraints," *Journal of Legal Studies* 8 (1979): 49–102. *See also* Buchanan and Congleton, *Politics by Principle, Not Interest: Toward Nondiscriminatory Democracy* (New York: Cambridge University Press, 1998), 18; Geoffrey Brennan and James M. Buchanan, "The Reason of Rules: Constitutional Political Economy," in *The Collected Works of James M. Buchanan*, Volume 10 (Indianapolis, IN: Liberty Found, 1999).

of nature) or an ideal distribution (for example, perfect equality), but rather the existing state of affairs at that point in time.[21]

This essay focuses on the benefit principle for a few reasons. One is that in the literature this is an original undertaking with innovative and even counterintuitive results. While growing inequality gave rise to new egalitarian literature and is expected to pave the way for large state-directed redistributions, the effects of the benefit principle have not been fully developed. The benefit principle is rooted in the classical liberal tradition.[22] Perhaps some will expect it to entail that inequalities in wealth and income are justified: the view that "pretax market outcomes are presumptively just" is what Murphy and Nagel caricature as "everyday libertarianism."[23] However, I will show that the benefit principle does *not* justify current distributions of income and wealth. And since the justificatory principle is different from egalitarian approaches, the benefit principle leads to another corrective policy. Although this is the main reason for this essay, I will nevertheless point to a few other elements that justify the use of the benefit principle.

First, the model that explains the benefit principle is realistic. To explain why individuals would choose a benefit principle, we do not need to assume imaginary persons as Rawls does.[24] Brennan and Buchanan, Buchanan and Congleton, and Delmotte have shown how individuals

[21] This essay thus follows Buchanan and Epstein, who take actual distributions ("the status quo") at some point in time, rather than some state of perfect equality, as the "baseline" against which improvements should be measured. This essay wishes to evaluate the institutions of today, so I start "from where we are," to quote Buchanan ("The Limits of Liberty," 8). The approach of taking actual situations has been recognized as practical and Buchanan even defends it on normative grounds: looking for improvements while accepting the current state of affairs aligns with what people would agree with (ibid., 78). This baseline can be criticized for being insensitive to injustices that occurred before the moment that constitutes the baseline. I thank the anonymous editor of my article for enabling me to clarify this. See Buchanan, "The Limits of Liberty"; Epstein, "The Ubiquity of the Benefit Principle"; John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press of Harvard University Press, 1999," See also Michael Munger, "Starting from Where We Are: The Importance of the Status Quo in *James Buchanan*," in Richard Wagner, ed., James Buchanan (Cham: Springer International Publishing, 2018) 39–64.

[22] For a localization of the benefit principle within the broader classical liberal tradition, see Charles Delmotte and Daniel Nientiedt, "Classical Liberalism: Market-Supporting Institutions and Public Goods Funded by Limited Taxation," in Delmotte and Nientiedt, eds., *Political Philosophy and Taxation: A History from the Enlightenment to the Present* (Singapore: Springer Nature, 2022).

[23] Murphy and Nagel, *The Myth of Ownership.*

[24] Think about the difference principle, which requires that economic institutions "work as part of a scheme which improves the expectations of the least advantaged members of society" (John Rawls, *A Theory of Justice*, 11). The difference principle is a *specific version* of the benefit principle—one that prioritizes one particular group in society and focuses on *one specific set* out of all those sets that satisfy the benefit principle. To justify this principle, Rawls modeled his individuals as being under the veil of ignorance, with rational agents ignorant about their social position, income, talent, ethnicity, and view of the good life. Only in this way can his individuals agree to "single out one particular group" (ibid.) and evaluate economic distributions solely in terms of their effect on this group. Although I am generally sympathetic to the difference principle, this essay works with the more agnostic benefit principle for reasons explained in the main text.

who look (more) like actual people (that is, relatively self-interested and aware of their economic and personal interests) could favor the benefit principle as the guiding norm for their subsequent political arrangements.[25] Rather than introducing a particular kind of chooser (for example, an ignorant one), the benefit principle introduces a specific type of choice.[26] When asked to choose rules that cover a large range of issues for an extended time, rational individuals are relatively uncertain regarding their future position under the different choice options and, thus, of the personal effects of various alternatives. Choosing under conditions of relative uncertainty of their future position, they are likely to favor institutions that benefit individuals in a broad range of positions and wish to avoid institutions that allow some (groups of) individuals to enrich themselves at the expense of others, and so they will choose the benefit principle.

The benefit principle satisfies the identity test: it isn't difficult for actual individuals to see why they would accept institutions to the extent that they render everyone better off. It aligns with a prosaic common notion of rational choice and thus passes the identification test.[27] When discussing the acceptability of specific actions versus others, Western citizens will often express the thought that every person can do what they want as long they do not harm others. The purpose of normative theory is to speak to actual individuals in society and find conclusions that align with their own interest, and there is popular support for a principle that accepts institutions as long as they render no one worse off.

The benefit principle also passes the "recognition test." While the identification test looks at whether actual individuals can identify with a principle, specific rules satisfy the recognition test when they stand as bona fide moral principles.[28] This means that they are moral principles that satisfy a test of impartiality.[29] While the benefit principle is generally more permissive of the realization of individualized gain than other normative principles (think about effective altruism, the principle that you must act in order to benefit others), it still embodies an idea of impartiality: no privilege is given to any specific group in society, and sets of institutions are favored that tend to promote universal benefits.[30] The benefit principle is impartial,

[25] Brennan and Buchanan, "The Reason of Rules: Constitutional Political Economy," in Buchanan and Congleton, *Politics by Principle, Not Interest: Toward Nondiscriminatory Democracy* (Cambridge: Cambridge University Press, 1998); Delmotte, "Tax Uniformity as a Requirement of Justice."

[26] Remarkably, this model is also the one employed by the "young" Rawls. In "Justice as Fairness" he characterized the original position as a setting in which players have full information about their circumstances.

[27] Gaus and Thrasher, "Rational Choice and the Original Position," 41.

[28] David P. Gauthier, *Morals by Agreement* (Oxford: Clarendon Press, 1986).

[29] Brian Kogelmann, "Rawls, Buchanan, and the Search for a Better Social Contract," in *Exploring the Political Economy and Social Philosophy of James M. Buchanan* (London: Rowman and Littlefield, 2018), 17–38.

[30] Peter Singer, *The Most Good You Can Do: How Effective Altruism Is Changing Ideas About Living Ethically* (New Haven, CT: Yale University Press, 2015).

as it embodies a generalized form of reciprocity: individuals aren't allowed to realize gains at the expense of others, as they wouldn't want others to realize gains at their expense. Rules are justifiable to "you and me" if they further the interests of both you and me—in a political world where no one truly expects to get everything they want.

We've established that the "benefit principle" for public policy is a *justificatory test* that aligns with people's intuitions and stands as a proper moral test to gauge the moral acceptability of specific sets of institutions.

III. The Justifiability of Markets in Ideal Theory

This essay does not intend to identify *all* sets of institutions that *may* satisfy the benefit principle.[31] Harking back to the introduction: market institutions are under fire in the distributive justice literature—and new tax programs are proposed to tame some of the unequal results that markets produce. And so, our focus is on what the essential market institutions are and how the benefit requirement evaluates them.

While the perspective of relative inequality is increasingly given attention in the literature, the benefit requirement is not primarily interested in what people earn, compared to others, at any given moment in time. Benefit theorists embrace institutions that, over time, boost the absolute level of all groups.[32] So, the first thing to realize is that benefit theorists have a fundamentally different outlook on distributive justice than do adherents to competing normative perspectives. The relative inequalities that can frustrate other philosophical positions, such as those mentioned in the introduction, are largely tolerated when they are paired with *net improvements* for all groups in society as compared to a previous point in time.

At the conceptual level, philosophers and economists who employ the benefit theory champion "markets as arenas of mutual benefit."[33] Economic systems primarily driven by private property and voluntary exchange that extend these rights over a relatively large range of objects in a society satisfy the benefit requirement, as they benefit every individual who is part of

[31] The benefit principle, by virtue of not prioritizing any specific group, is fairly "open-ended," meaning many different types of distributions and thus sets of institutions may satisfy the benefit principle. This essay has an applied purpose: First, I intend to research whether market institutions constructive for a capitalist society satisfy this benefit principle. I do not endeavor to identify *all* sets of institutions and regime types that satisfy the benefit principle. Second, when the baseline has been identified to be a recent, actual distribution (rather than some imaginary state), the number of sets of institutions that lead to net improvements for all, as compared to that baseline, significantly shrinks. The benefit principle might select redistributions for the current world when the baseline is some idealized form of equality. However, when the baseline is the status quo, such measures hardly satisfy the benefit principle. I do thank the anonymous editor of my essay for his useful comments in this regard. See also Munger, "Starting from Where We Are: The Importance of the Status Quo in James Buchanan."

[32] Epstein, *Takings.*

[33] Gaus, *The Order of Public Reason*, 83.

them.[34] The freedom to make trades (and to walk away from deals that one doesn't want to make) allows for relations of mutual benefit. Negatively, rendering goods and services excludable and immune from predation avoids some individuals enriching themselves by taking from others.[35] By and large—but not always—in economic exchanges, the parties exchange things (whether labor or money) for other things they value more (whether money or services), and both parties make each other better off than they were before. Market institutions—that is, property rights and the freedom to contract for labor, services, and products—give individuals in society an incentive to pursue their own goals while also acting in the interest of their fellows by maintaining and investing their holdings in ways that will be beneficial to others.[36] So, at the microeconomic level (focusing on interpersonal relations), private property and freedom of contract are institutional techniques that allow the interests of two parties to converge and create an economic relation that satisfies the benefit requirement.

At a more systemic and dynamic level, the marvel of markets is that the entire chain of exchanges creates a world of opportunity, specialization, innovation, and wealth creation, which no small group of individuals could ever do on its own, and in which individuals systematically benefit from exchanges they weren't a part of.[37] Under competitive conditions, the lure of profit incentivizes entrepreneurs to offer improved products or more efficient means of production, which benefits consumers and society at large. When firms charge supracompetitive prices, challengers will undercut them in attempts to take over the incumbents' consumers. In theory, "profits" are thus the result of a system that generates reciprocal benefits. Sellers realize a surplus over and above what they paid for the factors of production and buyers realize a "consumer surplus"—the difference between the market price and their reservation price, which marks their subjective desire for the product. While admittedly a world of privatization forbids us from taking what we want and creates disparities in income and wealth, it maximizes the number of goods, opportunities, and innovation that we will individually enjoy.[38]

The benefit principle can also justify market regulations (for instance, in workplace conditions), forms of safety nets funded by taxation, taxes to correct for negative externalities, and the monitoring of specific aspects of the economy to avoid fraud (for example, the financial industry).[39] To the

[34] Ibid., 78.

[35] Epstein, *Takings*.

[36] Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Lawrence, KS: Neeland Media LLC, 2004).

[37] Friedrich Hayek, *Law, Legislation, and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy* (London: Routledge, 1993).

[38] David Schmidtz, "Property and Justice," *Social Philosophy and Policy* 27, no. 1 (2010): 79–100, https://doi.org/10.1017/S0265052509990045.

[39] Friedrich Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960); Gaus, *The Order of Public Reason*, 79.

extent that these rules, overall, create a better outcome for all, there is no reason these "interventions" with the market should be qualified as exogenous constraints rather than endogenous features of the rules themselves. However, the focus remains on market institutions—systems of private property and exchange through contractual freedom—since their functioning is under critique for creating unequal outcomes.

IV. Markets without Romance: Rent-Seeking as a Violation of the Benefit Requirement

While markets produce unequal results, profits and income are rewards for creating value for others. Because all sides benefit, the distribution of income and wealth satisfies the benefit test. However, to know whether real-life distributions of income and profit are acceptable, we need to check whether contemporary markets function according to the image depicted in the previous section. The previous section heavily idealized market functioning by obscuring the reality of market players that buy political power and shape the rules that determine how they realize profit.

William Baumol famously observed another type of economic activity: in addition to productive entrepreneurship, "profits" can also emerge from unproductive or even welfare-destructive activities.[40] Individuals are ingenious and creative in finding ways to add to their wealth, power, and prestige, and they have no specific bias in favor of positive-sum activities. Contemporary "destructive entrepreneurship" exists not so much in the use of physical force but rather in the use of the *political and legal system* to transfer or secure wealth in ways that are not related to any productive activity.[41] If we measure profits simply as the excess in accounting revenues over accounting costs, corporations and individuals can increase their revenue by following the competitive track of innovation, specialization, or price competition, which will add to the social product (Section III). However, they can also follow the "political track" and invest time and energy in manipulating market rules to realize accounting revenue.[42] Businesses capture "rents" when they realize revenue without generating any market return (for instance, providing consumer benefit by investing in their productive assets). Instead, they realize gains by extracting means from others —whether through cash transfers from the public fund or by limiting

[40] William Baumol, "Entrepreneurship: Productive, Unproductive, and Destructive," *Journal of Political Economy* 98, no. 5 (1990): 893–921.

[41] Ibid., 915.

[42] Gordon Tullock, "The Rent-Seeking Society," *The Selected Works of Gordon Tullock* (Indianapolis, IN: Liberty Fund, 2005), 5; Robert D. Tollison, "The Economic Theory of Rent Seeking," *Public Choice* 152, nos. 1–2 (2012): 73–82, https://doi.org/10.1007/s11127-011-9852-5.

competition.[43] Recent political economy literature[44] reveals that rents are increasingly pervading our economic system, with artificial profits being made from the opportunity to limit competition or from financial transfers extracted from others. This institutional feature *violates the benefit principle,* in that the widespread presence of both rents and rent-*seeking* (resources that firms are willing to spend to obtain rents) takes away resources from genuine productive activities and leads to large-scale inefficiencies.[45] Under these circumstances, we can no longer assume that profits for one person reflect value created for another. We will briefly discuss two rent-seeking routes.[46]

Rents can be realized "indirectly": when businesses manage to limit competition, they can charge prices higher than they could under competitive conditions. Typically, regulations, professional licensing, and some types of patents, which all might have justifiable goals, equally limit competitor entry into specific industries or product lines. Excessive regulation (for instance, product compliance) raises entrance barriers[47] while leading to increased corporate profits for incumbents[48] and decreased levels of innovation.[49] These effects are exacerbated by the regressive nature of compliance costs, meaning that they impose a proportionately heavier burden on medium- and small-scale companies.[50] Professional licensing also renders the formation of new businesses, and thus new products and production methods, more expensive, and is associated with low employment and high prices.[51] When patents are too broad and long-lasting, the monopoly to market a specific product will shield a business from market

[43] Roger Congleton and Arye Hillman, *Companion to the Political Economy of Rent Seeking* (Northampton, MA: Edward Elgar Publishing, 2015).

[44] Lindsey and Teles, *The Captured Economy*, 17; Luigi Zingales, *A Capitalism for the People: Recapturing the Lost Genius of American Prosperity* (New York: Basic Books, 2012); Randall G. Holcombe, *Political Capitalism: How Economic and Political Power Is Made and Maintained* (Cambridge, UK: Cambridge University Press, 2018); Mikayla Novak, *Inequality* (New York: Springer Berlin Heidelberg, 2018); Paul Aligica and Vlad Tarko, "Crony Capitalism," CESifo DICE Report 13, no. 3 (2015): 27–32.

[45] Tollison, "The Economic Theory of Rent Seeking," 73–82; Aligica and Tarko, "Crony Capitalism."

[46] The point of the essay is not to give an exhaustive list of all types of rent-seeking. I pinpoint one type of rent-seeking that has gained dominance to illustrate the nature of rent-seeking, which will enable me to show the policy implications of the benefit principle in Section V and its difference from egalitarian positions in Section VI.

[47] Lindsey and Teles, *The Captured Economy*, 21.

[48] Fabio Schiantarelli, "Product Market Regulation and Macroeconomic Performance: A Review of Cross-Country Evidence," World Bank Policy Research Working Paper Series (2005): 3770.

[49] Andrea Bassanini and Ernst Ekkehard, "Labour Market Institutions, Product Market Regulation, and Innovation: Cross-Country Evidence," OECD Economics Department Working Papers 316 (2002), https://doi.org/10.1787/002243151077.

[50] André Nijsen, ed., *Business Regulation and Public Policy: The Costs and Benefits of Compliance* (New York: Springer, 2009), xii; Aligica and Tarko, "Crony Capitalism."

[51] Morris M. Kleiner, "Occupational Licensing," *Journal of Economic Perspectives* 14, no. 4 (2000): 189–202, https://doi.org/10.1257/jep.14.4.189; Paul Larkin, "Public Choice Theory and Occupational Licensing," *Harvard Journal of Law and Public Policy* 38 (2015): 296–301.

competition by rendering ideas artificially inaccessible, which stifles innovation.[52]

Artificial profits can also be secured "directly" by cash transfers from the public fund to the accounts of individuals and corporations. As explained by Buchanan and Tullock, Delmotte, and Holcombe, the operationalization of subsidies and tax exemptions is shaped by lobbying efforts intended to reallocate means from the general taxpayers to the most influential industries in the political process.[53] Interestingly, highly affluent economic industries—finance, agriculture, and technology—are equally the biggest recipients of tax support. American agricultural producers secure their revenue by ever-increasing support from taxpayers, from circa 28 billion dollars in 2013 to nearly 49 billion dollars in 2019.[54] And federal subsidies through tax support for research and development climbed from circa 7 billion dollars in 2000 to 15 billion dollars in 2016.[55] The financial sector is a notorious recipient of subsidies, for instance through the government-backed mortgage schemes that contributed to the financial crisis of 2008.[56] This data is a confirmation of the general observation that profit-making through political allocation, rather than through market-style exchanges, has gained dominance over time.

The point of this section is not to give an exhaustive list of all types of rent-seeking. I am focusing on a couple of forms of rent-seeking to illustrate the problem and to exhibit the policy implications of the benefit principle in Section V. The lesson of this section is that we need to deromanticize the image of markets described previously. As the early defenders of market institutions such as Adam Smith and Frederic Bastiat noticed, the recurrent enemy of capitalism is crony capitalism: the use of political power to undermine the functioning of free and open markets.[57] The ideal form of markets

[52] Steven Shavell and Tanguy Van Ypersele, "Rewards versus Intellectual Property Rights," *Journal of Law and Economics* 44, no. 2 (2001): 525–47; M. Kremer, "Patent Buyouts: A Mechanism for Encouraging Innovation," *The Quarterly Journal of Economics* 113, no. 4 (1998): 1137–67, https://doi.org/10.1162/003355398555865.

[53] James M. Buchanan and Gordon Tullock, "The Calculus of Consent: Logical Foundations of Constitutional Democracy," in *The Collected Works of James M. Buchanan*, Volume 3 (Indianapolis, IN: Liberty Fund, 1999), Charles Delmotte, "The Case Against Tax Subsidies in Innovation Policy," *Florida State University Law Review* 48, no. 2 (2021); Randall Holcombe, "Tax Policy from a Public Choice Perspective," *National Tax Journal* 51 no. 2 (1998): 359–71.

[54] "Agricultural Support," https://data.oecd.org/agrpolicy/agricultural-support.htm.

[55] "R&D Tax Expenditure and Direct Government Funding of BERD," https://stats.oecd.org/Index.aspx?DataSetCode=RDTAX.

[56] Todd Zywicki and Joseph Adamson, "The Law and Economics of Subprime Lending" *University of Colorado Law Review* 80, no. 1 (2009): 1–86; Lindsey and Teles, *The Captured Economy*, 39, 43.

[57] Adam Smith warned of the conflict of interest between producers and the public at large: "To widen the market may frequently be agreeable enough to the interest of the public; but to narrow the competition must always be against it, and can serve only to enable the dealers, by raising their profits above what they naturally would be, to levy, for their own benefit, an absurd tax upon the rest of their fellow-citizens." See Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations.* Frederic Bastiat describes how all sorts of interventions, such as trade restrictions that might benefit local procedures, have unseen costs, such as price

will often be untenable because even if we can all benefit from it, businesses can often benefit *more* by turning to the government to get subsidies or control over entry (for instance, by imposing costly product requirements or price controls).[58] This problem of rent-seeking is endogenous to democratic capitalism, as it creates institutions and incentives that make collusion between political power and economic power more profitable.[59] Whether an economy is driven by rent-seeking or profit-seeking, by cronyism or by entrepreneurship, is really a matter of degree, and it changes over time. There is a tipping point at which rent-seeking via wealth transfers or by limiting competition becomes more profitable than profit-seeking through innovation or price competition.[60] At that point, companies cut back on hiring engineers and business developers and shift their focus to lawyers and lobbyists, and we risk institutional sclerosis, where rents are recycled in the further undermining of the competitive structure of the market to ascertain future rents.[61] Institutions become weaker as corruption and cronyism, rather than innovation and competitive entrepreneurship, become the dominant route to economic success.[62]

William Baumol argued that the positioning of an economy on this divide between rent-seeking and profit-seeking is a function of the underlying set of rules. Whether human opportunism will be directed toward productive entrepreneurship or to cronyism is thus in part determined by the type of legal rules that govern the economy. Zingales, Lindsey and Teles, and Aligica and Tarko all claim that the U.S. economy in the last twenty years has been moving away from the "right side" of economic activity and toward a destructive entrepreneurial activity that has become increasingly profitable. The above analysis of the extended use of subsidies, the raising of entrance barriers through excessive regulation or occupational licensing, and the misuse of patent (patent-trolling) suggests that the track of rent-seeking has become more dominant in our economy. Together with the often-regressive nature of rents, these elements, Lindsey and Teles say, are the main drivers behind rising corporate profits, widening inequality among firms, growing market concentration, and falling rates of new business formation. In other words, part of what we perceive as inequality is generated by rent-seeking.

increases and lower levels of production. See Frederic Bastiat, *What Is Seen and What Is Not Seen* (London: W.H. Smith and Son, 1859).

[58] George Stigler, "The Theory of Economic Regulation," *The Bell Journal of Economics and Management Science* 2, no. 1 (1971): 3–21, https://doi.org/10.2307/3003160.

[59] Holcombe, *Political Capitalism.*

[60] Ibid.

[61] Mancur Olson, *The Rise and Decline of Nations: Economic Growth, Stagflation, and Social Rigidities* (New Haven, CT: Yale University Press, 1982).

[62] Daron Acemoglu and James Robinson, "The Rise and Decline of General Laws of Capitalism," *Journal of Economic Perspectives* 29, no. 1 (2015): 3–28.

V. Predistribution as a Policy Application of the Benefit Principle

Remember, the requirement that our philosophical framework places on legal–economic institutions is that they should generate economic movements that are positive sum and that those market institutions should promote interactions of mutual gain. Recent insights from political economy show that various types of rent-seeking characterize our mixed economy. Market activity no longer resembles the idealized image of a chain of cooperation that channels pursuit of private interest into general progress and prosperity and alleviates the living conditions of all groups and individuals. If we apply the benefit test to public policy, we see that the occurrence of rent-seeking undermines the legitimacy of the political and economic system and violates the Gausian qualification of "markets as arenas of mutual benefit." And so, the benefit principle grounds a call for reform. How can we reform market institutions starting "from where we are"?[63]

The double lesson that not all inequality is bad (Section III) and that government interventions often drive the bad kind (Section IV) teaches that the policy response required by the benefit principle will be different from what is currently proposed by egalitarians. Piketty, O'Neill and Williamson, Robeyns, Posner, and Weyl, and Nam all show that opposition to wealth and income inequality is generally paired with tax proposals: the imposition of new fiscal bases or higher rates is supposed to tame markets' intrinsic tendencies. This essay argues that such ex-post measures are normatively misguided since they don't distinguish rents from profits. Rather than blindly cutting back all high income or wealth and treating entrepreneurship and cronyism alike, we need a policy response that tolerates good inequality while pushing back on bad inequality. Tax policy is unable to offer the sensitivity to differentiate between profit-seeking and rent-seeking, and the difficulty of employing this distinction for tax purposes necessitates a policy response that occurs "before" economic exchange takes place.[64] Moreover, we need to reform market institutions so that rents become less profitable. The required reform will, thus, not be "redistributive" and amend market outcomes ex post—that is, through the tax code. Rather, the benefit principle grounds a *predistributive policy response*, namely, an alteration of market rules so that rent-seeking becomes less profitable.[65] Two questions can be raised: (1) How could this be done—

[63] See footnote 22.

[64] It remains incredibly difficult to target only rents through rule-based taxation. A possible second best would be to target entire industries notorious for rent-seeking with special taxes. The discretion to execute such a policy would probably create more rent-seeking than it would solve.

[65] For an example on the predistributive role of initial property entitlements see, e.g., David Blankfein-Tabachnick and Kevin Kordana, "Kaplow and Shavell and the Priority of Income Taxation and Transfer," 69 *Hastings Law Journal* 1 (2017)

that is, what would predistributive reform look like? (2) Would this reform pass the benefit test?

How to push back against rent-seeking requires a more in-depth analysis than this essay offered in the previous section. This essay aims to show the philosophical characteristics of a perspective on market reform generated by the benefit principle[66] and how it is normatively and economically different from the egalitarianism discussed in the introduction. I will nonetheless briefly pave the way for further research and draw some contours of market reform that satisfies the benefit requirement. The attributional framework, borrowed from recent political economists like Lindsey and Teles, Zingales, and Holcombe, shows that rents are a by-product of the regulatory and fiscal system. Indeed, it is governmental discretion and enlarged regulatory competences that host the opportunity for corporations to capture artificial gains. The solution, then, lies not in doing more—for instance, extra taxes—but in doing less; in doing away with the interventions that generate the opportunity for rents.

Tentative suggestions include, first, a drawback on the competences of government—that is, movement to a more limited government. To curb incumbents' inclination to undermine competition and to solidify the dynamic of open and competitive markets, we need to limit some of the interventions discussed in Section IV.[67] So, a curtailment of the subsidization of corporations and a reduction of anticompetitive regulation is a way to secure truly open and competitive markets and diminish the profitability of rent-seeking. These policies could be attained in various ways, for instance, by an interpretation of constitutional provisions or through the creation of agencies that perform regulatory review. Richard Epstein's work[68] on eminent domain illustrates how constitutional provisions, often designed to protect against potential harmful actions by government, can justify the redefinition of the contours of legitimate government action. Excessive regulations and far-reaching licensing requirements qualify as "regulatory takings," rules that diminish the value of property. Within the European Union, for instance, the Treaty offers a remedy to subsidies. Moreover, cash transfers from the public fund to the accounts of corporations face the risk of qualifying as unlawful state aid that "distort[s] competition by favoring certain undertakings or the production of certain goods."[69] Another way to limit some of the phenomena discussed is by creating agencies competent in regulatory review. Glaeser and Sunstein[70] underline the necessity of agencies that perform a cost–benefit analysis at all

[66] See previous sections, and Section 6.

[67] Zingales, *A Capitalism for the People*; Lindsey and Teles, *The Captured Economy.*

[68] Epstein, *Takings*; Richard Allen Epstein, "Missed Opportunities, Good Intentions: The Takings Decisions of Justice Antonin Scalia," *British Journal of American Legal Studies* 6, no. 1 (2017): 109–35.

[69] See Treaty on the Functioning of the European Union art. 107 (2007).

[70] Edward Glaeser and Cass R. Sunstein, "Regulatory Review for the States," *National Affairs* 20, no. 44 (2014).

levels of government to make sure that the regulations in question have "strong, evidence-based justifications." Second, *within* the residual domain of redefined competences, I suggest a more ambitious regulation *of* government. This means that, in domains like regulation, IP, and tax, discretionary powers must be replaced by the mantra of simple and general rules. When we can predict that political and legislative action will be partly motivated by self-interest, a system of general and simple rules reduces the risk of special-interest groups tinkering with the law. With the addition of sophisticated discriminations and technical conditions in tax or regulatory policy comes the potential for groups to capture special benefits (for example, subsidies, loopholes, credits) or limit competitive entry for challengers (for example, through regulation).[71] Whether in tax, IP, or the regulatory domain, having a system in which legal norms apply strictly and clearly to all businesses and apply in broadly defined situations is the best way to guarantee open and competitive markets.[72]

A second question is, if predistribution would diminish rent-seeking, *why would the rent-seekers benefit*? Recall from Section II that institutions are backed by the benefit requirement if they generate social improvement for all members and groups. Even if we were to assume that rent-seekers would calculate only the costs and benefits connected to their specific position (which is a pessimistic assumption; see below), they would nonetheless benefit from predistribution. This means that even rent-seekers benefit from the transition to a profit-seeking economy, in the broader scheme of things.[73] Indeed, large corporations would lose subsidies, firms would lose overbroad patent protection, incumbents would face more competition. Yet, the proposal here is not one policy that targets one group of rent-seekers but rather a complete reconfiguration of the rules that would curb all forms of rent-seeking. While in their capacity as producers (subsidy recipients) current rent-seekers might face some losses, these losses will be offset by the multitude of benefits they will seize in their capacity as citizens, owners, and consumers. And so, the concentrated losses that current rent-seekers will incur by moving to a profit-seeking society are offset by the diffuse benefits they will capture now that others are also prevented from rent-seeking. The lower standard of living generated by rent-seeking harms everyone in society, and current rent recipients will benefit from lower, competitive prices, higher-quality goods and services, increased innovation, and more job opportunity.[74] The Tax Reform Act of 1986 exemplifies individuals' willingness to bear some concentrated costs in return for more generalized benefits. That legislation did away with fiscal privileges for

[71] Delmotte, "Tax Uniformity as a Requirement of Justice."
[72] Hayek, *The Constitution of Liberty*.
[73] Concerning the generalized effects of specific rules: see endnote 21.
[74] Lindsey and Teles, *The Captured Economy*; Zingales, *A Capitalism for the People*; Holcombe, *Political Capitalism*; Acemoglu and Robinson, "The Rise and Decline of General Laws of Capitalism," 3–28.

special-interest groups that benefitted from preferential treatment of capital gains and other loopholes disproportionately used by upper-middle-income and wealthy taxpayers. In negotiations leading to the enactment of the Reform Act, interest groups were persuaded to forfeit their narrow privileges because of the general political and economic appeal of a radically simplified tax system (moving from fourteen to only two rates) and a lower top rate.[75] This real-world example of rent-seekers benefitting from anti-rent-seeking policies is strengthened by the insight that the benefit requirement does not require everyone to win simultaneously; the test evaluates effects over a whole set of applications (see Section II). Over time, a widespread system of rent-seeking leads to institutional sclerosis, which creates a downward spiral where, in the long term, everyone loses. If we broaden the temporal window, those who are doing relatively well in what is essentially a negative-sum game also benefit from the move to a positive-sum game. This same example also shows that the transition to a profit-seeking economy deals with an assurance problem. Once the Tax Reform Act was in place, the fiscal exemptions and targeted deduction rules gradually came back—and the widely celebrated tax reform was quickly undone. For our subject, this means that current rent-seekers might need some assurance that, once they forfeit their rents, others will not take their spot. The legal instrument to meet this worry is a constitution: by placing the reform at the constitutional level, we render it subject to a super-majority, assuring that the reform will remain relatively stable.[76]

The second, subsidiary response goes back to the foundations of the benefit principle as expressed in Section II. The benefit principle selects outcomes that are in the self-interest of individuals—hence, that reflect their hypothetical choice. As we mentioned there, because of the object of choice, it turns out to be difficult to precisely predict individuals' identified interests. When confronted with choosing fundamental institutions that have a general and quasi-permanent application, we are relatively uncertain about individuals' future position under the different choice options and, thus, of the personal effect of various alternatives.[77] While we are screening for the rules that align with the individual's interests, we are behind a "veil of uncertainty" when it comes to the effect on specific individuals. In the model of choice that the benefit principle operationalizes, current rent-seekers are thus not perfectly aware of their future position under the different options, and hence they prefer rules that are broadly acceptable and that yield benefits for all positions.[78] And so, to answer the question above: the benefit

[75] Alvin Rabushka, "The Tax Reform Act of 1986: Concentrated Costs, Diffuse Benefits—An Inversion of Public Choice," *Contemporary Economic Policy* 6, no. 4 (1988): 62, https://doi.org/10.1111/j.1465-7287.1988.tb00546.x.

[76] For a similar point, see Charles Delmotte, "Simple Rules and the Political Economy of Income Taxation: The Strengths of a Uniform Expense Rule," *European Journal of Law and Economics* (2021).

[77] Brennan and Buchanan, "The Reason of Rules: Constitutional Political Economy," 27.

[78] Buchanan and Congleton, *Politics by Principle*, 127.

principle doesn't focus on particular groups but favors institutions beneficial to a broad range of positions alongside generalized criteria of efficiency.[79] This means that rent-seekers will prefer institutions that promote reciprocal benefits rather than rules that allow gains through extracting means from others or from limiting competition.[80]

VI. Inequality, Good, and Bad: The Benefit Principle versus Egalitarianism

So, benefit theorists and egalitarians are provoked by the same economic phenomenon: growing inequality. And they both would like to do away with a big chunk of the current inequality. Yet, the specific normative window generated by the benefit principle is different from what we find with egalitarian positions. To clarify these differences and pave the way for further normative debate, I will end this essay by describing the differences between some generalized version of egalitarianism and the response of this essay, which is animated by the benefit principle.

First, benefit theorists take a *middle stance* between egalitarianism that eschews economic inequality and accumulation of capital and "everyday libertarianism," an invention of Murphy and Nagel to characterize the view that all unequal returns that capitalist societies produce are justified.[81] We must remind egalitarians like O'Neill and Williamson, Robeyns, Piketty, and Nam that not all profits are immoral: for benefit theorists, some forms of profit are morally justified and laudable because they stem from exchanges that bestow benefits on others. To the everyday libertarian, we must maintain that not all profits and, thus, inequalities are justified because rent-seeking is endemic in our current mixed economies. Various forms of economic profits result from manipulating the rules and extracting rather than creating wealth. Inequality is something like cholesterol—there are good and bad types.

Second, benefit theorists take a *qualitative stance* when it comes to the justifiability of income and wealth in our societies. This means that it is the type of economic exchanges and the nature of the underlying institutional framework that determines whether distributions of income and wealth are morally acceptable. If, within markets, income largely occurs as the idealized type depicted in Section III, income is a reward for creating value for others. If accounting revenue emerges against a legal background of rent-seeking, with significant roles for, among other things, subsidies, patent-trolling, overregulation, major tax breaks, and licensing, then we know that the benefit principle has been satisfied, only to a lesser degree. This position is particularly different from the egalitarian standpoints

[79] Ibid., 6-7; Delmotte, "Tax Uniformity as a Requirement of Justice," 76.

[80] Delmotte, "Tax Uniformity as a Requirement of Justice"; Buchanan and Congleton, *Politics by Principle*, 127.

[81] Murphy and Nagel, *The Myth of Ownership.*

mentioned in the introduction, which come up with frameworks to limit disparities of income and wealth altogether—albeit for different reasons and to a different degree. For economists such as Piketty, and limitarians or property-owning democrats, the acceptability of income boils down to a *quantitative* matter: we have an interest in diminishing disparities in income and wealth; hence, acceptability depends on the height of income or wealth.[82] According to such a view, someone earning $4,000 per month dealing with government-backed mortgages is acceptable, while another person earning $20,000 per month dealing with the same financial products is unacceptable. A benefit-theoretic perspective dismisses such a numerical focus as normatively misguided. I claim that the height of income is arbitrary from a moral point of view. Rent-seeking does not suddenly become acceptable when it generates low income, and profit-seeking does not automatically qualify as harmful when the amount gained is high. A perspective that depicts society as a venture for cooperation focuses on whether we make each other better off, which depends on the underlying rules of the market.

The nuanced perspective that distinguishes rents from profits generates another difference between egalitarian positions and the perspective generated by the benefit principle. Much philosophical scholarship attributes inequality to the invisible hand of relatively free and unregulated markets. The assumption that markets cause disparities and thus government intervention is the path to more equal distributions was solidified by Piketty, who represented inequality as an internal law of capitalism. Literature in political economy suggests that it is not because distributions of income and wealth occur "in" markets that they are only or primarily driven "by" markets. We live in mixed economies, and rents are often the (by-)product of fiscal and regulatory policies. Political economy teaches us that at least some rent-seeking can be traced back to governmental discretion and policymakers' tendency to regulate and subsidize the market—which hosts opportunities for affluent players to rig the market and secure rents. This means benefit theorists employ a different *attributional framework* than many other normative positions: government intervention is not necessarily the cure for, but rather is often the very cause of, income that does not satisfy the benefit principle. Powerful economic players increasingly realize

[82] The quantitative stance on justice bears a resemblance to what Nozick called "end-state" principles. When analyzing specific distributions of income, there is ideal distribution with certain arithmetical features, and distributions that align the closest with this arithmetical feature—say, a maximum ceiling, or equality in outcome—are preferable. The qualitative stance that I defend in this essay has some similarity to the historical-entitlement principle: we should look at *how* distributions came about. However, while Nozick had a pure historical account, with three types of acquisitions that render income permissible (initial acquisition, just transfer, and just rectification), this essay defends an institutional account: the permissibility of income earned relies on more than how titles were transferred, as the *broader* institutional structure (including rules on taxation, regulation, and so forth) wherein income was earned must promote mutual gain. See Robert Nozick, *Anarchy State and Utopia* (New York: Basic Books, 1974), 199–204.

accounting revenue through "the political track"—that is, through subsidies, or the institution of rules that impose extra burdens on both existing and potential competitors.

VII. Conclusion

Various egalitarian positions, such as limitarianism and property-owning democracy, aim to diminish wealth inequality and propose new taxes and higher rates. Such positions translate to a *quantitative* stance on the justifiability of market outcomes: the size of one's income or wealth determines its moral justifiability. This essay blends insights from political economy with political philosophy to integrate a new viewpoint into contemporary distributive justice. The "benefit principle" for public policy justifies institutions that create mutual gain and rules out those whereby some thrive at the expense of others. The benefit principle grounds a *qualitative* stance on inequality: the acceptability of distributions of income or wealth depends on the nature of the underlying set of rules. Market outcomes, and thus inequality, are largely acceptable when they stem from an institutional framework that promotes mutually beneficial gains. *A contrario*, the benefit principle opposes inequality when it arises within a broader legal structure that dominantly allows for "rents," wherein individuals or corporations realize profits without generating any market return. These forms of rents are typically regressive, meaning they benefit incumbents and disadvantage smaller economic players and consumers; thus, they exacerbate inequality.

The benefit theory opposes current distributions of income and wealth yet doesn't aim to cut back all high incomes or estates. Higher tax rates and new taxes are not sufficiently refined measures: reform needs to be oriented at the institutional origins of rent-seeking, rather than at a consequential phenomenon in which it plays an important role—inequality. The benefit theory calls for a predistributive policy response that aims to redesign market institutions to promote mutually beneficial market exchanges. Under these policies, the remaining inequalities will stem from a system whereby profits for one person arise within exchanges that also create value for another person. Even if the predistributive policies will dampen current rents, this does not need to make losers out of current rent-seekers. The overall dynamic of a society oriented toward mutual gain generates diffuse benefits, and rent-seekers will capture a multitude of new gains, first in their capacity as consumers and citizens, and eventually as producers, which largely offsets their losses of rents.

Law: Michigan State University College of Law