Equity, fairness and justice

Key concepts for water policy
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Each listed author has made a significant intellectual contribution to the work, as follows: *Nick Barry*[1] conception and design, contribution of knowledge, report drafting; *Rod Marsh*[2], conception and design, contribution of knowledge, report drafting, review.

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Watertrust Australia acknowledges the Traditional Owners of land, sea and waters across Australia and their continuing connection to culture and Country. We pay our respects to Elders past and present.

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Summary

Fairness, justice and equality are central concepts in modern democracies, and are often invoked when conflicts over state action arise. Water politics is no exception.

Water policy in democratic societies frequently involves debate over fairness, justice, and equity. Different stakeholders, from environmental groups to agricultural businesses, may interpret these values in conflicting ways, using them to support diverse, sometimes opposing, policy goals. The ambiguity surrounding these terms complicates policy-making, as stakeholders invoke them both genuinely and as strategic tools to advance particular interests, which can mask the causes of disagreement, exaggerate the degree of polarisation, and hinder effective resolution.

Common ideas about fairness, equity and justice focus on "giving people what is due to them, and not giving them what is not due to them" (Swift, 2019). When linked to state action and decision-making like water policy, many debates about policy focus on what is due and to whom.

John Rawls proposes that "justice is the first virtue of social institutions" (Rawls 1971:3). Following Rawls, the most important moral consideration for policy makers is to give people what is due to them. However, identifying what is due and to whom is often one of the "wicked" problems of water policy making. At its most basic level, equity implies implies treating similar cases alike, but in water policy, this can mean balancing standard principles with consideration of distinct regional needs and capacities. More recent accounts of *social* justice focus on the design of the social and economic institutions that shape people's lives (Swift, 2019; Rawls 1971). Policy makers often need to balance non-arbitrary consistency with situational adaptations, considering factors such as economic need, access to institutions, or environmental vulnerability in water allocation. However, policy makers also need to deal with perceptions of equity, fairness and justice because where policies aim to provide people (and nature) with their due and balance the distribution of benefits and burdens, they usually deploy the coercive power of the state to ensure outcomes that might not occur otherwise (Swift, 2019). Where some people believe policy to be wrong, strong perceptions of policy unfairness can make implementation difficult or impossible.

Theories of distributive justice – such as equality of outcome, equality of opportunity, sufficientarian, and luck egalitarianism – offer distinct perspectives on fair resource allocation.

Equality of outcome focuses on providing each person with an equal share of resources, often advocating for direct redistribution to achieve parity. In contrast, equality of opportunity centers on removing structural barriers, ensuring that all individuals have the chance to access resources fairly, while accepting differences based on merit or effort. Luck egalitarianism, a more radical view, argues that inequalities due to uncontrollable factors – such as drought – are unjust and require corrective measures and a far more consequential role for the state. Sufficientarian approaches hold that what ultimately matters is not people's relative share of resources, but instead, that everyone has sufficient resources to live a decent life. Where the threshold of sufficiency is set depends on the society in question – and on the theorist.

Summary

Relational egalitarianism and pluralistic justice shift focus from material distribution to social relations and context-specific fairness principles.

Relational egalitarians prioritise equal social relations, aiming to reduce social hierarchies and promote equal status among citizens. This perspective stresses that institutions should respect citizens equally, not merely distribute resources equitably. Pluralistic justice, as advanced by theorists like Michael Walzer, suggests that fairness principles vary across communities and goods, where justice should reflect local values. In the Murray-Darling Basin, a pluralistic approach would consider diverse regional needs and cultural values, fostering a complex set of policies where various forms of justice apply based on community context, not a single distributive model. Such approaches could guide policies to honour unique regional perspectives without imposing a one-size-fits-all solution.

Political equality, rooted in democratic principles, is essential for legitimate decision-making. However, disproportionate influence from powerful groups undermines fairness.

Political equality implies that all citizens should have an equal voice in shaping policies. Yet, this principle is often compromised when powerful entities – such as well-organised agricultural or environmental interests – wield excessive influence. In the Murray-Darling Basin ('the Basin'), this has led to perceptions that water policy disproportionately reflects the interests of, depending on the partisan perspective, large irrigators over those of smaller communities and environmental groups or urban environmentalists over farmers and regional communities. Such imbalances erode public trust, compromising democratic legitimacy. Addressing these concerns requires balancing influence among stakeholders to uphold political equality and enhance trust in water governance.

Political inequality in the Basin can prevent fair representation of diverse interests, favoring certain stakeholders over others. To address this, water policy frameworks need to ensure balanced representation across all interests, protecting against the monopolisation of influence by well-funded or organised groups. This balance is crucial for maintaining public trust and ensuring that policy decisions reflect the full spectrum of community interests.

Legitimacy in water policy depends on democratic decision-making processes perceived as fair by stakeholders and affected communities. While facts matter as much as values, politically motivated reasoning drives debate over what the empirical evidence shows and how it should be incorporated into policy processes.

Legitimate water policy decisions in the Basin require democratic processes that respect equality and autonomy. When policy decisions align with democratic values – like transparency, community inclusion, and equal consideration of stakeholder input – they foster cooperation and compliance. In practice, this means establishing participatory mechanisms and decision-making frameworks that reflect the community's diverse values and expectations. By focusing on legitimacy, policymakers can promote adherence to policies and foster sustainable water management outcomes, even in contexts of ongoing disagreement.

However, it is important to emphasise that political disagreements are rarely just a matter of competing values; they often reflect disagreement over facts as well. This is clearly evident in this project's parallel examination of how policies are framed by different stakeholders in debates over water policy in the basin (Hames and Marsh 2025) and the results of the Q-methodology study into perspectives on fairness in the Basin (Parry, et al. 2025). Although rigorous empirical evidence can usefully contribute to policy debates, the willingness and/or capacity of citizens to accurately interpret this evidence is often hindered by "politically motivated reasoning, epistemic injustice, and strategic manipulation of information by those in power" (Anderson 2020, p. 25). This problem is not unique to the Basin.

The diversity of communities in the Murray-Darling Basin requires acknowledging distinct views on fairness, informed by local identities, roles, and needs. The diversity of views on fairness held by Australians who do not live in the Murray-Darling Basin are also important because they shape the politics surrounding the management of water in the Basin.

Within the Basin, communities across states have different relationships with water resources, from agricultural and industrial uses to environmental conservation or First Nations' relationship with Country and economic development aspirations. Complex equality suggests that justice should vary across social spheres, as Walzer argued, based on the nature of each community's relationship to water. For example, communities with strong environmental ties may prioritise sustainability, while agricultural communities might focus on economic viability. Recognising these differences might allow for a tailored approach to fairness, aligning water policies with local needs and fostering more equitable satisfaction with resource allocation.

Fairer decision-making frameworks, seen as legitimate by key stakeholders, can contribute to helping shift conflict towards cooperation.

Disagreement over what constitutes fairness is inevitable given the varied needs and values in the Basin. A legitimate decision-making framework can provide a fair, transparent process, allowing stakeholders to accept policy outcomes even if they differ from individual preferences. This approach does not eliminate disputes but creates processes and institutions that key stakeholders perceive as just and reasonable. The goal of such decision-making processes is not to find consensus or alignment of different perspectives. Instead, it is to reach an outcome that participants view as legitimate and are willing to accept, even if it differs from their preferences. However, deep-seated disagreement over what justice requires is a common feature of politics. As Waldron (1999) points out, debates over justice and rights do not sit somehow outside of politics; rather they are constitutive of political disagreement.

Scott Moore describes river basin conflict as "a persistent state of competition over shared water resources, as manifested by legislative maneuvering, legal disputes, and rhetorical rivalry"; he defines cooperation as "managing shared water resources in terms of three criteria: collaboration, participation, and adaptability." (Moore, 2018, 11). Policy-making processes that include explicit consideration of fairness contribute to shifting conflict towards cooperation. When new conflicts appear, a history of fair policy-making processes can help bring parties to the table again to negotiate workable agreements.

Fairness, equity and justice: key concepts for water policy

Introduction

Fairness, justice and equity are central concepts in modern democracies, and are often invoked when conflicts over state action arise. Water politics is no exception to this. When the state intervenes to regulate the allocation of water, this frequently generates heated political conflict and debate, which is often couched in the language of fairness, justice and equity. These values also influence the decisions of policy makers, who claim to respect these values and build them into legislative frameworks. The parallel paper for this project *Water, law and concepts of equity* (Nelson et al. 2024) identified that the "precise meaning of equity-related concepts rarely receives legislative or policy elaboration, and often remains unclear."

The principal aim of this short paper is to provide some clarity by reviewing some key concepts of fairness, justice and equity. The paper also considers the implications that flow from the fact of disagreement over these values, shifting the focus onto the place of fairness and equality in discussions of democratic legitimacy. The paper then concludes by discussing how these concepts feature in the politics of water in the Murray-Darling Basin and the ways stakeholders understand these terms and issues.

This paper's review of some key concepts should be read in the context of the different and ambiguous ways key actors mobilise these ideas in political debates. This can complicate political disagreement because stakeholders can use the same word to mean different things (e.g. Swift 2019:5), which can obscure the underlying causes of disagreement. They can also use different terms to refer to what is essentially the same concept, leading to an exaggerated sense of the degree of polarisation that exists. At other times, language is used in a disingenuous way to attempt to mask blatant appeals to self-interest (Orwell 2013).

Fairness, Equity and Egalitarian Justice

The concept of justice is often defined as "the constant and perpetual will to render to each his due" (Emperor Justinian, cited in Miller 2001: 76-77, quotation at 76; see also Swift 2019: 15). This implies that justice is concerned with how we should treat people, and that this treatment should be non-arbitrary (i.e. consistent) and also proportionate. This is one of the reasons the terms equity and fairness are commonly invoked in discussions of justice. In its most basic sense, equity refers to the idea that "like cases should be treated alike". For example, if a dozen people engage in an activity (e.g. littering) that is punishable by a fine, then (other things being equal), equity requires that they should receive the same punishment and receive the same fine. It would be unjust for some to be fined and others to be let off. However, a key consideration in applying the concept of equity is to identify when apparently similar cases are sufficiently different to justify differential treatment. One example would be if the offenders have significantly different capacity to pay, which might constitute a non-arbitrary reason to make some pay less than others, or to avoid the fine altogether.

The concept of *social* justice is a more modern phenomenon, applying the idea of justice to the design of "the key social and economic institutions" that shape people's lives (Swift 2019: 11; Rawls 1971). Questions of social justice are normally taken to arise in the "circumstances of justice," i.e. a particular context where a number of background features are in place. The term originally comes from Hume, who argued in *A Treatise of Human Nature* that considerations of justice arise in conditions of scarcity (where resource constraints

mean that there are limits to the capacity of human beings to satisfy all their desires), and where it is possible to transfer goods between people (Hume 2000 [1739]; Miller 2013). More recently, Miller (1999: 5-6) has added to Hume's account that principles of social justice arise within a particular kind of political community – a "bounded society with a determinate membership" – where there are institutions in place (or that could be established) that shape the distribution of resources. There must also be an agent (such as the state) that is capable of establishing/reforming these institutions.

We might add a further consideration, namely, that the political community is at a sufficient level of economic development for everyone's most basic needs to be satisfied. If the community is facing a major threat to its survival, then meeting this threat arguably takes priority over considerations of justice and makes it difficult for the state to act to reform institutions. This idea is particularly relevant in debates over justice in the face of environmental challenges, particularly climate change. Some have suggested that because environmental challenges such as climate change represent an existential threat to human life, that the objective should be to do whatever is required to reduce emissions - questions of distributive justice simply do not arise.

However, when the circumstances of justice *do* obtain, political theorists have developed a variety of different accounts of what justice requires. The concept of equality plays a key role in many of these accounts. For a start, most mainstream political theorists (and politicians) would profess to be committed to the idea of equality in its most basic sense, i.e. that "all persons are equal" (e.g. Kymlicka 2002). This is the idea of moral equality – that each person has an equal moral status, so no one should be considered inherently more important than anyone else when making ethical and political decisions. This idea is built into most mainstream political ideologies, including contemporary forms of liberalism, socialism, libertarianism, and Green ideology (which in some versions extends equality beyond human beings).

From the outset, it is worth noting that one of the long-standing approaches to moral and political philosophy - utilitarianism - is also sometimes considered to embody a commitment to equality. Utilitarianism holds that we should seek to act in ways that maximise the aggregate level of utility. The idea of utility can be conceptualised in different ways, but the dominant approaches focus on conscious state/hedonistic utility (which understands utility as a positive conscious state), and preference satisfaction. There are two ways in which utilitarianism is sometimes said to embody a commitment to equality. First, utilitarianism treats individuals equally in that it "give[s] equal weight to each person's preferences" (Kymlicka 2002, p. 33). Second, it can also provide an argument for reducing levels of material inequality (Kymlicka 2002, pp. 40-41). This is because of diminishing marginal utility, which is the idea that the utility gain from a given increase in resources will decline, as the resource holdings of the recipient increase. This means, for example, that a high-income earner is likely to gain less utility from a $10 000 windfall than someone earning the minimum wage. This provides a justification for redistributing income and wealth resources to those who have less (although the extent of the redistribution that should occur will also depend on other factors, including the broader effects of the redistribution).

However, when it is used in discussions of distributive justice, those who think that equality is an important value usually mean something more than the idea of equal moral status, giving equal weight to preferences, or the instrumental commitment to redistribution that is reflected in the idea of diminishing marginal utility. Egalitarians have many different views on exactly what it is that should be equalised or, as Sen (1995) famously put it, they have different answers to the question, "equality of what?" Since Sen posed this question, a vast literature has emerged in response, developing systematic and increasingly fine-grained accounts of egalitarian justice, often anchored (both explicitly and implicitly) in the notion of fairness. This work is primarily written by political philosophers (e.g. Arneson 1989; Cohen 1989; Lippert-Rasmussen 2015; Stemplowska 2017), but also draws on the work of economists (e.g. Roemer 1996) and legal theorists (e.g. Rakowski 1991; Macleod 1998; Dworkin 2000, 2011).

Contemporary egalitarian theory is concerned with a number of different debates. The central debate of interest for our purposes is over the *pattern* of distribution (Wolff and de-Shalit 2007). In other words, what pattern of distribution of social resources should egalitarians seek in a just society? The major dispute here is between those who focus on equality of outcome and those who focus on equality of opportunity. In other words, should the focus be on ensuring that everyone has an equal share of social resources, or equal opportunity to achieve an equal share of social resources? The latter view can itself be understood in different

ways (e.g. Mason 2006; Schouten 2012; Macfarlane 2018). For some, equality of opportunity simply means that there should not be any discrimination when filling positions of privilege (e.g. high status jobs, educational opportunities), so the best qualified person gets the position. This is what Rawls (1971) refers to as "careers open to talents". For others, equality of opportunity requires more than this. It requires, in Rawls's (1971, p. 302) terms, fair equality of opportunity, which means that individuals "with the same talents and motivations should have the same chance of success". One implication of this is that people's opportunities in life should not vary based on differences in their family background (e.g. the quality of education that their parents are able to afford), although unequal opportunities reflecting differences in their natural abilities are acceptable.

At first glance, equality of outcome seems to be a more straightforward notion. It refers to the idea that all individuals should have an equal share of social resources. However, even here, there are further complications. As Sen (1995, pp. 325-26) has pointed out, individuals vary in their capacity to convert material resources into well-being. For example, other things being equal, an individual who needs expensive medical treatment is likely to need more resources to achieve the same level as welfare as an individual who does not need such treatment, because the former needs to devote a significant part of their income to meeting these medical costs. This means that equality of outcome in one dimension (e.g. an equal distribution of income) can produce an unequal outcome in another dimension (in terms of quality of life). The distribution might also be described as inequitable or unfair, even though it is (in one sense) equal, so a commitment to fairness and equity requires that we redistribute these social resources (Raphael 1946, p. 125-26).[1]

In between equality of opportunity and equality of outcome is a third approach, known as luck egalitarianism (e.g. Dworkin 2000; Cohen 1989; Arneson 1989; Barry 2006; Lippert-Rasmussen 2016). Luck egalitarianism holds that inequalities in outcome are unjust when they result from factors that are beyond a person's control (that is, when they are the result of brute luck), but just if they result from decisions for which it is reasonable to hold someone responsible (e.g. they knowingly decide to invest a large amount of money in a risky investment, Voigt 2007:389). Luck egalitarianism goes further than the idea of fair equality of opportunity because individuals are not responsible for the level of "natural talent" they have, which means that inequalities resulting from differences in natural talent are unjust. Luck egalitarianism is a radical notion of equality, but it also anchored in the idea of fairness (Stemplowksa 2017) - arising from the idea that "it is bad - unjust and unfair - for some to be worse off than others through no fault or choice of their own" (Temkin 1993). The corollary, though, is that it can be fair for some to end up with more than others because they have elected to take a risk that pays off, or have made sacrifices for the sake of a future gain. This idea sounds radical, but in a sense, it is a further development of the idea of fairness that underpin the commitment to equality of opportunity, and the idea of protection against risk that underpins the welfare state. Luck egalitarianism, though, implies a more far-reaching role for the state. Because brute luck is rife, a radical redistribution of social resources, particularly, income and wealth, is required to reduce levels of material inequality, along with reforms to the health and education systems, to reduce health inequalities and improve social mobility.

It also important to note that ideas of fairness and equality have been extended to political communities as well as individuals. This is particularly important in an Australian context. As Brett (2011: 7) puts it, "there is… [an] historically important strand of Australian egalitarianism that is focused on regional or spatial equity". This is reflected in Australia's long-standing approach to horizontal fiscal equalisation, which aims to reduce differences in the fiscal capacity of states across the country with the aim of ensuring that there are not major differences in the access to government services that citizens in different states enjoy (Hueglin and Fenna 2006: 52-53; Miragliotta, Errington and Barry 2013: 55-56). This has been dubbed "fair go federalism" (Gramlich, cited in Galligan 1995: 234). However, these ideas of fairness do not only arise in the context of inter-state relations; they also apply to the relationship between different political communities within and across different states, most notably in the case of rural and urban communities. In fact, Brett (2011: 18-19) argues that this idea was reflected in a sixth pillar of the Australian Settlement: the idea that "there was

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[1]This is linked to a second part of the "equality of what?" debate, which is over the conceptualisation of "advantage", i.e. the appropriate metric to use for engaging in inter-personal comparisons of well-being (e.g. a resource-based measure such as income and wealth, or a welfarist measure which focuses on some form of utility, whether this is understood in terms of preference satisfaction, a conscious state, or some kind of objective measure). Sen has also proposed the capabilities approach which is having the freedom to achieve human functionings (which are "beings and doings"). This theoretical debate has fed into debates into other disciplines, such as development economics. At this stage, it does not seem to be a major issue in contemporary water politics, so it is not discussed here in detail.

a trade-off between the country and the city, brokered and administered by government, to compensate country people for the costs of remoteness and sparse settlement, to give them a 'fair share' of Australia's resources".

Priority, Sufficiency and Levelling Down

Theories of egalitarianism, particularly outcome equality and luck egalitarianism, have also been strongly criticised for leading to "levelling down" (Crisp 2003; for further discussion see also Raz 1986; Temkin 1993; Parfit 2002). That is, critics argue that they are misguided because they reflect a rigid and extreme understanding of justice that produces absurd conclusions. If outcome inequalities are inherently unfair, and justice requires that we eliminate unfair inequalities, then this means that justice would endorse a society where everyone is equal but living in abject poverty rather than a society where there is inequality but the population is better off overall (e.g. if 20% of the population are poor and the remaining 80% of the population live in material comfort). In this way, egalitarian theories could endorse "levelling down" because they support lowering the material condition of the well-off, so it is equal to that of the impoverished, without anyone's condition actually improving. Critics of egalitarianism argue that this is an absurd conclusion to reach and that these theories of egalitarianism – and the whole idea that justice should be grounded in the commitment to a far-reaching notion of fairness – is fundamentally flawed.

In the face of this objection, some egalitarians continue to maintain their commitment to a thorough-going notion of equality, but they argue that equality is not the only value that matters, and that a commitment to other considerations (e.g. maximising overall levels of well-being) should be traded off against the commitment to equality (e.g. Temkin 1993; Cohen 2008). However, it has also prompted some egalitarians (e.g. Arneson 2000; Parfit 2002) to endorse the priority view rather than egalitarianism. The priority view is an egalitarian modification of the utilitarian approach. It holds that when we are making judgements about distributive justice, we should give priority to the worst off, which means giving greater moral weight to benefits that flow to those who have less. This means, for example, that a 10% increase in the well-being of someone who is very badly-off is of greater moral value than a 10% increase in the well-being of someone who is very well-off. Depending on the weightings involved (i.e. how much priority is given to the worse off), it may also mean that giving a 10% increase to someone very badly off has more value than a 40% increase to someone very well off. In practice, this is likely to require an expansion of the welfare state to improve assistance to the least advantaged, along with a significant redistribution of income and wealth.

The sufficientarian approach is another quasi-egalitarian theory that seems to avoid the problem of levelling down (Crisp 2003). It holds that what ultimately matters is not people's relative share of resources, but instead, that everyone has sufficient resources to live a decent life. Where the threshold of sufficiency is set is going to vary depending on the society in question – and on the theorist. For some, it is about being able to satisfy the basic necessities that are needed for material survival. For others, it is about having enough to live a comfortable life relative to the standards of a particular community. This leads to further questions over how this standard is determined.

There have also been attempts to develop egalitarian theories of justice that systematically combine elements of the different approaches outlined above. The most influential example was developed by John Rawls (1971), who is widely regarded as the most influential liberal political philosopher in over a century. The concept of fairness is at the core of Rawls's theory, which is known as "justice as fairness". Rawls argued that when we are trying to work out which principles should govern the institutional design of a just society, we should engage in a thought experiment, known as the "original position". In the original position, we are to imagine we are unaware of the key aspects of our personality and background that give us advantages and disadvantages in life. For example, we don't know whether we are born into a wealthy family or a poor family, we don't know our race or gender, or our natural abilities. Rawls argues that we should imagine what principles of justice we would choose if we were motivated by self-interest, but behind this "veil of ignorance". He argues that although we would choose in a self-interested way, the resulting principles would be fair because we don't know the key features of our background and personality that might tempt us to select principles that are skewed to our advantage. Rawls thinks the principles we would choose in this thought

experiment are a principle of equal basic liberties, which means that the rights and liberties of all citizens would be guaranteed; a principle of fair equality of opportunity (which is outlined above); and the difference principle, which means that "social and economic inequalities are to be arranged so that they are... to the greatest benefit of the least advantaged" (Rawls 1971, p. 302). The difference principle means that inequality is the default position, but that departures from it can be justified if it improves the position of the worst off (this is designed in part to prevent levelling down).

Alternative Approaches

Although the approaches outlined above all differ in important ways, they all:

1. share a focus on the distribution of material resources

2. reflect some kind of commitment to equality and fairness

3. are usually presented as free-standing principles or theories of distributive justice that can be applied in a variety of different social contexts (i.e. they are not tied to a particular society or culture).

However, there are a variety of other different theories that have been developed that reject at least one of these three elements.

Relational egalitarianism is relatively new approach to equality in the contemporary literature, although it builds on ideas that have a longer historical lineage (Nath 2020:2). In its contemporary form, it rose in part in response to the focus on the highly abstract and materialist theories of equality that had come to dominate the literature, particularly luck egalitarianism. Relational egalitarians argue that these theories focus too much on the distribution of material goods, which obscures the true purpose of egalitarianism, which is to dismantle social hierarchies and pursue equal social relations (Anderson 1999; Scheffler 2003). What this means is often rather ambiguous, but as relational egalitarians have developed their approach, they have emphasised that it involves the idea that all citizens should have an equal standing or status, and that this is reflected in the design of social and political institutions. There should also be pluralistic grounds for awarding social esteem (above this threshold of equal citizenship) (Anderson 2012). Distributive inequalities are morally objectionable, but only to the extent that they corrode these kinds of equal social relations.

Related to this are pluralistic theories of justice, which hold that different principles of distribution apply to different kinds of goods. On Walzer's (1983) communitarian account, justice is not about identifying "universal laws," but rather, it should reflect (and vary) depending on the values of a particular community. As Miller (1995: 2) summarises, "we must see justice as the creation of a particular political community at a particular time and the account we give must be given from within such a community". We identify the principles of justice that should guide the distribution of a social good (such as education, health, or public honours), by reflecting on the meaning of this good to the community in question. A further aim is to bring about a situation of "complex equality". We should try to distribute social goods throughout the different spheres of society such that those who have a larger share of one social good, do not enjoy larger shares of all other social goods. As Walzer (1983) explains, this "means that no citizen's standing in one sphere or with one regard to one social good can be undercut by his standing in some other sphere, with regard to some other good". For example, an elected politician enjoys political power over other citizens, but they should not then be entitled to receive better access to healthcare than everyone else.

One of the limitations of Walzer's approach is that it struggles to deal with genuine disagreements within the community over distributive justice. Individuals might agree on the meaning of a particular good such as education, but nonetheless have different views on how it should be distributed (Miller 1999: 25). In light of this problem, Miller puts forward an alternative account of pluralistic justice that grounds the distribution of social goods in different "modes of human relationship". As Miller (1999: 25) says, "[h]uman beings can stand in different kinds of relationship to one another, and we can best understand which demands of justice someone can make of us by looking first at the particular nature of our relationship". In a "solidaristic community," such as a family, members have a shared identity and ethos, and within such a community,

needs-based principles of justice should apply. This means that "each member is expected to contribute to reliving the needs of others in proportion to ability, the extent of liability depending upon how close the ties of community are in each case". In contrast, in an "instrumental association," such as the kinds of economic relationships that arise with when individuals engage in market transactions, desert-based principles of justice apply. In this context, "[e]ach person comes to the association as a free agent with a set of skills and talents that he [sic] deploys to advance its goals. Justice is done when he receives back by way of reward an equivalent to the contribution he makes". Lastly, when the relationship in question is one of citizenship, the relevant principle of justice is one of equal status. This overlaps with the kind of relational egalitarianism approach outlined above, and it means that "each person enjoys the same set of liberties and rights, rights to personal protection, political participation, and the various services that the political community provides for its members" (Miller 1999: 26–30, quotations at 28, 30).

In contrast to the preceding theories, libertarians tend to reject the whole concept of distributive justice, regarding it as a category mistake (Hayek 1960). They criticise egalitarians for arguing over the distribution of social resources without taking into account the fact that these resources are generally owned by individuals who have a right to own them (at least if they have been justly acquired) (Nozick 1974). They argue that property ownership is the primary value, so a society is just if all property has been justly obtained – whether this is through initial acquisition or voluntary exchange. It does not matter whether this produces a completely equal or a highly unequal distribution of social resources. Rather, what matters is how the distribution of resources has come about, not whether it is equal or unequal. For the government to forcibly redistribute justly acquired property through taxation or some form of compulsory acquisition, is a violation of property rights. As Nozick famously argued, "[t]axation of earnings from labor is on a par with forced labor" (Nozick 1974, p. 169). Of course, a major problem with the libertarian position is that a great deal depends on how property was acquired in the first place. Throughout human history, the land and natural resources used to generate property was often originally seized through violence, not free market exchange, so some argue that the logic of the libertarian position points towards the need for a radical equalisation of social resources (e.g. Swift), before we can let the outcomes of market exchanges fall where they lie.

Mainstream theoretical debates over justice have also been slow to engage with the issues of racial inequality and colonialism. For example, Charles Mills (2016: 58) has highlighted the failure of the voluminous Rawlsian literature to deal directly with these issues, partly because it operates at the level of ideal theory and assumes that racial equality is in place. This differs radically from the reality, where deep racial inequality and oppression are pervasive. Although the situation has begun to change and mainstream theorists of justice (including those operating within a Rawlsian framework) have begun to engage more with these issues (e.g. Mills 2015; Shelby 2016; Shiffrin 2004), there is still much work to be done. This is particularly important in a settler-colonial country such as Australia, where critical questions arise over what justice means for First Nations people whose land has been violently seized and who have been subjected to genocide and racial violence.

Although a full treatment of existing work on First Nations and theories of justice is beyond the scope of this report, we can distinguish between two broad approaches to these questions (Watene 2016). The first seeks to extend mainstream theories of justice (i.e. the sorts of theories outlined above) to First Nations' claims, while the second seeks to centre a First Nations perspective, which can lead to major revisions to, or the replacement of, mainstream frameworks for thinking about justice. An example of the first approach is to focus on the way in which First Nations people today are disadvantaged by the legacy of past and ongoing violations of their basic rights and freedoms, which means they are disadvantaged relative to other groups. A commitment to the idea of equality of opportunity would therefore require measures to off-set these disadvantages, potentially including policies such as affirmative action.

However, while they are likely to be supportive of these measures, proponents of the second approach argue that simply extending mainstream approaches to justice is not enough. Rather, what justice requires is "a cross-cultural conversation that directly includes the voices of indigenous peoples" (Watene 2016: 138). The diversity of these perspectives means that many different ways of understanding justice could result. As examples, though, Watene (2016: 138) points out that "Indigenous peoples often speak of justice in terms of healing", which involves public recognition of the history of colonisation and racial oppression, and "processes of healing (treaty claims, grievances, apologies, reconciliation processes) [which] open up space for indigenous communities to remember, face, and begin to overcome histories of grave injustice and great

loss of hope". This approach also means engaging with Indigenous knowledge, which can have important implications for how we think about justice. For example, Watene (2016: 144) argues that Māori worldviews ground an understanding of justice with a broad scope that "includes future generations, non-human animals, and the natural world from the start", along with the idea that "we enhance our own lives by enhancing the lives of others". In the Australian context, the concept of Country is crucial to First Nations cultures, and one that has important implications for political thought, particularly ideas of autonomy and the self (e.g. Brigg and Graham 2021a), and the relationship between people and the land (e.g. Brigg and Graham 2021b).

Democratic Legitimacy and the Fact of Disagreement

The preceding sections of the report highlight some of the major ways in which concepts of fairness, justice and equality are understood in the literature. This discussion shows that there is a wide array of theories that policy makers can draw on if they wish to bring greater clarity to existing laws and policies, which frequently invoke these ideas in ambiguous and ill-defined ways (Nelson et al. 2024). However, the diversity of ways in which these concepts can be understood also points to a problem – when stakeholders in the politics of water allocation invoke fairness, justice and equality in public debates over water allocation, they are likely to be operating with very different understandings of what they mean. In other words, they may agree that these values are important but disagree over what they mean, even at the abstract level.

A further complication is that political disagreements are rarely just a matter of competing values or competing understandings of the same set of values; they often reflect disagreement over facts as well. In the context of debates over distribution, for example, supporters and opponents of egalitarianism will often disagree over the likely economic consequences of greater levels of redistribution, not just the question of whether economic inequality is unjust. As Anderson (2020, p. 25) has recently argued, "[d]isagreements over the justice of existing practices rest on empirical claims about how these practices work, the fitness of individuals for the moral responsibilities assigned to them, their consequences for the welfare of participants, the merits of alternatives, and so forth". Although rigorous empirical evidence often exists that could help resolve these public disagreements, the willingness and/or capacity of citizens to accurately interpret this evidence is often hindered by "politically motivated reasoning, epistemic injustice, and strategic manipulation of information by those in power" (Anderson 2020, p. 25). Similarly in the context of the Basin, parties are likely to disagree over how well the existing approach is working in practice, what the causes of these problems are, and what revisions to the status quo would most effectively address them. These are empirical disagreements, not just disagreements over values.

These problem are not unique to the Basin. In fact, deep-seated normative and empirical disagreements over what justice requires are a common feature of politics. Debates over justice and rights do not sit somehow outside of politics; rather they are constitutive of political disagreement (Waldron, 1999). Given the fact of deep-seated disagreement over facts and values, this means that we need political decision-making processes and institutions that enjoy widespread support to settle these disputes and determine how to proceed. As Waldron puts it (2016: 5):

> "[I]nstitutions are massively important. Exactly because we disagree in our ethical and political aims, we need to inquire into the structures that are to house and refine our disputes and the processes that are to regulate the way we resolve them. I mean the processes by which we (in our millions) resolve disagreements over disparate aims that we severally regard as fundamentally important – without denigrating into fighting driven either by self-interest or worse still by the militias of self-righteousness".

What is also crucial is that these decision-making institutions and processes have legitimacy. Legitimacy essentially means "rightful rule" (Heywood 2004). In this context, it refers to the use of a "rightful" decision-making process to resolve moral and political disagreements. This can be understood in a *descriptive* sense

– referring to whether people in a particular community believe a process is legitimate; and in a *normative* sense – referring "to some benchmark of acceptability or justification of political power or authority", which is often linked to a particular theory of legitimacy (Peter 2017). To see the difference, a decision made by a hereditary ruler (e.g. a King) might be seen as legitimate (in the descriptive sense) by aristocrats in 17th century Europe, but illegitimate (in the theoretical sense) according to a modern theory of legitimacy.

Theories of legitimacy tend to shift the focus onto institutions and processes rather than outcomes. For example, the legitimacy of a law does not depend on whether its substantive provisions are just, but rather, on whether it has resulted from a just process (Waldron 2016). For most modern theorists, this entails (at a minimum) a democratic process, but beyond this, there is disagreement over what kind of democracy produces legitimate laws and policies, and why democracy should be considered legitimate. Mansbridge (2014: 11) identifies "a constellation of ideals" that democracy is supposed to embody (albeit imperfectly), and which explain the legitimacy of democratic decision-making processes. These are:

> "republican liberty… [which means 'autonomy or self-rule'] 'liberal' liberty (by which I mean the ideal of non-interference), a form of community grounded in equal respect, and various forms of equality based, among other things, on human dignity and formal justice. These ideals derive from human experience, have evolved over time, and resonate among the marginalised as well as the powerful. They anchor the legitimacy of democratic systems".

Thus, although democratic government is generally regarded as a precondition for legitimacy, this is because democracy embodies (albeit imperfectly) a variety of different ideals and values, and this is why it generally attracts people's support.

It is important to emphasise that these questions of legitimacy are of more than theoretical interest. Legitimacy is also important for practical reasons, particularly when it comes to environmental policy and the politics of water. Mansbridge has pointed out that many issues in politics and public policy involve collective action problems, and these problems often require state coercion for an effective resolution. However, state coercion is likely to be more effective when it is viewed as legitimate. As Mansbridge (2014: 11) points out, "[m]any studies have shown that people are more likely to obey a law they consider legitimate. The more legitimate they think the coercion is, the less often sanctions need to be applied. Thus, the best coercion is legitimate coercion. Less legitimate coercion throws sand in the cogs, the system begins to grind more slowly and less well, and the product becomes more expensive - sometimes too expensive to compete [sic.]".

Political Inequality

In modern democracies, political equality is often considered to be another key component of legitimate decision-making. However, this idea can be understood in different ways. On some accounts (e.g. Waldron 1999), the key idea is that disagreements should be resolved through political processes that reflect the equal moral standing of all citizens. He argues that legislative bodies that are chosen through free and fair elections (including full suffrage and equally weighted votes for all citizens), meet this requirement because each citizen has an equal say in determining who is elected to the legislature (Waldron 2016). Furthermore, once the legislature is elected, it is the view of the majority of elected representatives that should win out when deciding whether legislation should be approved. This is because majority decision-making reflects a commitment to fairness/equality. As Waldron argues, it is,

> "[b]etter than any other rule… [it] is neutral between the contested outcomes, treats participants equally, and gives each expressed opinion the greatest weight compatible with giving equal weight to all opinions. When we disagree about the desired outcome, when we do not want to bias the matter up front one way or another, and when each of the relevant participants has a moral claim to be treated as an equal in the process, then [majority decision-making] - or something like it - is the principle to use" (Waldron 2016: 227).

Provided certain background conditions are satisfied, this commitment to majority decision-making by democratically elected institutions means that certain counter-majoritarian mechanisms such as rights-based judicial review (which allow courts to strike down legislation that it deems to be in conflict with a constitutionally-entrenched bill of rights) should be rejected.

While supporting the claim that decision-making procedures should respect the equal standing of citizens, Ronald Dworkin developed this idea in a different direction. He pointed out that an individual citizen's right to vote leaves them with an extremely limited capacity to affect the decisions of the legislature. As he puts it, "[p]eople in a large community whose political impact is actually or close to equal have no more power over their own governance, just as individuals, than they would if priests took political decisions by reading entrails. If the political impact of an ordinary citizen with an equal vote is infinitesimal, why should it matter whether the infinitesimal impact each has is equally infinitesimal?" (Dworkin 2011: 390). Instead of equating political equality with majoritarian forms of representative democracy, he instead endorses the idea "that no adult citizen's impact… [should be] less than that of any other citizen for reasons that compromise his dignity – reasons that treat his life as of less concern or his opinions as less worthy of respect" (Dworkin 2011: 388). In Dworkin's view, this is consistent with endorsing a counter-majoritarian mechanism such as judicial review, because judicial review upholds the dignity of citizens by protecting fundamental rights.

Another important area of debate is over the extent to which political communities within the state should be empowered to govern themselves. The clearest institutional instantiation of a system that empowers sub-national communities is a federal system of government, where sovereignty is divided between a central (federal or national) government and sub-units (provinces or states) (Hague and Harrop 2001: 202; Follesdal 2022). Some believe that federalism is undemocratic because it departs from majoritarianism (e.g. Kelemen 2006). For example, it allows a sub-national government to bring in laws that might conflict with the views of a national majority. However, this assumes that a national majority should always trump a sub-national majority, and some democratic theorists (e.g. Dahl 1983) have challenged this idea, pointing out that it isn't automatically clear which majority should triumph in this case. This is a specific instance of a more general issue in democratic theory – "which majority should rule?" (e.g. Wodak 2024). Others have defended federalism on the grounds of fairness, pointing out that in countries containing groups with multiple national identities, "federalism is a fair way to adjudicate between conflicting identities among citizens that make up the component nations" (de Schutter 2011: 168). Others have argued that federalism is required because it is needed to achieve political equality. In the kinds of democracies that actually exist, "once we take into account real-world conditions – such as departures from strict majority rule, persistent political cleavages, and the power of numbers – then democratic equality may require arrangements, such as federalism, that majoritarians typically reject on these formal grounds" (Abizadeh 2021: 743). In federations, notions of fairness/unfairness are also frequently invoked in conflicts between the different tiers of government. This includes disputes over the appropriate powers of the two tiers of government, and the distribution of resources between them.

Leaving these theoretical and institutional disagreements to one side, what unites most theorists and advocates of political equality is the idea that it is unfair if those with greater income and wealth can have a disproportionate influence on the democratic process. Unequal influence can occur in the "foreground" if democratic institutions are designed in a way that is skewed towards the interests of some groups of citizens. For example, if those without property are excluded from voting, or gerrymandering advantages one party over another, then the legislature that results will lack legitimacy (Scanlon 2018, p. 77). However, political inequality can also arise because of "background" inequalities, i.e. because people lack "equal access to the *means* for attaining office and, more generally, influencing policy through the electoral process" (Scanlon 2018, p. 80, his emphasis). For example, if the wealthy are able to make large campaign donations and spend a lot on political advertising, and this means that the legislature passes laws that disproportionately reflects their interests, then this is a violation of political equality (Scanlon 2018, pp. 80-82). Similarly, if there is a highly concentrated level of media ownership, this might skew the political information that citizens have available to them in a way that advantages the interests of the wealthy (given media proprietors will be from the wealthiest sections of society) (Scanlon 2018, pp. 89-91). The legitimacy of a decision-making process is undermined by these forms of political inequality.

Fairness, equity and justice in Murray-Darling Basin politics

The preceding discussion highlights some of the complex ways in which ideas of justice and fairness are conceptualised in the contemporary theoretical scholarship. Although they reflect different ways in which the concepts of justice and fairness are used in popular and political discourse, they generally develop these distinctions more systematically, and at a higher level of abstraction. This can sometimes make it difficult to work out how they are likely to be applied, in practice, to a case such as water allocation in the Basin. For this reason, before engaging in an analysis of the public debate surrounding water politics in the Basin, it is worth briefly considering some of the ways in which these concepts can be applied to the case in hand.

Perhaps the most straightforward case is the outcome equality view, which would classify any inequality in the allocation of water as inherently unfair. In contrast, the equality of opportunity approach would only view inequalities as unjust if they result from unfairness in the nature of the water market. If there are structural impediments that stand in the way of fair competition, then the inequalities that result are unjust. Luck egalitarians would also be concerned with these kinds of structural barriers to fair competition, but would go further and draw attention to other factors that may have led to inequality, including natural disasters and changes in weather patterns, which may be beyond the direct (and immediate) control of human beings. An important point is that for proponents of both the equal opportunity view and the luck egalitarian view, the key question is not just whether an inequality exists but how that inequality has been generated, and, in particular, whether it results from problems with the structure of the market.

The non-egalitarian views of fairness and justice discussed in the second section also have important implications for water allocation in the Basin. The levelling down objection could be used against the kind of egalitarian approaches discussed above. Critics might raise concerns about the long-term implications of pursuing equality in this sphere, suggesting that it will ultimately leave everyone worse off, as it stifles the economic activity oriented around the Basin. They might instead recommend that a sufficientarian approach be adopted, which would focus on allocating water so as to maximise profitability while ensuring the sustainability of the Basin and ensuring that all parties have enough water to engage in essential activities. Whether there are inequalities, or whether some have competitive advantages over others, does not matter in and of itself. On the other hand, the priority view would share this concern with profitability and sustainability, while also giving a greater weighting to allocations that flow to the worst off (i.e. smaller players in the market).

In contrast to these approaches, which focus on questions of distribution, the relational egalitarian approach focuses more on how institutions treat citizens and different groups of citizens. This could have a variety of implications in the case in question, but a big focus is likely to be on the way in which actions by governments end up advantaging some and disadvantaging others in the kinds of regulations they introduce, reflecting a lack of equal respect for all citizens in the way institutions are designed.

The "complex equality" approach put forward by Walzer would draw attention to the principles of justice that are dominant in the communities in question. However, the Basin contains multiple communities, stretching across different states, so it is highly unlikely that a single dominant principle is going to be found that can guide decisions about water allocation. Moreover, as the next section makes clear, a further problem is that even within individual communities, there are different ways in which justice is understood in the context of water allocation. For example, large irrigators are going to have a different view of the principles that should

be dominant from environmentalists in the same community. At first glance, the pluralistic approach to distributive justice put forward Miller might avoid this problem by focusing on the nature of the relationships that are dominant in this context. However, this approach would also run into problems. In some cases, particularly within local communities, the human relationships in question might have a more solidaristic character as the water is used as a resource that is crucial to the health of the local community, leading to distribution in accordance with a needs-based principles. However, for those living in different states, or for irrigators who are primarily motivated by profit, the relationships have a more instrumental character, which means principles of desert become more appropriate (that is people are rewarded in proportion to their contribution). A focus on justice for First Nations would require "a cross-cultural conversation that directly includes the voices of indigenous peoples" (Watene 2016: 138) and recognises their important connections to, and responsibilities for, Country.

The libertarian approach is also a difficult one to apply to the question of water allocation. The libertarian approach holds that a focus on fairness in distribution is misguided in cases where the resources in question are owned by private actors. The problem in this case is that the resource in question is a collective good, water. Moreover, the artificial nature of the market that has been created for this good is readily apparent, in a way that is often masked when dealing with other markets. This makes it hard to dismiss appeals to justice by simply pointing to the ownership of all the resources in question, given that the fairness of this ownership structure is one of the things that is in question. What a libertarian might argue in response to this position, though, is that once the ownership structure has been determined, questions of fairness no longer arise, regardless of the outcomes the market produces.

The prominent role for the government in determining water allocations also means that political inequality/fairness is likely to be invoked in debates over the Basin. Concerns are likely to arise that the government is beholden to "special interests", that is, powerful groups who are able to exercise disproportionate influence over the policy-making process. Such influence could come from groups who have financial clout, such as large irrigators, but could also include well-organised groups that are able to mobilise effectively, such as environmental groups. Similarly, given the Basin runs across state borders, and antagonism between different states has long been part of the politics of water allocation, it is also highly likely that public debate will lead to claims that some states have been treated unfairly.

Key concepts in public debate on water policy in the Basin

Having outlined how the different conceptions of fairness, justice and legitimacy in the academic literature might arise in the context of debates over water allocation, the next step is to examine whether they are invoked by stakeholders, by analysing a subset of public material relating to water allocation in the Murray-Darling Basin. This section draws on work done in analysis of public inquiry submissions prepared for this project (Hames and Marsh, 2025). Specifically, we used concordances drawn from all submissions to seven public inquiries about the Basin Plan and Parliamentary debates. These concordances allowed us to review the uses of equity, fairness and justice concepts in the submissions and then extract and review in their entirety those submissions that presented useful perspectives on the issues outlined in this report.

Concern about distributive inequality and the unfairness of the market is a recurring theme of political discourse relating to water allocation in the Basin. Some focus on features of the water market that give advantageous opportunities to some actors over others, reducing competition. For example, in a submission to the Australian Competition and Consumer Commission's (ACCC) water market review, Barossa Infrastructure Limited (BIL) argued that "[t]he markets lack of transparency and lack of timely information are viewed by BIL as a market weakness resulting in a lack of confidence that the market is fair to all participants, particularly given the heavy reliance on broker supplied information with little or no oversight/guidelines/regulations" (BIL 2019). Similarly, a newspaper opinion piece in 2017 argued that government regulations were too complex, and that "[t]he Aussie ideology of a fair go is severely wanting as communities endeavor [sic] to navigate through the complicated minefield of state and federal water policy" (Buller and Dalton 2017). And

in a 2008 speech to the House of Representatives on the Water Amendment Bill 2008, the Hon. Nola Marino drew on the language of fairness, claiming that "For too long policy makers have sought to exclude... [irrigators that are not members of government owned schemes] from the decision-making process and taken the opportunity to disadvantage grower owned schemes in the marketplace. The government needs to use this opportunity to ensure that all irrigators are treated fairly and consistently" (Marino 2008).

Inequality between communities, particularly between states, is another major theme running through public discourse, and this is often couched in the language of fairness. For example, a submission from the Swan Hill Rural City Council argued that it was important that the states be treated equally and claimed that Victoria had done more than the other states:

> "There is plenty of evidence that Victoria has led the way in implementing the reform measures necessary to see the Murray Darling Basin Plan implemented. Victoria has contributed far more water to the environmental pool through buybacks than any other state.
>
> [...] Our community should be concerned that Victoria appears to do the heavy lifting. While other states lag behind, the heavy lifting comes at significant economic cost and a loss of prosperity for our communities.
>
> It's incumbent upon COAG to ensure that all states do their fair share of reform and that they do it in a timely way, so that those who are trying to do the right thing aren't unfairly disadvantaged" (Swan Hill Rural City Council 2019: 4-5).

Other submissions argued that other states were being treated unfairly. For example, a submission by political party, Family First, argued that South Australia had been treated unfairly during the recent drought in the mid-2000s, and called for greater central control:

> "We called for the Commonwealth and an independent authority to be put in charge of the Murray-Darling Basin system which we argued did not belong to any one state. We strongly believed that one state should not have to beg for its share of the country's water resources but that all states should be given equitable access" (Family First 2015).

Similar concerns were expressed by individual citizens. For example, a letter to the Murray-Darling Basin Authority said that she "can't look people from South Australia in the eye, as they get a drible from this river after Qld and NSW have... take what they want. It's not fair, it's [sic] wilfully greedy, ignorant, wasteful and unnecessary" (Torrisi).

Another recurring theme is with political inequality, with criticism that some groups wield disproportionate influence over the government. As a letter to the Barrier Daily Truth put it:

> "We have a situation where the Darling River & tributaries outcomes are driven by the powerful irrigation lobby, facilitated by the water bureaucrats and endorsed by successive feckless governments. There is no fair outcome with authoritarian regimes.
>
> The MDB was once the "Food Bowl of Australia", then became the "Food & Fibre Bowl" and now perhaps should be renamed "The Fibre Bowl"
>
> Remember when Menindee had the first juicy apricots of the season along with wonderful grapes and other produce? This town is now just a small town on a dying river thanks to greed, and may I say alleged corruption. Why is it so great to put 605gig of environmental water back to the irrigation industry to create security on the small towns upstream whilst at the same time destroying a small town like Menindee?" (Wecker 2018).

A concern with political inequality was also reflected in a speech to Parliament by Senator Janet Rice, who argued that powerful vested interests had exercised too much influence over policy, damaging the Basin in the pursuit of their commercial interests:

> "The Greens have secured an independent audit of water in the basin to stop the rorts, to insert integrity and restore trust after a decade of mismanagement from vested interests. And […] we've secured $100 million for First Nations water and the Aboriginal water entitlements program to protect country and culture from greed and over-extraction" (Rice 2023).

In both cases, there is a strong sense that political inequality has led to bad policy, with the environment and/or local communities suffering as a result.

Even among those who adopt a broadly pro-market approach, they argue that there is a need for government involvement to ensure that markets are competitive by sharing information and regulating to prevent uncompetitive practices. For example, in a submission to the ACCC inquiry, Coleambally Irrigation Co-operative Limited (CICL) argued that "rather than placing restrictions on investors regulation should focus on restricting behaviours of investors that are harmful to the fair and transparent operation of the water allocation and water entitlement markets" (CICL 2020: 9). In other words, the focus should be on making sure that markets are competitive rather than on altering outcomes. Interestingly, the National Farmers Federation appealed to the notion of fairness in defending its approach, claiming it:

> "strongly supports improvements to market governance. The benefits of water trading rely on fair and efficient water markets, underpinned by a healthy river system. A robust governance system that market participants have confidence in, that is consistent with sound water management principles and respects the river system's physical system, will lend itself to this goal" (NFF 2020: 21).

Lastly, in its submission to a recent Productivity Commission Inquiry, the Murray-Darling Basin Authority itself drew on ideas of fairness and equity, but linked them to properly regulated markets:

> "The southern Basin water market is well-established and demonstrates the ability of water markets to support the movement of water resources to their highest value use. It also demonstrates the role of water markets in reforming industry and redistributing wealth and opportunity. It is not the role of the market to ensure this is equitable, however Governments need to create an operating environment that is fair, transparent and allows people to adapt".

Thus, even among those who adopt a broadly pro-market position, the language of fairness and equity is frequently invoked.

Overall, what this demonstrates is that ideas of fairness and justice are central to the public debate over water management in the Basin. One positive of the preceding analysis is that it reveals that many different interest groups and citizens involved in the debate over water management in the Basin agree on the importance of fairness. The downside is that they appear to operate with often quite different conceptions of fairness, let alone how it should be applied to the Basin. One response to this would be to argue that there is a need for governments to identify exactly what fairness requires in the Basin, and then to try to convince those involved of the merits of this approach. As the discussion above demonstrates, there is a substantial academic literature that can be drawn on to help with this task. However, to some extent, this is also part of the problem. Theorists who devote their professional lives to debates over unfairness continue to disagree over what it means, and these debates are unlikely to be resolved any time soon. If even experts cannot agree on these questions, then what hope do governments have in working out precisely what fairness requires themselves, let alone of convincing all those involved in the heated debate over water allocation in the Basin to reach agreement on this issue?

In this way, adopting a legitimate decision-process is of great practical importance when trying to come up with an effective resolution to the contentious issue of water allocation on the Basin. As we have seen, many of those involved in the debate agree that fairness is important, but they disagree over values (i.e. the kind of fairness that is at stake) and facts (i.e. how fairness should be applied in practice). A crucial next step, then, is to come up with decision-making processes that are seen as fair by stakeholders involved in the dispute.

The aim of such processes is not to ensure that everyone's views on the issue somehow converge. Rather, it is to discover policy outcomes that the majority of stakeholders see as being legitimate, and that they will abide by, even if it departs from their preferred position.

Scott Moore describes river basin conflict as "a persistent state of competition over shared water resources, as manifested by legislative maneuvering, legal disputes, and rhetorical rivalry"; he defines cooperation as "managing shared water resources in terms of three criteria: collaboration, participation, and adaptability." (Moore, 2018, 11). Policy-making processes that include explicit consideration of fairness contribute to shifting conflict towards cooperation. When new conflicts appear, a history of fair policy-making processes help bring parties to the table again to negotiate workable agreements.

References

Abizadeh, A. 2021. "Counter-Majoritarian Democracy: Persistent Minorities, Federalism, and the Power of Numbers". *American Political Science Review* 115(3): 742-56.

Anderson, E. 1999. "What is the Point of Equality?" *Ethics* 109(2): 287-337.

Anderson, E. 2012. "Equality" in *The Oxford Handbook of Political* Philosophy, edited by D. Estlund. New York: Oxford University Press, 40-57.

Anderson. E. 2020. "The Epistemology of Justice". *The Southern Journal of Philosophy* 58 (1): 6-29.

Arneson, R.J. 1989. "Equality and Equal Opportunity for Welfare". *Philosophical Studies* 56(2): 77-93.

Arneson, R.J. 2000. "Luck Egalitarianism and Prioritarianism". *Ethics* 110(2): 339-349.

Barry, N. 2006. "Defending Luck Egalitarianism". *Journal of Applied Philosophy* 23(1): 89-107.

Brett, J. 2011. *Fair Share: Country and City in Australia*. Quarterly Essay no. 42: 1-67.

Brigg, M. and Graham, M. 2021a. "The Relevance of Aboriginal Political Concepts (3): Autonomous Self-hood". ABC Religion and Ethics, 27 July. https://www.abc.net.au/religion/aboriginal-political-concepts-autonomous-selfhood/12472310

Brigg, M. and Graham, M. 2021b. "The Relevance of Aboriginal Political Concepts (5): Country, Place and Territory". ABC Religion and Ethics, 27 July. https://www.abc.net.au/religion/aboriginal-political-concepts-country-place-territory/12815608

Cohen, G.A. 1989. "On the Currency of Egalitarian Justice". *Ethics* 99(4): 906-944.

Crisp, R. 2003. "Equality, Priority, and Compassion". *Ethics* 113(4): 745-763.

Dahl, R. 1983. "Federalism and the Democratic Process". In *Liberal Democracy: Nomos XXV*, edited by J.R. Pennock and J.W. Chapman. New York: New York University Press.

Dworkin, R. 2000. *Sovereign Virtue: The Theory and Practice of Equality*. Cambridge, MA: Harvard University Press.

Dworkin, R. 2011. *Justice for Hedgehogs*. Cambridge, MA: Harvard University Press.

Follesdal, A. 2022. "Federalism". *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta & Uri Nodelman. URL = https://plato.stanford.edu/archives/win2022/entries/federalism/.

Galligan, B. 1995. *A Federal Republic: Australia's Constitutional System of Government*. Melbourne: Cambridge University Press.

Hague, R. and Harrop, M. 2001. *Comparative Government and Politics: An Introduction*, 5th edition. Basingstoke: Palgrave.

Hames, S. and Marsh, R. 2025.*Equity, Fairness and Justice Concepts in Public Inquiry Submissions and Social Media*. Canberra: Watertrust Australia (in press).

Hayek, F.A. 1960. *The Constitution of Liberty*. London: Routledge.

Heywood, A. 2004. *Political Theory: An Introduction*, 3rd edition. Palgrave Macmillan.

Hueglin, T.O. and Fenna, A. 2006. *Comparative Federalism: A Systematic Inquiry*. Toronto: Broadview Press.

Hume, D., 2000. *A treatise of human nature*. Oxford University Press.

Kelemen, R.D. "Federalism and Democratization". In *Comparative Federalism: The European Union and the United States in Comparative Perspective*, edited by Anand Menon and Martin A. Schain. Oxford: Oxford University Press: 221-43.

Kymlicka, W. 2002. *Contemporary Political Philosophy: An Introduction*, second edition. Oxford: Oxford University Press.

Lippert-Rasmussen, Kasper. 2015. *Luck Egalitarianism*. London: Bloomsbury.

Macfarlane, K. "Education, Sufficiency, and the Relational Egalitarian Ideal". 2018. Journal of Applied Philosophy 35(4): 759-74.

Macleod, C.M. 1998. *Liberalism, Justice, and Markets: A Critique of Liberal Equality*. Oxford: Oxford University Press.

Mansbridge, J. 2014. "What is Political Science For?" *Perspectives on Politics* 12(1): 8-17.

Mason, A. 2006. Levelling the Playing Field: The Idea of Equal Opportunity and Its Place in Egalitarian Thought. Oxford: Oxford University Press.

Miller, D. 1999. *Principles of Social Justice*. Cambridge, MA: Harvard University Press.

Miller, D. 2013. *Justice for Earthlings*. Cambridge: Cambridge University Press.

Mills, C.W. 2015. "Racial Equality". In The Equal Society, ed. G. Hull. London: Lexington Books, pp. 43-72.

Miragliotta, N. Errington, W. and Barry, N. 2013. *The Australian Political System in Action*, 2nd edition. Melbourne: Oxford University Press.

Moore, S. 2018. *Subnational Hydropolitics: Conflict, Cooperation, and Institution Building in Shared River Basins*. Oxford University Press.

Nath, R. 2020. "Relational Egalitarianism". Philosophy Compass 15(7): 1-12.

Nelson, R., Walsh, G., Shirley L.M., and Marsh. R. *Water, Law and Concepts of Equity*. Canberra: Watertrust Australia, 2024.

Nozick, Robert. 1974. *Anarchy, State and Utopia*. Oxford: Blackwell.

Orwell, George. 2013 [1946]. "Politics and the English Language". In *Essays*. London: Penguin.

Parfit, D. 2002. "Equality or Priority?" In M. Clayton & A. Williams (eds.), *The Ideal of Equality*. Houndmills, Basingstoke: Palgrave Macmillan.

Parry, L. and Marsh, R. 2025. *Equity, fairness and justice in Murray Darling Basin water policy: results of a Q-methodology study.* Canberra: Watertrust Australia (in press).

Peter, Fabienne. 2017. "Political Legitimacy". *The Stanford Encyclopedia of Philosophy*. Edited by Edward N. Zalta URL https://plato.stanford.edu/archives/sum2017/entries/legitimacy/.

Rakowski, E. 1991. *Equal Justice*. New York: Oxford University Press.

Rawls, J. 1971. *A Theory of Justice*. Oxford: Oxford University Press.

Raz, J. 1986. *The Morality of Freedom*. Oxford: Clarendon Press.

Roemer, J. 1996. *Theories of Distributive Justice*. Cambridge, MA: Harvard University Press.

References

Scanlon, T.M. 2018. *Why Does Inequality Matter?* Oxford: Oxford University Press.

Scheffler, S. 2003. "What is Egalitarianism?" *Philosophy and Public Affairs* 31(1): 5–39.

Schouten, G. 2012. "Fair Educational Opportunity and the Distribution of Natural Ability: Toward a Prioritarian Principle of Educational Justice". Journal of Philosophy of Education 46(3): 472–91.

Sen, A.K. 1992. *Inequality Reexamined*. Oxford: Clarendon Press.

Sen, A.K. 1995. "Equality of What?" In *Equal Freedom: Selected Tanner Lectures on Human Values*, edited by S. Darwall. Ann Arbor: University of Michigan Press, 307–330.

Shelby, T. 2016. Dark Ghettos: Injustice, Dissent and Reform. Cambridge MA: Harvard University Pres

Shiffrin, S. 2004. "Race, Labour, and the Fair Equality of Opportunity Principle". Fordham Law Review 72: 1643–75.

Stemplowska, Zofia. 2017. "Rarely Harsh and Always Fair: Luck Egalitarianism and Unhealthy Choices". In *Current Controversies in Bioethics*, edited by S. Matthew Liao. London: Routledge.

Swift, Adam. 2019. *Political Philosophy: A Beginner's Guide for Student's and Politicians*. Cambridge: Polity.

Temkin, L.S. 1993. *Inequality*. New York: Oxford University Press.

Voigt, K., 2007. The harshness objection: is luck egalitarianism too harsh on the victims of option luck?. *Ethical theory and moral practice*, 10:389–407.

Walzer, M. 1983. *Spheres of Justice: A Defense of Pluralism and Equality*. New York: Basic Books.

Waldron, J. 1999. *Law and Disagreement*. Oxford and New York: Oxford University Press.

Waldron, J. 2016. *Political Political Theory*. Cambridge MA: Harvard University Press.

Warren, M.E. 2017. "A Problem-Based Approach to Democratic Theory". *American Political Science Review* 111(1: 39–53.

Watene, K. 2016. "Indigenous Peoples and Justice". In Theorizing Justice: Critical Insights and Future Directions, ed. K. Watene and J. Drydyk. Rowman and Littlefield, pp. 133-151.

Wodak, D. 2024. "Which Majority Should Rule?" *Philosophy and Public Affairs* 52(2): 177–220.

Wolff, J. and de-Shalit, A. 2007. *Disadvantage*. Oxford: Oxford University Press.