

## Justice, Interpersonal Morality, and Luck Egalitarianism

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Elizabeth Anderson (2010) argues that certain of G.A. Cohen's criticisms of contractualist theories of justice (e.g., Rawls 1971) are mistaken. She further argues that luck egalitarianism is not a plausible account of justice, when justice is understood as a certain kind of interpersonal morality. Although I shall agree that her argument against Cohen's criticisms is successful, I shall argue that her criticism of luck egalitarianism is not.

### 1. Background

Anderson focuses on luck egalitarianism as a theory of justice. The term "justice" is, unfortunately, used to mean different things by different authors. Before addressing Anderson's usage, let me highlight some different usages. This will be useful because it will highlight how easy it is for different theories of "justice" to be addressing different topics.

"Justice" is sometimes understood to mean (something like) *moral permissibility of social institutions* (e.g., legal systems).<sup>1</sup> In this first sense, the specific content of justice is determined by the objects assessed rather than by the set of moral concerns relevant for the assessment. This sense is perhaps best abandoned, given that (1) it makes the term redundant, since it just means "morally permissible" for a particular kind of object, and (2) and there is an established usage (see below) for using "justice" to refer to a particular subset of moral concerns.

A second sense of "justice" is interpersonal morality understood as *the duties that we*

*morally owe each other.*<sup>2</sup> It is concerned with personal wrongs, but not with impersonal wrongs (i.e., actions that are wrong but wrong no one; e.g., perhaps voluntary euthanasia when this harms no one). What we owe others is what they can claim from us, and this is that to which they have a right against us. (On one variation of this concept, it is only concerned with the duties we owe *others*; on a second variation, it includes duties we owe ourselves, and is thus interpersonal only in an extended sense.) This understanding of “justice” seems fairly useful. It makes justice a particular, but fairly broad, kind of moral concern.<sup>3</sup>

A third sense of “justice” is concerned with *enforceable duties*—with those moral duties we have that others are morally permitted to force us to fulfill (e.g., the duty not to kill someone, but perhaps not the duty to keep promises to our friends). This understanding also seems useful, since it makes justice a particular, but reasonably broad, kind of moral concern. On some views, this sense of justice is intimately connected with the preceding one. For some would argue that a duty is morally enforceable if and only if it is a duty owed to someone.<sup>4</sup> This, of course, could be challenged on that grounds that (1) some duties to individuals are unenforceable in principle (e.g., because they require a certain mental state)<sup>5</sup> or are too trivial to justify the use of force, (2) there are duties to oneself, but they are not enforceable, or (3) some impersonal duties are sufficiently important to be enforceable.<sup>6</sup>

A fourth sense of “justice” is as *giving each what she deserves.*<sup>7</sup> This differs from the duties what we owe each other (the second sense) in at least two ways. One is that justice in this fourth sense is necessarily based on desert, whereas justice as the duties that we owe each other need not be (although it can be, if individuals have a right to what they deserve). Second, this sense allows impersonal concerns to be relevant (although it does not require this). For example, it allows that justice may hold that it is unjust when everyone gets *more* than she deserves. This

fourth sense of justice—justice as the demands of desert—is perfectly bona fide, but its application is limited to views that recognize issues of desert.

A fifth sense of justice is as *fairness*, where this is understood as a *purely comparative* concern for ensuring that each individual get *what she is due to the same extent as others*.<sup>8</sup> (This should not be confused with what Rawls calls “justice as fairness”, which is his contractualist account.) The notion of being due something can be understood either in terms of having a right to it (as on the second sense of justice) or as deserving it (as on the fourth). This sense differs, however, from both the second and the fourth senses in that its concern is purely comparative. It is not concerned with ensuring that individuals get what they are due; it is only concerned with ensuring that the extent to which individuals get what they are due is as equal as possible. (The formal requirement that individuals with equal claims be treated equally is a special case of this concern.) Thus, if we are each due 20 units of benefit, and each currently has zero units of benefit, then it is unjust to give me 10 and you nothing. It is not, however, unjust, in this sense, to give us each nothing. The former is unfair, but the latter is not. This fifth sense of justice—justice as fairness (in the purely comparative sense)—is perfectly bona fide, but its scope of concern is limited, since moral permissibility and moral goodness are not necessarily sensitive to fairness in this sense.

Anderson argues that many of Cohen’s criticisms of contractualist theories of justice fail against justice as the duties we owe each other (the second sense). I agree. She also argues that luck egalitarianism’s focus on the fairness of distributions (justice in the fifth sense) makes it a non-contender for a theory of justice as the duties we owe each other. I will argue that this is not so.

## 2. Interpersonal and Second-Person Justificatory Morality

Anderson focuses on the concept of justice as the duties that we owe each other. She interprets the concept, however, in a particular way that I will set aside. On her interpretation, justice is identified with *second-person justificatory morality* (e.g., as developed by Darwall (2006)), where this is a matter of what is justifiable to others in one's justificatory community of free, equal, reasonable, and mutually accountable agents.<sup>9</sup> The focus on justification and justificatory community may be the basis for a promising *substantive theory* of interpersonal morality, but it is too narrow to be the *central topic* of the *general debate* about justice.<sup>10</sup> Very few theories of "justice" are concerned with second-person justificatory morality. Because most of Anderson's focus is on the more general notion of the duties we owe each other, I will focus on that concept of justice and set aside the specifics of second-person justificatory morality. Fortunately, this is easy to do.

Anderson (p. 5) identifies four features of justice understood as second-person justificatory morality:

- (1) There can be no injustice without an injury to someone's interests (where disrespect of someone's will can count as an injury).<sup>11</sup>
- (2) There can be no injustice without an agent who has (or had) an obligation to avoid some action and to rectify the situation if she performs it.
- (3) There can be no injustice without an agent who is (or was) morally entitled to address a complaint to the responsible agent, to hold that agent to account, and to exact compliance with the demand.
- (4) There can be no injustice in a world where all agents continuously and successfully comply with all the demands that everyone can reasonably make of them, such that no one has any valid

complaint against any agent.

This is very much in the spirit of justice as the duties we owe each other, except that the references in (3) and (4) to demands and complaints seems to involve a commitment to the second-person justificatory morality. Fortunately, slight reformulations remove those specific commitments:

(3\*) There can be no injustice without an individual who has a claim-right against an agent to rectify her situation.<sup>12</sup>

(4\*) There can be no injustice in a world in which all agents act justly.

(1), (2), (3\*) and (4\*) are indeed conditions on justice in the sense of the duties that we owe each other, and I fully agree that this is an important concept of justice.

On the basis of this concept of justice, Anderson rightly objects to Cohen's criticisms of theories of justice, such as contractualist theories, that are sensitive to issues of feasibility, publicity, stability, or efficiency. Cohen (e.g., 2008, chs. 6-8) claims that, although these considerations may be relevant to principles of regulation, they are foreign to justice. He is correct with respect to justice in the sense of fairness or in the sense of giving people what they deserve, but contractualist theories of "justice" do not address that topic. They are theories of (something like) the duties that we owe each other. In that sense of justice, Anderson is right that contractualism does not, pace Cohen, confuse justice with non-justice values. Cohen is right about justice as fairness, but he mistakenly assumes that all theories of "justice" address the same topic.

### 3. Luck Egalitarianism

Anderson further argues that luck egalitarianism is a non-contender as a theory of justice in the sense of the duties that we owe each other. I shall argue that she is mistaken.

Luck egalitarianism is often articulated as a theory of the fairness of distributions of benefits and burdens (realized by states of affairs). So understood, it holds that it is unfair if some, as a matter of brute luck, have greater net benefits than others.<sup>13</sup> For example, if one person is born with a severe disability, that is a matter of brute luck for her, and it is deemed unfair if she suffers that net disadvantage and someone else, as a matter of brute luck, enjoys greater advantage.

Anderson claims that luck egalitarianism is a non-contender as a theory of justice in the sense of interpersonal morality. Whether this is true, however, depends on how luck egalitarianism as theory of *fairness* is the basis for a luck egalitarianism theory of the *duties that we owe each other*. A clearly implausible version is one that holds that it is unjust in this latter sense, when the brute luck advantage of some is greater than that of others. This is implausible, as Anderson stresses, because sometimes individuals have worse brute luck advantage than others *merely due to "acts" of nature* (e.g., being born inferior natural talents) and not due to any agent failing to do something she had an obligation to do something (as required by (2) above).<sup>14</sup>

Luck egalitarians, however, need not, and indeed do not, make this claim. They can (a) maintain their claim about the unfairness of outcomes with unequal brute luck advantage, (b) claim that the goodness of outcomes is determined in part by such fairness, and (c) add a claim that bases the duties of agents on the direct, or indirect, promotion of good consequences (and hence of fairness). Such views agree that the existence of unfairness in the world does not entail the existence of injustice (a failure to fulfill a duty owed to someone), but they insist that the

existence of unfairness generates at least a pro tanto duty to reduce such unfairness. This last claim can be done in at least three ways: (1) Rule consequentialism (e.g., in the spirit of Hooker 2000): Agents have a duty to comply with feasible institutions (or sets of rules) that, if they were adopted, would have the best consequences. (2) Natural duty of justice (e.g., in the spirit of Rawls 1971, pp. 115, 333-37): Agents have a duty (a) to comply with the feasible institutions that have the best consequences, if they have been adopted in the agent's society (i.e., exist and apply to the agent), and (b) to promote the existence of such institutions, when they have not yet been adopted. (3) Act consequentialism: Agents have a duty to perform an action that, relative to the feasible actions, has consequences that are good enough (e.g., where maximizing goodness is but one version).<sup>15</sup> Let me explain.

Each of these approaches gives an account of the duties that agents have and bases those duties, in part, on the how well actions, or institutions to which they comply, promote the fairness of outcomes. Of course, the goodness of outcomes does not depend solely on their fairness, and so these theories of duty will need to include additional considerations, such as how well people's lives go, in their theory of the goodness of outcomes. It is no failure of luck egalitarianism as a theory of the *fairness* of outcomes to ignore non-fairness aspects of the moral goodness of outcomes.

Each of these approaches will satisfy the first part of (2), the requirement that there is no injustice without an agent who has (or had) an obligation to avoid some action. In order to satisfy the second part of (2), the requirement that such an agent also have an obligation to rectify the situation, and (3\*), the requirement that there be an individual who has a claim-right against the wrongdoing agent to such rectification, these approaches must give an account of when individuals have a right to rectification against wrongdoers. In order to satisfy (1), this must be

limited to cases where the individual suffers an injury to her interests. We shall address these issues below. Once this is done, the accounts will also satisfy (4), the requirement that there can be no injustice, in the sense of the violation of duties we owe each other, in a world in which all agents act justly (in that sense).

What, then, determines when a wrongdoer owes duty to someone to rectify the situation? On the rule consequentialist approach, and on the natural duty approach when optimal institutions exist, this can be answered by appealing to the optimal institutions. A duty of rectification is owed to someone just in case the optimal institutions impose such a duty. As long as this institutional duty is imposed only when there is an injured party, (1) will be satisfied. Of course, for the natural duty approach, more needs to be said about the case where optimal institutions do not exist and apply to the agent. Instead of addressing that issue directly, I shall now consider how act consequentialism can address the above issues. The natural duty to promote optimal institutions, when they have not yet been established for an agent, can be handled, I believe, in a similar way.

As recognized by Anderson (p. 16), luck egalitarianism, can adopt an act consequentialist theory of permissibility that requires maximizing the goodness of outcomes, where such goodness depends in part on how fair they are, understood in terms of brute luck equality of advantage. (For simplicity, I will assume a maximizing version of consequentialism in what follows.) Interpreted as a theory of justice in the sense of the duties we owe each other, this satisfies (2), since injustice would be limited to the wrongdoings of agents. It would not, however, satisfy (3\*), the requirement that there can be no injustice without an individual who has a claim-right against an agent to rectify her situation. On the simple consequentialist approach, the fact that an agent acts wrongly (by failing to maximize the goodness of outcomes)



does not ensure that she, or anyone else, has wronged anyone, nor that anyone has a duty to anyone to rectify the situation. The wrong may be merely impersonal. So, act consequentialism needs a way of connecting the wrongness of actions with the duties owed to particular people.

One possible approach for luck egalitarianism (and other views that give an account of fair shares) is the view that an agent with more than her fair share<sup>16</sup> owes (at least a pro tanto) duty, to each of those with less than his fair share, either (1) to make the distribution as good as possible without the agent leaving herself less than her fair share, *or* (2) to give each person with less than his fair share at least as much as advantage as (for example) the *average* advantage that he receives among the agent's actions that satisfy the first condition. The first clause ensures that no one's rights are infringed when a maximally good distribution is imposed. The second clause identifies which individuals are wronged when such a distribution is not imposed.

Like the above simple consequentialist approach, this does not claim that there is injustice (in the sense of duties owed to each other) merely because nature imposes worse brute luck advantage on some. It claims that there is an injustice only when those with more than their fair share of advantage fail to aid those with less than their fair share. Acts of nature give rise to duties to aid, even though those "acts" are not themselves injustices. So, this version of luck egalitarian theory of the duties we owe each other satisfies (2) above.

This version of luck egalitarianism can also satisfy (3\*), the requirement that there can be no injustice (in the sense of the duties we owe each other) without an individual who has a claim-right against an agent to rectify her situation. When an agent fails to promote the goodness of distributions as much as she can without leaving herself less than her fair share, an individual is wronged, if he gets less advantage than the average advantage that he might have gotten were the agent to have so promoted the goodness of distributions. For an example, in a two-person

case, if an agent imposes the distribution 3-1, when her only alternative was 2-2 (which is the only option that promotes egalitarian goodness as much as possible compatible with her getting a fair share), then the second person is wronged, and the harm is 1 unit. This version of luck egalitarianism can further hold that the wronged individual has a claim-right to rectification (e.g., compensation for the shortfall from the average amount). Admittedly, the rights involved are conditional and complex, but that is not a barrier to being a promising theory of the duties we owe each other. Moreover, I offer this only as an example of how duties to others might be specified. Refinements are surely needed, and there other ways of doing this. The important point is that there is no barrier to act consequentialist luck egalitarianism developing accounts of who is wronged and what compensation is owed.

With the above approach, luck egalitarianism also satisfies (4\*), the requirement that there is no injustice (in the sense of infringements of duties we owe each other) in a world in which all agents act justly.

Finally, this approach also satisfies (1), the requirement that there can be no injustice without an injury to someone's interests. It holds that, for someone to be wronged, some agent must have failed, relative to the options that leave her at least her fair share, to maximally promote the goodness of outcomes. It further holds that a person is wronged by such a failure if and only if the action performed gives him less advantage than the average, for him, among the agent's options that do maximally promote the goodness of outcomes (without leaving the agent less than her fair share). If there is no injury to the individual's interests (advantage), relative to this benchmark, the individual is not wronged.

In short, Anderson is correct that, if the luck egalitarian theory of duty is simply the requirement to maximize the brute luck equality of outcomes, then it is not a plausible contender

for the correct theory of the duties we owe each other. There is, however, no reason why it must take this form. Moreover, each of the versions sketched above is reasonably plausible and satisfies Anderson's four conditions on theories of the duties that we owe each other.

Of course, it may be that no *contractualist* (or second-person justificatory) account of the duties we owe each other would endorse a luck egalitarian account, but that, I claim, remains an open issue.

#### 4. Conclusion

Luck egalitarianism is often advocated as a theory of *fairness of distributions* of advantage, and hence *not* as a theory of the *duties we owe each other*. Nothing in the argument of Anderson (2010) casts doubt on luck egalitarianism as a theory of fairness.<sup>17</sup> Anderson rightly notes that this leaves open what duties we owe each other. Luck egalitarians, of course, typically hold that their view of fairness has implications for the duties we owe each other. In general, however, they have not adequately articulated the connection. Anderson is right to press this point, but a natural way to make the connection is to hold that individuals with more than their fair share of advantage owe a duty, to each of those with less than their fair share, (1) to make the distribution as good as possible (where that depends in part of issues of fairness) without the agent leaving herself less than her fair share, *or* (2) to give each person with less than his fair share at least as much as advantage as (for example) the average advantage that he receives among the agent's actions that make the distribution as good as possible. Thus, there is no barrier in principle to a luck egalitarian account of the duties we owe each other.<sup>18</sup>

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<sup>1</sup> Scanlon (1998, p. 6) states that justice is primarily about the moral assessment of institutions. Rawls (1971, p. 7) acknowledges that actions, dispositions, and agents also "are said" to be just, and he focuses on social institutions because his topic is *social* justice. Nonetheless, he later (e.g., pp. 108-114) treats justice for individual actions as merely derivative. Of course, Rawls doesn't claim that justice is the only virtue (or consideration for permissibility) of institutions (he identifies efficiency as a second virtue on pp. 9, 109), but much of the book proceeds as if it were the only consideration.

<sup>2</sup> See, for example, Mill (1871, ch. 5, pp. 280, 286, 289), Feinberg (1984, p. 107), and Buchanan (1987).

<sup>3</sup> Of course, on some conceptions of morality, there are no impersonal wrongs. On such views,

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justice in this sense just is moral permissibility.

<sup>4</sup> Something like this is the view of Kant (1797, 6:231-32) and Steiner (1994, pp. 2, 109).

<sup>5</sup> I thank Mike Otsuka for pointing this out to me.

<sup>6</sup> See, for example, Buchanan (1987, p. 58).

<sup>7</sup> See, for example, Feldman (1995, p. 573).

<sup>8</sup> See, for example, Arneson (2012, p. 58) and Cohen (2008, pp. 7, 159).

<sup>9</sup> Anderson contrasts second-person justification with third-person (audience-invariant) justification and argues that luck egalitarian is committed to the latter (e.g., because of its focus on what makes outcomes fair). This aspect of her argument is not essential for my argument, and I do not address it. For systematic and insightful discussion, see Lippert-Rasmussen (2013).

<sup>10</sup> Thus, I deny that “justice [in the sense of the duties that we owe each other] cannot be specified independently of what people can reasonably demand of one another” (Anderson p. 22).

<sup>11</sup> I here count disrespect of the will as counting as an injury to a person’s interests so as to make Anderson’s account neutral between interest-protecting and choice-protecting of rights. I believe that this is her intention, as suggested by her fn. 6.

<sup>12</sup> Anderson’s (3) also includes an entitlement “to exact compliance with the demand” for rectification, but I leave that out in order to leave open whether the rights are enforceable. If we include that requirement, then her generalized topic would be something like the enforceable duties we owe each other. (Note that Anderson does not explicitly include a right to *prevent a primary rights* violation, as opposed to the right to prevent a failure to fulfill a duty *rectify a primary rights* violation).

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<sup>13</sup> There are different conceptions of brute luck, but I here remain neutral (as does Anderson). I think that the best understanding is, as proposed by Hurley (2003, pp. 107-109), that for which the individual is not agent-responsible (on the correct account of agent-responsibility). For related and alternative views, see Otsuka (2002), Lippert-Rasmussen (2001), and Vallentyne (2002, 2008).

<sup>14</sup> Of course, sometimes brute luck for an individual is the result of another agent acting wrongly. When you unforeseeably attack me, this is bad brute luck for me.

<sup>15</sup> Cohen (2008) implicitly invokes a version of act consequentialism, but he makes explicit that it may make room for personal prerogatives (e.g. pp. 10-11, 61-62, 387-94) and thus need not be a maximizing version. Murphy (1998) defends a version of act consequentialism based on fair beneficence (prioritarianism rather than brute luck equality).

<sup>16</sup> The appeal to the agent's fair share could be understood as the fair share given the actual circumstances at the time of choice, or it could be understood as (for example) what her fair share would be if everyone then alive had always acted permissibly and would also so act in the future. The latter approach would typically appeal to a higher fair share for the agent (since it does not reduce it in light of wrongdoings of others), and thus be less demanding. Murphy (2000) insightfully develops a non-maximizing version of act consequentialism along the latter lines (although without appeal to fair shares).

<sup>17</sup> I here set aside Anderson's claim (p. 10) that fairness only applies to pure procedural justice (i.e., where there is no independent standard of justice for outcomes) and thus only to the actions of agents. I agree that this is an interesting notion of fairness, but it is not the notion of fairness used by luck egalitarians. They address fairness as an independent standard for outcomes.

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<sup>18</sup> For helpful comments, I thank Dick Arneson, Paula Casal, Kasper Lippert-Rasmussen, Serena Olsaretti, Mike Otsuka, and Andrew Williams.