

AN ARGUMENT FOR THE GOOD IN EGALITARIAN JUSTICE

by

ANNA CHRISTINE DAILY

(Under the Direction of Alexander Kaufman)

ABSTRACT

This work looks to identify and address a common problem in the literature on egalitarian justice: a commitment of liberal egalitarians to a normative good, equality, but a reluctance of those theorists to make appeals to other accounts of the good in forming public policy. I show how not all conceptions of the good are inconsistent with providing equal political status for all individuals and that other understandings of the good – moral, ethical, and philosophical doctrines – can be discussed without threat to equality and even enhance our goals as egalitarians – to secure equal social and political agency for all individuals.

INDEX WORDS: Egalitarianism, Theories of equality Capabilities theory, Social justice, Liberal political theory

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ANNA CHRISTINE DAILY

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ANNA CHRISTINE DAILY

Major Professor: Alexander Kaufman

Committee: Sean T. Ingham
Keith L. Dougherty

Electronic Version Approved:

Maureen Grasso
Dean of the Graduate School
University of Georgia
May 2013

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Introduction

In the literature on egalitarian justice a paradox has emerged: a commitment of liberal political theorists to a normative ideal, equality, but a reluctance of those same theorists to make appeals to the good in public affairs.¹ This is to say that many theorists are concerned with securing the moral principle of equality for all citizens in a liberal society but do not assert the right of individuals or political representatives to invoke moral principles, broadly understood, in the formation of public policy.² The worry of these theorists may seem obvious – by allowing for appeals to moral or religious doctrines in public policy we also allow for an individual’s civil liberty or freedom to be undermined by a majority-held belief system that is inconsistent with the principle of equality.

While this worry is meritorious, I do not think that an incorporation of the good into policy decisions will necessarily yield the tyrannical consequences that egalitarians fear. Instead, I argue that appeals to a public conception of ‘the good’, things that are good for all persons to do or to have, can enhance individual autonomy and be consistent with the egalitarian concern of securing individual liberty. I also argue that by placing a lexical priority on the principle of equality before other conceptions of the good we are able to engage in a public discourse over policy issues in which appeals to moral or ethical principles are made that egalitarians would find attractive.

¹ In this article I will speak primarily to Ronald Dworkin and Elizabeth Anderson as the authors of a position on luck equality and democratic equality, however I believe many egalitarians of different branches to have held this concern such as Bernard Williams (1962), Richard Nozick, (1974) and Thomas Scanlon (2003).

² Here I understand “liberalism” to refer to a broad conception in modern philosophical thought that places emphasis on the liberty of individuals and understands the state to be a governing body aimed at securing individual liberty in civil society in whatever vein this may be conceived of.

The conception of the good that I wish to endorse is one found in the literature on capabilities, in particular, the list of “beings and doings” found in Martha Nussbaum’s “Human Functioning and Social Justice” (1992).³ I rely heavily on Nussbaum’s writings to address the misgivings of liberal egalitarians about a theory of social justice that sanctions a public conception of the good. I also depend on my reading of Nussbaum to distinguish between the notions of toleration and acceptance of a conception of the good in public discourse. I find that it is possible to agree upon a public conception of what it is good for *all* members of a democratic society to have or be able to do, indicating acceptance, and simultaneously disagree over controversial or important issues that affect an individual’s personal conception of ethics or morality, in which cases toleration of different opinions is vital.⁴

My argument is organized into three sections. In the first section, I address a particular group of liberal egalitarians known as luck egalitarians. It is the goal of these theorists to determine which circumstances of undeserved bad luck it is the responsibility of the state to compensate individuals for. I think it is the luck egalitarians that best display my first major concern, which is to dispel the notion that a public conception of the good necessarily undermines an individual’s autonomy. I focus on the writings of Ronald Dworkin to illustrate this position and respond to the undue emphasis he places on choice and responsibility of the individual, rather than his or her status as a political equal (1981). I object to his view on the grounds that his economic measures of assessing individual well-being is neglectful to a citizen’s

³ Nussbaum offers a list of capabilities which are also described as “beings and doings” or desirable states of being and things all citizens should be able to do. A desirable state of being may include a state of good health, while a desirable doing might be literacy. Both of these are things we can regard as necessary for equal and meaningful participation in civil society.

⁴These cases may be of a private nature such as which religion an individual ought to prescribe to or they may be a matter of public policy that often appeal to our senses of ethics such as whether or not physician-assisted suicide ought to be legal. In a democratic society, both types of cases require toleration of different perspectives for equality.

ability to participate meaningfully in a democratic society, which I understand to be the goal of egalitarianism.

A related point I make in this section has to do with the root of the luck egalitarian position because it is often mistaken to be an extension of John Rawls's theory of justice (1979). But Rawls's concerns for equality and justice supersede his commitment to any economic measures of equality and the goal of his work is not to compensate individuals for their undeserved bad luck as it is for the luck egalitarians. Instead, I argue that capabilities are in fact compatible with Rawls's goals and that the 'goods' of his primary goods mechanism may be substituted for Nussbaum's list of capabilities. This merging of Rawls and capabilities has important implications for egalitarian literature. Rawls may be considered the most prominent figure of contemporary egalitarianism. His harmony with the perspective of capabilities lends it force and credibility.

In the second section I respond to the objections and concerns of a different branch of liberal egalitarianism, the theory of democratic equality offered by Elizabeth Anderson in her article, "What is the Point of Equality?" (1999). Anderson shares similar views to Nussbaum in many ways, most notably in the sense that she is primarily concerned with the social and political status of individuals in society and that her goal is to secure an equal ability of and opportunity for all citizens to participate meaningfully in a democratic society, regardless of their deserved or undeserved bad luck. However, it is important to distinguish Nussbaum's view of capabilities and my argument for the acceptability of invoking the good from Anderson's account of democratic equality because Anderson calls for a restraint of individuals in dispensing judgment about the personal conceptions of the good other individuals have, something I do not do. Though Anderson endorses capabilities, she still holds wider conceptions of the good to be

incompatible with democratic equality and thus makes herself subject to the main objection I posed to liberal egalitarians. She, like the luck egalitarians, is worried that public debate over conceptions of the good will collapse into a tyranny of an unfounded moral majority. But, by establishing equality as the supreme good to which we appeal, we can still discuss other conceptions of the good and make appeals to them as grounds to consider social issues or public policy. I show how her view, though a progressive move from the one of luck equality, is still lacking in respect for the individual by assuming that all kinds of criticism are an act of moral or cultural imperialism. This is not the case and Phillip Pettit is useful here to distinguish between the notion of toleration and acceptance over accounts of the good in a liberal society. I assert that it is possible to engage in a political discourse in which appeals to the good are made and considered to be a legitimate part of public discourse. In these discussions appeals to ethical, moral, and philosophical doctrines are to be tolerated by other members of society and are eligible for consideration as a part of the debate as long as they do not conflict with the publicly endorsed conception to which all citizens can accept.

I conclude my argument with a call for a lexical ordering of accounts of the good in policy making. If the primary concern of egalitarians is to protect individual autonomy and equality, then I argue that we can allow for accounts of the good to be present in a liberal society so long as they do not conflict with or undermine the principle of equality. I offer several brief examples as to how we might determine that some conceptions of the good are not compatible with the principle of equality but that other appeals to the good are legitimate and ought not to be barred from public discussion. Allowing individuals to invoke their personal moral principles in public affairs not only enhances individual autonomy but also elevates respect for individuals by

recognizing their potential motivations for participating in a democratic society as legitimate and rational.

I hope to advance the capabilities theory and add to it another dimension of what it means to incorporate a conception of the person in contemporary politics. By recognizing individuals as committed to equality as well as other conceptions of the good we can allow for a full conception of the person in egalitarian literature, which only enhances the understanding of the individual, allows us to contribute to the skills needed to realize autonomy, and advances equality.

Luck Egalitarianism

Ronald Dworkin is the theorist I consider to be the premier example of what has been called “luck equality”. This is a conception of justice that seeks to improve the situation of the “worse off” in a democratic society through compensatory means.⁵ It assumes a baseline of social goods or resources that all citizens are entitled to and compensates those that lack these resources. These resources may not just be “goods” (such as housing, food, clean water) but also natural talents, allowing individuals to prosper in a capitalist economy. This theory rests on the basic principle that persons in an egalitarian society deserve to be compensated for their “brute luck,” or undeserved poor circumstances, that put them at a disadvantage to the rest of society (Dworkin 1981). However it also aims to maintain the autonomy of citizens by allowing resource inequalities to exist when they are the product of “option luck,” or circumstances resulting from choice. In this form of distributive justice, the equalizing of resources ought not to be uniform,

⁵ This is a reference to Rawls (1971, 1993) and the goals of the theory of justice. I do not identify Rawls as a luck egalitarian, but the luck egalitarians identify themselves with many aspects of Rawls’s theory. In this instance, Rawls’s theory is concerned with assuring that even the person in the worst possible position in society after emerging from behind the veil of ignorance is secured certain goods that would be necessary to pursue any “rational life plan” and advance their position through fair equality of opportunity and the difference principle.

but instead accommodate the needs of a heterogeneous society. It distinguishes between circumstances of birth and the results of choices, maintaining sensitivity to the responsibilities of individuals in forming preferences. Dworkin refers to these preferences that are a result of a series of choices, such as through the formation of a habit, as 'adaptive preferences' (Dworkin 1981). For example, luck egalitarianism finds that it is just for society to compensate an individual that was born unable to walk. She would require a significant amount of resources for a wheel chair, as opposed to a person with two healthy legs. Similarly, there is no obligation of society to compensate an individual who has developed a taste for an exorbitant amount of leisure time even though it results in her only being able to afford a studio apartment or causing her to sacrifice her desire for fine wines. These adaptive preferences illustrate a worry of luck egalitarians that unchecked compensatory justice will lead to an abuse of the system. Dworkin is looking to protect public resources by limiting their distribution to those in need. Mere circumstance is insufficient to dole out compensation. The process by which individuals come into their circumstances must be considered to protect against the undue self-interest of citizens.

These premises of luck egalitarianism as a general perspective have incurred several objections from Nussbaum in her defense of an essentialist account of justice, which calls for a more comprehensive list of human entitlements. Though the focus of her article, "Human Functioning and Social Justice," is to make positive contributions to theories of equality, her criticisms of luck egalitarianism are poignant ones (Nussbaum 1992).

First, she objects to the measurement of resources as a way to measure inequality. It atomizes the circumstances of individuals to an issue of compensation, not political agency. She states that "wealth and income are not good in their own right; they are good only insofar as they promote human functioning" (Nussbaum 1992). Second, she remarks that different persons have

different needs, which luck egalitarianism does not take into account. Instead, direct, monetary circumstance replaces comprehensive care for individuals under the guise of respecting autonomy. For instance, a pregnant woman has different nutritional needs than a non-pregnant woman; an adult has different needs than a child. These persons are treated uniformly in their access to the amount of resources that are immediately required, even though their circumstances vary greatly. Third, she objects to defining the “well-off” in terms of monetary resources because it does not reflect the impediments that persons face in everyday life. This is to say that resource equality does not capture the difficulties faced by individuals who experience marginalization, prejudice, or exploitation and offers no way to compensate for these social inequalities.

I agree with Nussbaum’s objections to luck egalitarianism, that while well intentioned, it does not capture the social and political injustices that persons may experience. By reducing the issue of equality to one of resources, luck egalitarians lose sight of the state of a human being that justice is primarily concerned with. I think it can be agreed by most that justice is neither arbitrary nor a formal means of maintaining public resources, but is instead a moral concern. As political theorists, we are particularly concerned with how to secure a social and political form of justice that promotes this morality. Luck egalitarianism becomes preoccupied with method and estranges itself from this normative concern; it places undue emphasis on the means and neglects the ends.

Nussbaum takes particular contention with the utilization of resources as a metric for individual wellbeing, as is illustrated in her first and third objections and Rawls is the primary person to whom Nussbaum responds and directs her criticism. Though the connection that Nussbaum makes between Rawls and the luck egalitarians is a common one, I believe that it is a mistake. *A Theory of Justice* is an egalitarian theory that is rooted in normative values

compatible with those of capabilities. These values are not satisfied by a strictly compensatory account of justice and Rawls does not assert that they are.

Dworkin, on the other hand, ought to be the source of Nussbaum's criticisms for reasons that become clear with an understanding of Dworkin's differences from Rawls. Dworkin sees himself as an extension of Rawls' theory, a presumption that is based primarily on the difference principle (Rawls 1979, Dworkin 1981). The difference principle is a guideline justifying some aspects of inequality, as long as it is a part of a larger, just system. It says, "the higher expectations of those better situated are just if and only if they work as part of a scheme which improves the expectations of the least advantaged members of society."⁶ Dworkin understands the difference principle to mean that Rawls is committed to a capitalist economy, one in which monetary inequalities are subject to certain constraints, but ultimately justified. He tries to extend this economic system in a way that is consistent with a conception of equality that places a high priority on individual responsibility and choice. However, the premise of Dworkin's account is not the same as that of a theory of justice. Rawls does pay attention to resources, but not on the grounds that it is an accurate account of human value, so much as it is a necessary constraint placed on a modern, liberal society. Rawls does conceive of his liberal society as entrenched in a market system, for which money plays an important role, but it is not the locus of his account of egalitarian justice.⁷ The economic aspects of the basic structure of society come second to the principles of justice. Dworkin would like to be sensitive to personal ambitions and allow for individuals to prosper should they choose to put in the work to do so, and as long as the undeserved disadvantages of individuals are compensated for. But for Rawls, the picture of a just

⁶ John Rawls, *A Theory of Justice*, (Cambridge, Mass: Harvard University Press, 1979), 75.

⁷ One could object to this particular act of considering the role of monetary resources as a necessary aspect of a liberal society, but this would require objecting to the conception of a capitalist system entirely, an issue that I do not wish to discuss here.

democratic society is one in which the market system serves justice, not legitimizes inequality. He says, “The intuitive idea is that the social order is not to establish and secure the more attractive prospects of those better off unless doing so is to the advantage of those less fortunate.”⁸ Rawls’s relationship with a particular branch of economics is conditional on its ability to fulfill his conception of justice.

In Dworkin’s case, we are hard pressed to argue that he is concerned with the social and political status of individuals. His theory expounds an insurance scheme to optimize individual choice, a perspective strongly disengaged from facilitating desirable social relations or individual status, that is a better target for Nussbaum’s objections to luck egalitarianism than the Rawlsian theory of justice. Dworkin is an egalitarian but gives greater importance to the notion of autonomy and self-responsibility than Rawls does. Dworkin illustrates an insurance mechanism that is meant to allow citizens to prioritize their states of ‘beings and doings’ through a predetermined order of importance. This is his way of ensuring against poor brute luck (or if you have many resources to expend on better insurance after the initial distribution, poor option luck, luck resulting from choice) and maintaining the liberty of an agent (Dworkin 1981). Nussbaum objects to the use of money as a way to determine which citizens are “better off” or “worse off” on the grounds that it does not evaluate societal relations or imposed social hierarchies. Nussbaum evaluates positions of human beings based on whether or not they have the ability to achieve desired states of functionings and she is concerned with a human being’s ability to flourish (Nussbaum 1992). Dworkin, however, would likely have classified this kind of an evaluatory process as a perspective consistent with equality of welfare and he is unconcerned

⁸ John Rawls, *A Theory of Justice*, (Cambridge, Mass: Harvard University Press, 1979), 75.

with an agent's ability to achieve a state of desired welfare.⁹ For luck egalitarians, equality of welfare is reducible merely to preferences and even encourages adaptive preferences. For Dworkin, resources, particularly monetary ones, are seen as an effective way to measure whether or not someone has the ability or opportunity to achieve the things necessary to live and exercise a certain amount of autonomy, which may or may not be in pursuit of an individual conception of the good.

But the notions of autonomy and capabilities are not disconnected nor does autonomy have to be undermined by a public conception of the good as Dworkin seems to imply. I have alluded to Nussbaum's list of beings and doings several times already but I officially introduce particular elements of them here. The list is what she calls the pieces of a "thick, vague" conception of essentialism or, "the view that human life has certain central defining features."¹⁰ She claims that this list has a normative character and that it is not only meant to describe what essential elements of the person identifies them as a human being across time and differing cultures, but also what functions all human beings should be able to have or do if we consider ourselves to be egalitarians (Nussbaum 1992). It comprises two levels, "the shape of the human life form" and "basic human functional capabilities," of which I will focus on the latter (Nussbaum 1992). The list includes ten points that seem intuitive, but they could easily be impeded by a social or political system that is not sensitive to ensuring them for all individuals. These points range from "being able to reach the end of a complete human life," "being able to have good health," and "being able to use the five senses," to "being able to recognize and show

⁹ Equality of welfare may be generally understood as a compensatory form of justice in which citizens are compensated according to their "well-being." It focuses on individual conceptions of well-being rather than a standard set of resources for all persons. Authors propounding accounts of equality of welfare are Roemer (1985), Scanlon (1986), and Parfit (1990).

¹⁰ Martha Nussbaum, "Human Functioning and Social Justice: In Defense of Aristotelian Essentialism," *Political Theory* 2 no. 2 (1992): 205.

concern for other human beings,” and “being able to form a conception of the good and engage in critical reflection about the planning of one’s own life.”¹¹ I do not list the full account of capabilities here, nor do I provide a defense for the particular elements within them. However I think it is clear from what is listed about that the ‘thick, vague’ conception of the good she provides is true to its name. These capabilities don’t promote how human beings should utilize their capabilities, just that all persons ought to be able to have them. I endorse her assertion that her list of capabilities, or one of a similar vein, are not only things the state ought to recognize as good for all persons but also promote and protect individuals’ rights to have them. I do not think Dworkin, or other luck egalitarians, would deny that the elements listed above are essential for equality or that recognizing these capabilities as a central feature of a political conception of justice are in danger of “undermining” the autonomy of an individual or absolving citizens of personal responsibility.

An additional point I would like to make concerns Rawls’s compatibility with capabilities theory. He is praised by Dworkin and criticized by Nussbaum and I have pointed out that I believe his position has been mischaracterized in both cases, but this deserves further probing. Rawls is not as concerned with the distinction between choice and circumstance that he is often associated with and I credit Samuel Scheffler’s evaluation of Rawls’s *A Theory of Justice* in my adoption of this position (Scheffler 2003). Scheffler draws a distinction in Rawls from other luck egalitarians by analyzing the structure of Rawls’s argument. He believes that Rawls doesn’t illustrate a form of resource equality, but is instead primarily concerned with developing a theory of democracy and then subsequently establishes reasonable means by which this democracy would form and operate. In this society people engage in a fair system of cooperation, are free

¹¹ Martha Nussbaum, “Human Functioning and Social Justice: In Defense of Aristotelian Essentialism,” *Political Theory* 2 no.2 (1992): 222.

and equal, have a sense of the right that is distinct from a personal conception of the good, and are by nature heterogeneous, but capable of coming to an overlapping consensus of public justice and forms of political regulation (Scheffler 2003). In this system Rawls is concerned with two particular notions, what he calls the two principles of justice: (1) that all citizens equally deserving of the most extensive basic liberties with a similar liberty for others and (2) social and economic inequalities are to be arranged so that they are to everyone's advantage.¹² He introduces the principle of Fair Equality of Opportunity and the Difference Principle to regulate and reinforce these primary notions (Rawls 1971). Fair Equality of Opportunity opens all careers and opportunities to persons of all backgrounds and the difference principle justifies resource inequalities when they are the result of a system aimed at improving the situation of the worse off.

In no part of Rawls's theory does Scheffler find a priority of choice over circumstance or conception of compensatory justice over the treatment of citizens as equal and systematic attempts to reduce inequality. I agree with Scheffler's analysis; Rawls is committed to a conception of justice that takes all persons to be of equal moral value. Rawls then tries to secure these principles of justice through a mechanistic political scheme of primary goods all persons should have, a priority placed on the autonomy of an individual to pursue any rational life plan, opportunities for professional and economic advancement, and a guideline to evaluate resource inequalities by. Rawls's emphasis on responsibility is one that Scheffler understands as a reasonable expectation and it is a part of what classifies Rawls as a liberal egalitarian. He gives individual autonomy to pursue or refrain from any rational life plan that does not conflict with another citizen a place of priority in the public conception of justice.

¹² John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971) 65.

Though we can distinguish Rawls from the luck egalitarians, he is not exempt from all criticisms from the perspective of capabilities theory. In particular Nussbaum finds fault with the use of the primary goods model as a system of comparison for wellbeing. Primary goods only secure persons access to social goods that allow a person to live “reasonably” well. Any other preferences or personal conceptions of the good are up to the individual to pursue. Rawls is concerned with the means citizens have to pursue them, and the difference principle commits us to continually aiming to improve the situations of the worse off so that these conceptions of the good may be pursued, but it does not capture the social injustices that Nussbaum is concerned with and Rawls himself is committed to according to the principles of justice. In light of Nussbaum’s charges I assert that it would be conducive to Rawls’s egalitarian commitments for him to replace the goods of the primary goods metric with a list of the capabilities I discussed earlier.

Capabilities fulfill the liberal commitments that Rawls has to autonomy, equality of status, and social justice. By evaluating citizens by their capabilities we can consolidate the concerns of Rawls. Capabilities consider an individual’s ability to fully function as an equal member of a political society, access to primary goods, and individual functionings. A person lacks in capabilities and his or her ability to meaningfully participate in public affairs limited if he or she is meal insecure or malnourished (a state of good health is a desirable state of being), unable to lead a stable and productive life due to a lack of housing (shelter would likely be a primary good) or be able to write and read in the nation’s official language (literacy is required to accurately cast a ballot). A focus on capabilities better captures the motivations of egalitarians as a whole than primary goods, which is a commitment to a moral ideal that all persons are politically equal and not just in need of resources which implies that individuals are a burden on

the state. To only ensure their economic equality is to disregard the very real circumstances of everyday life and varying needs of individuals. To only regard their welfare poses problematic constraints on the state. But to provide all persons with sets of essential capabilities ensures their ability to function as equal political members of a society, which recognizes them as respected and equally valuable to public affairs as a participating agent or subject of care.

Democratic Equality

I now turn to Elizabeth Anderson's account of democratic equality, which she presented in her article, "What is the Point of Equality?" (Anderson 1999). This, and other works advancing capabilities, differs greatly from the luck egalitarian position by the nature of the work's premise (Nussbaum 1992, Sen 1980, 1985). Rather than asking, "what do individuals deserve to be compensated for?" Anderson asks, "what do all persons deserve to be free from?" The answer to this question is sweeping and political: all forms of marginalization, exploitation, oppression, and arbitrary prejudice (Anderson 1999). By this alone we can begin to understand how the concerns of Anderson are very similar to Nussbaum's. Her theory views equality not in terms of access to primary goods or resources but instead the social and political status that persons have as an end, not as a consequence of their circumstances.

There are five points that Anderson sets as principles of democratic equality and she uses them to grapple with the same problem that defines the luck egalitarian approach which is aimed at determining how we secure some particular goods for citizens that are established by a normative understanding of equality while also maintaining the autonomy of those citizens in a democratic society. For Anderson, democratic equality calls for (1) identifiable goods that all persons ought to have access to, (2) access to these goods throughout life, despite brute or option

luck, (3) remedies adequate to resolve injustices committed against persons, (4) a responsibility to withhold judgment from other members of society in the pursuit of a conception of the good, and (5) an agreement upon these principles by all members of this liberal society (Anderson 1999).

I will pause here to make a special note that I do not expect my interpretations of Nussbaum to speak for her position, though I do lean on what she offers in “Human Functioning and Social Justice” (1992) as a means to advance capabilities as a whole. And in the case of democratic equality I find Nussbaum’s approach to be agreeable with the first two principles: there are identifiable goods with which all persons ought to have access to throughout their lifetime. Anderson later endorsed these goods as capabilities, introduced by Amartya Sen (1980, 1985), and I believe she would endorse the same capabilities as a suitable replacement of Rawls’s primary goods. In the case of principles four and five, I would not expect Nussbaum to accept them as Anderson has defined them, and deal with them below, and I refrain from commenting on the third principle because this particular form of retributive justice is not addressed by Nussbaum’s theory.

I begin with Nussbaum’s position on the fifth principle, which she addresses in her own writings, though she does not respond to Anderson specifically. She finds that consensus is desirable but not wholly realistic. Her “thick, vague” conception of the good is designed as such to accommodate for the lack of total consensus any society or global organization has achieved in the past (Nussbaum 1992).¹³ In regards to the notion of consensus and whether or not it can be

¹³ Nussbaum (1992) constructs an account of the human functions that is Aristotelian in nature and is specifically drawn to contrast with Rawls’s account of the good. It is meant to incorporate the things in which “human life is defined.” In brief, it includes details about the shape of the human form, cognitive abilities, the nature of societal relations with other humans, and the degree to which we are simultaneously autonomous, and other physical and social elements of human beings that she determines to be true for all persons across regions and through time.

achieved in actuality she makes the point that we can only accept consent from those willing to participate in the discussion (Nussbaum 1992). She points out that the ideal that persons, leaders, and citizens of a democratic society will ever come to a complete consensus is not likely to be realized. And this goal is impossible when citizens reside in a democratic community but refuse to participate directly or instead defer to a political elite. However, she contends that for a society to progress or establish a standard of determining where justice does or does not reside, at some point a decision must be made. For her, consensus is desirable – something aspire to, but not logistically necessary.

The fourth principle is one that I find problematic for an egalitarian theory. As Anderson puts it, “[e]galitarian principles should uphold the responsibility of individuals for their own lives without passing demeaning and intrusive judgments on their capacities for exercising responsibility or on how well they have used their freedoms” (Anderson 1999). The way I interpret this point is that Anderson is trying to prevent the kind of obstructions to autonomy that the luck egalitarians were trying to secure with their emphasis on choice and responsibility. By asserting the right of individuals to act “without judgment” I believe her to mean that individuals should be able to act in accordance with the laws of the state but not be subject to laws that are purely of a moral or normative nature. The dangers of such kinds of public policy that she is against are of interest to all egalitarians, it brings up the eternal question of egalitarianism: how do we ensure the normative principle equality without demanding homogeneity? I bring up again the point I attempted to make with my responses to luck equality in the previous section - a conception of the good, particularly one such as Nussbaum’s capabilities, does not have to impede upon, criticize, demean, or marginalize groups committed to an egalitarian society. A particular, publicly accepted, conception of equality can be constructed in such a way that it

appeals to egalitarians rather than threatens them. In the case of democratic equality, capabilities and the thick, vague conception of the good are designed to protect individuals from the forms of oppression that Anderson lists. Anderson herself endorses a list of capabilities, indicating that she can and does accept a public conception of the good. Anderson affirms the point I have utilized Nussbaum to make in response to the luck egalitarians without realizing the full implications of what it means to assert capabilities or how it might be done safely.

I do not mean to interpret Anderson unfavorably or dilute the important points she makes with democratic equality in the name of promoting capabilities theory. I do find, however, that for capabilities to be fully realized – and I believe Nussbaum would agree with me – that a commitment must be made to a particular, public conception of the good for the critics of luck egalitarianism to be successful. Continuing on a path in which political theorists promote one normative principle without full consideration of what positive contributions must be made for human beings to have equality established – and continued – for themselves is unsustainable. For luck egalitarians like Dworkin, there is no responsibility of the state to continue state intervention for individuals after the initial distribution and compensation for brute luck. But this view is insensitive to the ways in which humans grow, learn, and change. It also neglects the wider social or political circumstances that individuals face throughout a lifetime which are unpredictable but undoubtedly have effects for our social and political equality and agency.

One of the ways I think we can distinguish the list of capabilities from the concept of democratic equality is to determine what kinds of appeals to the good are acceptable in public policy that egalitarians will find useful and agreeable. Part of this is achieved by distinguishing a conception of the good that is acceptable to all and accounts of the good that require toleration. I believe there is a way to determine a public conception of the good but that not necessarily all

kinds of morality or the good are acceptable in an egalitarian society, specifically those that conflict with the security or promotion of individuals' social and political equality.

Philip Pettit addresses this difference between acceptance and toleration. Acceptance implies a kind of consensus, explicit or tacit, while toleration could be described as a public ethos. Both are necessary for egalitarianism in the sense that this account of justice calls upon individuals to recognize differing views, perspectives, or personal ideas of the good. In both cases, a widespread, public compliance is necessary because both depend on broader societal relations between different ethnic, religious, or moral groups. For Pettit, this idea of social cooperation comes up in Sen's capabilities theory when he points out that equality is achieved not just through autonomy, but through the support of those around us in society (Pettit 2001). Freedom requires autonomy, but also, "it is a conception that engages preference rather than choice, allowing that a person may enjoy freedom by courtesy of the efforts of others, not just by dint of his or her own" (Pettit 2001). To achieve cooperation does not mean calling upon a begrudging obligation to fulfill a bare minimum of tolerance of difference or pluralism in a society, but to engender a bond between persons on a large scale based on acceptance or by the standard of normative values. A public conception of the good can help to create and maintain that large-scale solidarity.

I think that the fears of Anderson and other liberal egalitarians may be ameliorated by incorporating a conception of the good into civil society that is acceptable to all and aims to enhance individual agency and autonomy. It should also be the case that the ability to develop and pursue a personal and rational plan of life is key and the representation of different political, moral, and ethical perspectives in public affairs is allowable under a condition of toleration and as long as these perspectives do not undermine the premiere normative value of equality.

Conclusion: Capabilities Theory

The final point I wish to make has already been discussed in many respects, but I will reiterate and finalize it here. I wish to make a call for egalitarians to incorporate a conception of the good into accounts of social justice with a lexical priority placed on a thick, vague conception of the good that is acceptable to all members of society. This conception should include a list of things that all persons should be able to have or do regardless of their choices, circumstances, or resources. I believe that capabilities theory is the progressive account of social justice and more accurately serves our goals as egalitarians when compared to luck egalitarianism. I also believe that future accounts of all egalitarians, including those supportive of capabilities theory, ought to let go of the assumption that equality is only present in liberal societies that bar appeals to the good in public discussion.

Nussbaum's account shows us that we can identify what essential elements identify someone as a human being and that many of the functionings we assume to be a part of equality aren't fully accounted for until they are explicitly recognized by egalitarians. I don't think any of the capabilities Nussbaum mentions are antithetical to the views of egalitarians be they luck egalitarians, welfare egalitarians, capabilities theorists, or proponents of equality of status. I believe that as political theorists and philosophers we are naturally concerned with the political status of an individual in society and that equality is best realized when it is conceived of in terms that all citizens need to be able to do or have to assert their political rights in a meaningful way.

I also believe that it is in the interest of egalitarians to retire the ban on other, personal accounts of the good in the formation of public policy when a lexical priority of the public conception of the good has been established. There are many controversial and political issues

that end up in local, state, and national legislative chambers that appeal not just to our sense of reason or logic, but also to our emotions, our sense of heart, our fears, and our deepest and oldest philosophical questions. We should be able to limit the appeals made to moral conceptions in public policy that conflict with or undermine the first principle of equality or the thick, vague conception of the good. In some ways this will seem counter-intuitive to egalitarian notions. They might ask, is it consistent with egalitarianism to allow for some conceptions of the good to appear in public debate but for others to be counted as illegitimate? However, I would respond with the question, is egalitarianism itself not a normative conception actively promoted by egalitarian theorists as opposed to other, competing conceptions of what principles of order or justice should rule a civil society? Egalitarianism itself is a good, it holds normative qualities in the same sense that capabilities do - it recognizes a particular thing that is worth having in and of itself. When we commit ourselves to a normative perspective, we must also accept that we reject other normative perspectives. Equality is the first commitment for us, and thus it ought to be considered as a legitimate appeal in the creation of public policy. Other perspectives challenging egalitarianism from inside an egalitarian society, by their nature, do not apply.

I give two brief examples to illustrate the difference between a legitimate and illegitimate appeal to a conception of the good in political issues. The first concerns freedom of speech. In an egalitarian society, one could reasonably assume that a right of all citizens is to have freedom of speech. In the United States (hardly an egalitarian society, but a contemporary example of a society aimed at promoting autonomy and other liberal goals on a broad scale) political, religious, and community groups along with individuals are granted the right to hold dissenting opinions from the government, address the general public on any number of social and political issues, and subscribe to whatever form of religion, political ideology, or other form conception

of the good that they may come up with. There are however, reasonable exceptions to when these views may be expressed and when free speech may be invoked, such as at times that particular kinds of speech could endanger other individuals. The example of shouting, “fire!” in a crowded theatre comes to mind. It is the right of a citizen to enjoy shouting the word fire and to do so in the event of imminent danger. However, a deliberate action to invoke a particular kind of speech that *creates* danger or harm to individuals is not protected by the right of freedom of speech. In this case, freedom of speech has reasonable circumstances in which it must be regulated to protect the equal opportunity of all movie-goers to enjoy the show without being subjected to the dangers of a crowd suddenly rushing to the exits, potentially harming them or others in a panic to escape from a danger that doesn’t exist.

Hate speech offers another example that might be relevant for egalitarian concerns. It is the right, however deplorable one might find it, for a citizen to hold unfounded prejudicial opinions about women, racial and ethnic minorities, religious groups, or persons with disabilities. However no egalitarian would grant that hate speech deserves an equal position in society as a source for appeal to form public policy. In fact, the notion of hate speech directly conflicts with the concerns of egalitarians. This would be an instance in which an appeal to equality as a good in and of itself is useful to egalitarians. Even more so, a public conception of the good such as that offered by Nussbaum constructs a roadblock for the legitimacy of hate speech in public debate because it recognizes a particular, but vague and acceptable, conception of the person that hate speech disregards. In this case, the lexical priority of this public conception of the good appeals to egalitarian justice, it does not threaten individual autonomy and instead serves autonomy.

Last, we might consider the example of physician-assisted suicide. This is an issue that for some is one of reason and rationality (how do we balance the amount of harm the patient would suffer dying from a fatal disease in comparison to the costs of dying at the hands of a physician?), for others it is practical (how will this change the nation's health care system? What will be the obligations of physicians if this is allowed? How do we determine when assisted-suicide is legitimate?), it may be political (is this a partisan issue? Is it one that should be determined nationally or by the states?), and for many of us is religious, moral, and ethical (how does this challenge my conception about what it is right to do? When should someone be forced suffer? Is the suffering of the living alleviated or worsened by assisted suicide?). It is these last questions and more that get pushed out of public discussion by egalitarians. I do not have the answer to any of these questions, in particular the last ones confronting our ethical concerns. But I do believe that in consideration of issues such as these, the deep moral and philosophical commitments that individuals hold ought to be recognized as legitimate in a public debate. There is no quick or simple answer to questions such as these because they challenge what we recognize in ourselves as human beings, such as our place or role in society, our obligations to other human beings, what this means for a greater moral order if we believe in one. Rather, if we are to ever find an answer and create or modify a public policy on an issue such as this one, we ought to be able to appeal to all sources of reasoning that might help us conclude where we stand as a society on something that affects us all in some way or another and what our equal rights ought to be as citizens equally subject to the policy that is created.

I conclude that the moral, ethical, and normative commitments of individuals ought to be a concern of egalitarians. Not in the sense that they ought to be equally ignored by the public sphere, but that within them individuals can – and do – make appeals to them when forming

opinions about public policy and that they are legitimate sources worthy of political consideration. I would be shocked to learn that any egalitarian identified herself as such purely on the basis of a logical proposition in which case she found equality to be irrefutable *a priori*. I think it is much more likely that egalitarians identify themselves as such because they feel morally or ethically compelled in some way to do so. They are themselves proof that altruistic claims can be made when considering how political societies ought to run and that autonomy of the individual is of the utmost concern but not necessarily in conflict with a public conception of the good. I hope to see in the future less fear about what the good might do to interfere with equality, and more confidence about how we can use a public conception of the good to enhance and ensure it.

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