

*Justice, Equality, Fairness, Desert, Rights, Free Will, Responsibility, and Luck*<sup>1</sup>

John Rawls defended a view he famously called “justice as fairness.”<sup>2</sup> I have defended a position I called “equality as comparative fairness.”<sup>3</sup> The notions of justice, equality, and fairness are all intimately related to each other, and to a host of other notions, such as desert, rights, free will, responsibility, and luck. This chapter aims to illuminate some connections between these deeply important overlapping notions.

Each of these notions is exceedingly complex. Hence, a full treatment of them is not possible here. Still, by focusing on a few key aspects of these notions some progress can be made in understanding the relations between them.

The chapter is divided into two main parts. In part one, I discuss justice. I begin by distinguishing between different conceptions of justice, including a conception of justice as involving the respecting of rights, two different versions of proportional justice, and the Rawlsian conception of justice as fairness. I then note the importance of distinguishing between *acting justly*, where one is acting for *agent-relative* justice-based reasons, and acting for *reasons of justice*, where one is acting for *agent-neutral* justice-based reasons

In part two, I discuss equality. Arguing that there is an intimate connection between a central concern for equality and a concern about comparative fairness, I focus on a view I call *equality as comparative fairness*. I discuss luck egalitarianism, the option/brute luck distinction, the role of responsibility and desert, and the difference between comparative fairness and comparative justice. I also argue that egalitarians should be concerned about both equality of opportunity and equality of welfare broadly construed, about both *ex ante* and *ex post* equality, and about both procedural and substantive fairness.

The chapter reveals that different plausible conceptions of justice and equality have different and important connections with fairness, desert, rights, free will, responsibility, and luck. The chapter also explores some implications of these different conceptions.

## Part I. Justice

### A. Recognizing some different conceptions of justice.

The notion of justice is extremely rich and complex. Correspondingly, there are many powerfully attractive and deeply important conceptions of justice. I shall discuss several of these here.

One general conception of justice is that justice requires giving each person her “due.” This conception, dating back at least to Plato, is widely accepted.<sup>4</sup> But this conception gives rise to many distinct alternative views about what justice requires, tracking different substantive views about what people are “due.”

One particular view about what people are “due” is the respecting of their rights. On this view, the notion of justice is tied to the notions of rights and rights violations. Specifically, on this conception an individual or society acts unjustly when, and only when, it violates someone’s rights. If, for example, you have a right to life or property, and I violate that right by killing you or taking your property, I act unjustly in so treating you. A view of this sort, combined with a narrow, parsimonious, conception of rights, is advocated by Robert Nozick and Jan Narveson.<sup>5</sup>

Clearly, on this conception of justice it is crucially important to determine the nature and scope of rights. Are there any natural rights, or are all rights social in basis? Are there any positive rights—rights to assistance, for example, to adequate food, shelter, or medical care—or only negative rights—rights not to be harmed, or interfered with in certain ways, for example, to

not be killed, tortured, or have one's property taken away. Are there any inalienable rights, and if so what are they? Are some rights alienable, and if so, under what conditions?

Most people believe that most rights are alienable by word or deed. I can, for example, voluntarily renounce my right to property or not to be harmed, in which case you may take my property or harm me for certain desirable goals without acting unjustly. Similarly, many believe that certain of my rights are conditional upon my respecting similar rights in others. Thus, on this view, justice, rights, and responsibility are intimately entwined. My responsible actions can limit or alter the scope of my rights, and thereby affect what may be justly done to me. So, for example, if I steal from another or harm an innocent person, then the state may perhaps fine or incarcerate me without violating my rights or acting unjustly. Likewise, there is no rights violation, and hence no injustice, if the state duns the wages of a parent who abandoned his children.

What about the role of luck? Well, I may not be able to *lose* a right because of bad luck, but the rights one has may be *conditional* on certain states whose obtaining may be a matter of luck. For example, I have a right not to have my property taken from me, *provided* I meet my fiscal responsibilities towards others. If, however, I default on my car payments, my car may be taken from me without violating my rights, and hence not unjustly *in the sense under discussion*, even if the only reason I defaulted on the payments is due to bad luck. Perhaps I have innocently come down with a rare disease and cannot work, or my employer has moved overseas, or my spouse has run off with my life's savings! Similarly, there is an old saying that "your rights end where the next person's nose begins." In accordance with this, many believe that even such fundamental rights as the rights to life and liberty are circumscribed by the conditions in which I find myself, including circumstances beyond my control. Thus, many

believe that if I posed a sufficiently serious threat to enough others—say, if I developed a highly infectious fatal disease—it would be neither unjust, nor a rights violation, if I were quarantined against my will, or perhaps, if necessary, even killed.

So, on one important view there is a connection between justice and rights, and the connection is such that both individual responsibility and luck may play a significant role in how one may be justly treated.

Two other important conceptions of justice are alternative versions of *proportional justice*. The principle of proportional justice might be roughly framed as follows: there ought to be a proportion between *living* well and *faring* well. This notion is intimately connected to the notion of desert. Intuitively, the thought is that insofar as one lives well, one *deserves* to fare well, and in a fully just world one *would* fare well. Unfortunately, the notion of “living well” is ambiguous. It may mean that one is *doing* well—that is, *acting* rightly or *doing* good deeds. Alternatively, it may mean that one is *being* well—that is, possessing good *character* or high moral *virtue*. I don’t think these positions have been sufficiently distinguished, since they tend to agree about most actual cases. Nevertheless, they are distinct positions with different implications, and though there is something to be said for each, I favor a version of the latter.

Suppose that Alan and Randi are both equally virtuous. Each would do everything possible to help someone in need. But Alan lives in a neighborhood where he can effectively help someone three times a week, while Randi lives in a neighborhood where she can only effectively help someone once a week. If, in fact, Randi would do everything Alan actually does, if she were in his position, and vice versa, then on the view of proportional justice I favor Alan and Randi ought to fare equally well, from the standpoint of justice, even if in fact, given their different circumstances, Alan actually *acts* rightly, and *does* good, more often than Randi.

Though not conclusive, such considerations lead me to think that the most plausible versions of proportional justice should focus on *character* more than *actions*. As such, it is such versions of proportional justice, properly qualified, that I shall focus on here.

There are two main versions of proportional justice. The first corresponds to a conception of *absolute* justice or desert. This reflects the general conception, noted above, that justice involves each person receiving her *due*, but the thought is that people *should* fare well precisely to the extent that they are *morally deserving*, where this is a function of their virtue or moral character.<sup>6</sup> On this view, it is unjust when one fares either better or worse than one morally deserves to, where this is understood in *absolute* terms. So, for example, saints (understood as extremely virtuous people) deserve to fare extremely well, sinners (understood as extremely vicious people) extremely poorly, and the rest of us somewhere in between. Thus, on this view, it would be unjust for a saint to fare extremely poorly, and likewise for a sinner to fare extremely well.

The second main version of proportional justice corresponds to a conception of *comparative* justice or desert.<sup>7</sup> On this view, to the extent that someone is more virtuous than another she deserves to live a proportionally better life. Here, justice determines the *relative* standing of the two lives, but not their absolute standing. John Broome defends such a conception of proportional justice.<sup>8</sup> For Broome, it would be unjust for sinners to fare better than saints, but it wouldn't be unjust for both to fare well, or poorly, as long as the saints fared better than the sinners in proportion to how much more virtuous they were. Thus, for Broome, "Sinners should be worse off than saints, but ... justice does not determine how well off each group should be absolutely." To Broome, a world containing only saints who fare poorly due to

natural conditions may not be “a very good one” but it is not unjust. “Similarly,” Broome writes, “in a world containing only sinners, I see no injustice if the sinners fare well.”<sup>9</sup>

Some people believe that all proportional justice requires is that there *be* the relevant connection between living well and faring well, no (or few) questions asked, as it were. On this view, it doesn't matter *why* one is, or is not, virtuous or vicious, what matters is simply *whether* one is virtuous or vicious, and to what extent. My own view is that this makes a mockery of the notion of justice. If the only reason I am virtuous and you vicious is that we have each been brainwashed or drugged to be the way we are, then I believe that neither of us is responsible for our character, and neither of us is morally deserving of faring well or faring poorly. In such a case, I believe that absolute justice would not require that I fare well, and you poorly, and comparative justice would not require that I fare better than you; similarly, if our characters are simply the result of genetic endowment or manipulation for which we are not responsible. So, for example, if God created Adam to be perfectly virtuous, and Eve to be perfectly vicious, and then sent Adam to a wonderful afterlife and Eve to a terrible one, he could not, in my view, defend his actions or their afterlives as *just*. More particularly, he could not claim to have acted in accordance with either absolute or comparative justice, since Adam doesn't *deserve* a wonderful afterlife, Eve doesn't *deserve* a terrible afterlife, and neither *deserves* to be better off than the other.

Thus, on my view, the conception of proportional justice understood in terms of absolute justice sees a tight connection between justice, moral desert, and responsibility. People must, in a robust sense, be responsible for their characters for them to be morally deserving of being well or poorly off in virtue of their characters, and hence for it to be a matter of absolute justice that they be well off in direct proportion to the degree to which they are virtuous. On this view,

good or bad luck that results in our getting either more or less than we deserve should be rectified, though good or bad luck that results in our getting what we actually deserve should not. On the other hand, luck can have no fundamental role to play in the formation of our characters. Insofar as it is a matter of luck whether we are virtuous or vicious, we are not morally deserving of faring well or poorly, and the notion of absolute justice loses its traction.

My own view is that the robust conception of responsibility required to make sense of our deepest convictions regarding absolute justice is inextricably tied to the mare's nest of free will. More specifically, I believe that the most compelling conception of absolute justice requires the kind of free will that is incompatible with both determinism and indeterminism, and that is notoriously difficult to square with our scientific world view and the obvious way in which both nature and nurture influence our characters. I think we must face this fact head on, and not try to deny it or run from it. I am aware, of course, that many will regard my claims here as tantamount to a *reductio* of the notion of absolute justice. But I don't share this sentiment. Though I don't have the foggiest idea how to solve the mare's nest of (meaningful!) free will, I believe that there is reason to believe, or at least hope, that many rational beings *are* sufficiently free, in the relevant sense, as to make attributions of responsibility for their characters appropriate. Correspondingly, I suspect that the notion of absolute justice is not incoherent—even if we don't understand how it could be coherent—and believe that it should be given significant weight in our moral deliberations. Though I hasten to add that there may be many cases where people are not (fully) responsible for their characters, in which cases the notion of absolute justice will not be (fully or straightforwardly) applicable.

Let us next consider the view of proportional justice that involves a commitment to *comparative* justice or desert. Although most advocates of comparative justice probably

assume that most people are responsible for their choices and character, the notion of comparative justice does not require that there be meaningful free will for it to retain its intuitive plausibility and force. According to comparative justice, if two people are responsible for the extent to which they are virtuous, then one person should fare better than another in proportion to the extent to which she is more virtuous; which is to say, only to the extent that she is morally more deserving than the other of faring well. But this suggests that if one person is not morally more deserving than another, then it is unjust if they do not fare equally well. Thus, as I understand this view, in a world where there is no meaningful free will, everyone is *equally* deserving—as well as equally *undeserving!*—since no one morally *deserves* anything at all. Since, according to comparative justice, at least as I understand it, it is unjust for one person to be worse off than another who is no more deserving than she, in such a world *all* inequalities in terms of overall quality of life would be comparatively unjust.

Let me sum up the preceding discussion. On my view, in a world lacking meaningful free will—for example, a purely deterministic or indeterministic world—no one would be morally *deserving* of anything. A fortiori, no one would morally *deserve* to fare well or poorly or at *any* particular level, and the conception of absolute justice would lose its traction. But a meaningful conception of comparative justice would remain. In such a world, all substantive inequalities would involve some being worse off than others no more deserving than they, and this would be comparatively unjust. Correspondingly, in such a world comparative justice would amount to a version of egalitarianism. All inequalities would be solely due to luck, and comparative justice would seek to rectify the impact of such luck by removing all inequalities of normative significance.<sup>10</sup> So, in a world with meaningful free will, where people are responsible for their choices and characters, both absolute and comparative justice will be

plausible, and proportional justice will be compatible with, and almost certainly require, inequality. But in a world lacking meaningful free will—which some people believe is ours—only comparative justice will be plausible, and proportional justice will require equality.

Finally, let me mention Rawls's well-known conception of *justice as fairness*. On Rawls's view, "Justice is the first virtue of social institutions,"<sup>11</sup> and there are two principles of justice by which a society's basic structure, or principles and institutions, are to be judged: "First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all."<sup>12</sup> Clause (a) of the second principle is fleshed out into Rawls's famous Difference Principle: society's principles and institutions are to be arranged so as to maximize the expectations of the representative member of society's worst off group.<sup>13</sup> Importantly, in *A Theory of Justice*, Rawls restricts the scope of his claims to "sufficiently developed" societies, and contends that his two principles may not govern the relations between sovereign nations. Later, he further suggests that his two principles may only apply to modern western-style democracies.

Rawls's theory of justice as fairness gives expression to a conception that we have of ourselves as free and equal rational beings.<sup>14</sup> But as Rawls later emphasizes, his conception of justice as fairness is political, not metaphysical, so he is not committed to free will in any deep, metaphysical, sense.<sup>15</sup> His concern is with a conception of *social* justice, and for Rawls questions about individual responsibility have little, if any, bearing on whether or not we should regard society's basic structures as just.

In a key paragraph illuminating the aim, scope, and motivation of his position, Rawls writes the following:

The intuitive idea is that since everyone's well-being depends on a scheme of cooperation without which no one could have a satisfactory life, the division of advantages should be such as to draw forth the willing cooperation of everyone taking part in it, including those less well situated. Yet this can be expected only if reasonable terms are proposed. The two principles [of justice] mentioned seem to be a fair agreement on the basis of which those better endowed, or more fortunate in their social position, neither of which we can be said to deserve, could expect the willing cooperation of others when some workable scheme is a necessary condition of the welfare of all.<sup>16</sup> Once we decide to look for a conception of justice that nullifies the accidents of natural endowment and the contingencies of social circumstance as counters in quest for political and economic advantage, we are led to these principles. They express the result of leaving aside those aspects of the social world that seem arbitrary from a moral point of view.<sup>17</sup>

So, for Rawls, social justice amongst free and equal rational beings reflects recognition of the fact that no one *deserves* the “accidents of natural endowment” or the “contingencies of social circumstances.” Recognizing that such factors are “arbitrary from a moral point of view,” Rawls believes that it will only be “reasonable” and “fair” for the disadvantaged to agree to a set of principles and institutions comprising society's basic structure that, in essence, treats natural endowments and social circumstances as common assets to be used for everyone's benefit. In particular, Rawls believes that the correct principles of justice will tolerate inequalities in natural endowments and social circumstances only to the extent that they can be harnessed for the maximal benefit of those most disadvantaged by such morally arbitrary inequalities. Since, arguably, it is a matter of luck whether one is advantaged in one's natural and social circumstances, Rawls's principles of justice can be seen as attempting, among other things, to mitigate the role that society allows luck to play in its citizens' lives.

It is important to emphasize that in *A Theory of Justice*, Rawls offered his theory of justice as fairness strictly as a theory of *social* justice, and in particular as a theory for assessing

the justness of a society's principles and institutions with respect to how it treats its *own* citizens, when the society is a sufficiently advanced western-style democracy. As Rawls acknowledged, his theory does not capture the *whole* of our notion of justice. Thus, in *A Theory of Justice*, Rawls says little about what justice requires of societies that are not sufficiently advanced western-style democracies, of individuals in their treatment of others, or of societies in their treatment of other societies or non-citizens.<sup>18</sup>

I have canvassed four specific conceptions of justice. Each is plausible and important. Though much more needs to be said about these issues, it is apparent that the different conceptions of justice are connected, in different ways and to varying degrees, with the related notions of fairness, equality, desert, rights, responsibility, and luck. Thus, a full understanding of the dictates of justice requires a much better understanding of the nature and significance of these other, related, notions.

#### B. Acting justly versus acting for reasons of justice.

Having recognized several plausible and important conceptions of justice, let me next introduce an important, but often overlooked, distinction between *acting justly* and acting for *reasons of justice*. Let us say that one *acts justly* when one acts for *agent-relative* justice-based reasons, whereas one acts for *reasons of justice* when one acts for *agent-neutral* justice-based reasons. These categories are not exclusionary. One might act for both agent-relative and agent-neutral justice-based reasons. The distinction I have in mind can be illustrated with the aid of the following examples.

Suppose that John has promised to pay Mary \$100 for a day's work. If Mary does the work, then John acts justly if he pays her, and unjustly if he doesn't. Suppose now that John decides to cheat Mary, and not pay her. I can try to talk John into paying Mary, but he's my

boss, and I'm afraid he'll fire me if I do. It would be good of me to talk with John, perhaps I even act wrongly if I don't. Still, if I fail to confront John, *he's* the one who is *acting* unjustly, not me. I'm (just!) being a coward. Still, there are *reasons of justice* for me to talk with John. If I do, I may promote a just situation. He may heed my words and act justly. Suppose I do talk to John, and it has the desired effect. In that case, I'd say I've acted courageously, perhaps even rightly, but not justly. *John* is the one who has acted justly, I've merely acted for reasons of justice.

Analogously, suppose John is going to pay Mary what he owes her, but I want him to lend me the \$100 instead. Suppose I know that if I ask John to lend me the \$100 he will do so, and not pay Mary. I then have reasons of justice not to ask John for the money. But if I ask John to lend me the money and he does, I may be acting selfishly, and perhaps even wrongly, but *I'm* not the one *acting unjustly*, John is. John is the one who owes Mary the money, not me.

So, accordingly, we can distinguish between *agent-relative* justice-based reasons, which are those an individual must comply with to avoid acting unjustly, and *agent-neutral* justice-based reasons, which are those anyone might have to help promote a more just situation. Agent-neutral reasons are distinct from agent-relative reasons, but both are important.

Notice, nothing I have said bears on the relative weight of agent-relative or agent-neutral justice-based reasons. Although we often think of agent-relative justice-based reasons as having overwhelmingly compelling force ("I *cannot* act unjustly"), in fact, there are stronger and weaker agent-relative justice-based reasons. For example, while I have a strong agent-relative reason not to enslave another, I only have a weak agent-relative reason not to take my brother's candy. Likewise, there might be stronger and weaker agent-neutral justice-based reasons. For example, while I might have a strong agent-neutral reason to help end child

exploitation, if I can, I might only have a weak agent-neutral reason to ensure that my colleague carefully reads the admissions folders.

Though permitting or tolerating injustice may not be the *same* moral shortcoming as *acting* unjustly, it is important to bear in mind that agent-neutral justice-based reasons are still reasons of *justice*. And strong reasons of justice, whether agent-relative or agent-neutral, are not to be sniffed at lightly. Or so I contend, though I cannot argue for this here.

Suppose, then, that A would be a more just outcome than B. On the view sketched above, everyone will have justice-based reasons to promote A rather than B, if they can. If failing to promote A rather than B, would be acting unjustly, then at least some of the justice-based reasons for promoting A would be agent-relative. If not, then the justice-based reasons would be agent-neutral. But, as emphasized above, they would still be reasons of *justice*, and they may still carry significant moral weight.

The distinction between different kinds of justice-based reasons helps illuminate the nature and scope of the different conceptions of justice. Insofar as justice is seen as involving the respecting of rights, agent-relative reasons are primary, and it makes most sense to talk of particular individuals as acting justly or unjustly when they respect or violate other people's rights. Insofar as justice is seen as involving proportional justice, whether absolute or comparative, agent-neutral reasons are primary. We don't normally think that each individual is responsible for seeing that people "get what they deserve" in the senses required by proportional justice; hence, we won't accuse someone of acting unjustly just because they haven't acted so as to make good people fare well, bad people fare poorly, or good people fare well relative to bad people. Still, we can recognize that the state of affairs where good people fare well, or better

than bad people, would be proportionally just, and hence that there are agent-neutral reasons of justice to promote such a state of affairs if we can.

To see the importance of the distinction between agent-relative and agent-neutral justice-based reasons, imagine that someone in another society who has responsibly developed a saintly character has been the victim of great natural misfortune. Suppose, in fact, that despite the best possible personal and social responses to her situation, her life is one of unremitting pain and misery, though this doesn't stop her from maintaining her saintly character and continually aiding others. If one believes in the absolute conception of proportional justice, one will believe that it is naturally unjust that this saint's life has gone so badly. Since she has lived well she deserves to fare well, and it is a bad thing—naturally unjust—if she doesn't.

Suppose now that it becomes possible to easily improve the saint's life. Do we have reason to do so? On the view in question we have a justice-based reason to improve her life—but it is an agent-neutral justice-based reason, not an agent-relative one. If we don't help the saint we may not be *acting unjustly*—since we did not cause her plight, promise to help her, and so on—but even so we have a reason of justice to help the saint. Helping the saint would promote justice by promoting a better proportion between living well and faring well.

Notice, it may be impossible for us to help the saint. On my view, this would be a case of irremediable natural injustice. It wouldn't merely be that her life was tragic, though it would be that too, rather she would be a victim of cosmic or natural injustice. What is the point of calling such a situation unjust? It tells us something important about the situation. It tells us that if, contrary to fact, we *could* do something about it, then,

*ceteris paribus*, we *should* do something about it, and one of the *reasons* to do so would be to bring about a proportion between the saint's level of well being and her moral desert or character. In aiding the saint we would not necessarily be *acting justly*, but we would be *promoting* absolute justice. We would be acting for *reasons of justice*.

Similar remarks would apply, *mutatis mutandis*, if one accepted the comparative conception of proportional justice.

Some people, like Robert Nozick and Jan Narveson, would acknowledge that the saint's misfortune is regrettable, and that it would be nice, good, and perhaps even desirable for us to act on her behalf; but they vehemently deny that we act unjustly if we fail to do so.<sup>19</sup> On their view, justice only requires us to rectify those misfortunes for which we are, in some relatively narrow and straightforward sense, directly and socially responsible.<sup>20</sup> Correspondingly, they think that victims of natural misfortune may warrant our sympathy, and that there may be various reasons to aid them, but that they have no claim on us regarding *justice*.

Many people feel some force to Nozick and Narveson's claim that I don't *act unjustly* simply by failing to rectify a situation for which I am not responsible. This claim seemingly tracks the widespread view that there is a big difference between the culpability of someone who exploits another, and someone who "merely" fails to aid a victim of natural misfortune. By the same token, however, many of these same people feel the force of proportional justice, believing that it is unjust for the saint to suffer, or to be worse off than the sinner, even if this results from natural misfortune. The distinction between agent-relative and agent-neutral justice-based reasons helps reconcile these beliefs. Perhaps Nozick and Narveson are right that there is an important source of

justice-based reasons, agent-relative reasons, that don't apply to me in situations for which I'm not responsible. Correspondingly, Nozick and Narveson may be able to plausibly claim that I'm not *acting unjustly*, if I fail to remedy a situation I'm not responsible for producing. Even so, there may be powerful agent-neutral justice-based reasons to do something about the situation. If we believe it would be more just for the saint to fare well, and for the saint to fare better than the sinner, we may also believe that we have *reasons of justice* to promote such outcomes if we can, even if we are not *acting unjustly* if we fail to do so. We see, then, that there is room for capturing what seems plausible about Nozick and Narveson's position, without having to deny that there may be reasons of justice to help those whose plight we are not responsible for producing.

## Part II. Equality

Just as there are many different conceptions of justice, there are many different conceptions of equality. In this part, I explore some connections between one central conception of equality, and the notions of fairness, luck, and responsibility. I believe that many of the points made here are directly relevant to, and help illuminate, certain central conceptions of justice, but I shall not pursue this here.

### A. Fairness, luck, and responsibility.

If I give one piece of candy to Andrea, and two to Rebecca, Andrea will immediately assert "unfair!" This natural reaction suggests an intimate connection between equality and fairness. I believe that there is one central conception of equality—I do not claim it is the only one—that focuses on how people fare *relative to each other*, where the concern for equality is not separable from our concern for a certain aspect of fairness; they are part and

parcel of a single concern. On this conception we say that certain inequalities are bad, or objectionable, when, and because, they are *comparatively unfair*; but by the same token, we say that there is a certain kind of comparative unfairness in certain kinds of undeserved inequalities. As indicated above, I now call this conception of equality *equality as comparative fairness*,<sup>21</sup> and it is this conception that I shall be addressing throughout this chapter. So, egalitarians of my sort are not motivated by *envy*, as is frequently charged, but by a particular conception of *fairness*.

Many contemporary egalitarians, including Gerald Cohen, Ronald Dworkin, and Richard Arneson, have been identified as so-called *luck egalitarians*.<sup>22</sup> Acknowledging the importance of autonomy and personal responsibility, *luck egalitarianism* supposedly aims to rectify the influence of luck in people's lives. Correspondingly, a canonical formulation of luck egalitarianism, invoked by both Cohen and myself, is that it is bad when one person is worse off than another through no fault or choice of her own.<sup>23</sup> So, luck egalitarians object when equally deserving people are unequally well off, but not when one person is worse off than another due to her own responsible choices, say to pursue a life of leisure or crime.

In fact, I think luck egalitarianism has been misunderstood by both its proponents and its opponents. The egalitarian's *fundamental* concern isn't with luck *per se*, or even with whether or not someone is worse off than another through no fault or choice of her own, it is, as noted above, with *comparative fairness*. But people have been confused about this because, as it happens, in most paradigmatic cases where inequality involves comparative unfairness it *also* involves luck, or someone being worse off than another through no fault or choice of her own.

On close examination, the intimate connection between equality and fairness illuminates the ultimate role that luck plays in egalitarian thinking, as well as the relevance and limitations of the “through no fault or choice of their own” clause. Among *equally* deserving people, it *is* bad, because *unfair*, for some to be worse off than others through no fault or choice of their own. But among *unequally* deserving people it isn’t bad, because not unfair, for someone less deserving to be worse off than someone more deserving, even if the former is worse off through no fault or choice of his own. For example, egalitarians needn’t object if a fully responsible criminal is worse off than a law-abiding citizen, even if the criminal craftily avoided capture, and so is only worse off because, through no fault or choice of his own, a falling tree branch injured him.

Additionally, in some cases inequality is bad, because unfair, even though the worse off *are* responsible for their plight; as when the worse off are so because they chose to do their duty, or perhaps acted supererogatorily, in adverse circumstances not of their making. So, for example, if I’m unlucky enough to walk by a drowning child, and I injure myself saving her, the egalitarian might think it *unfair* that I end up worse off than others, even though I am so as a result of my own responsible free choice to do my duty to help someone in need.<sup>24</sup>

Correspondingly, on reflection, luck *itself* is neither good nor bad from the egalitarian standpoint. Egalitarians object to luck that leaves equally deserving people *unequally* well off, not to luck that makes equally deserving people *equally* well off, or renders *unequally* deserving people *proportionally* well off. Thus, luck will be opposed *only to the extent* that it undermines comparative fairness.

Some luck egalitarians distinguish between *option luck*, to which we responsibly open ourselves, and *brute luck*, which simply "befalls" us, unbidden.<sup>25</sup> This distinction's advocates believe that any option luck inequalities—e.g. those resulting from people autonomously choosing to gamble or invest in the stock market—are unobjectionable, while brute luck inequalities—e.g. those resulting from genetic variations or unavoidable accidents—are objectionable.

I reject the way the option/brute luck distinction is typically invoked. In part, this is because drawing the line between them is difficult. But, more importantly, I believe it *is* objectionable if Mary takes a prudent risk, and John an imprudent one, yet Mary fares much worse than John, because she is the victim of bad, and he the beneficiary of good, option luck. Likewise, I believe there *is* an egalitarian objection if Mary and John are equally deserving, and choose similar options, but John ends up much better off than Mary because he enjoys vastly greater option luck. As with paradigmatic cases involving brute luck, in such a case Mary ends up much worse off than John, though she is in no way less deserving. This seems patently unfair. It is a case of *comparative* unfairness to which my kind of egalitarian should object.

This discussion is relevant to many public policy issues. *If* it is true that people can have personal responsibility for their actions in a way compatible with a meaningful conception of desert—a big “if”, but one that many accept, and that I shall assume for this discussion—then not *all* substantive inequalities will involve comparative unfairness, and hence be objectionable from an egalitarian standpoint. This position has deep and important implications for the nature and extent of our obligations towards the less fortunate whose predicaments resulted from their own fully responsible choices. This might include

conditions resulting from individually responsible choices involving job selection, lifestyle, risky behavior, and so on.

Clearly, this issue is too large to deal adequately with here, but let me just make five relevant points. First, this discussion's starting point is that the mere fact that some are worse off than others, does *not* mean that there is an *egalitarian* reason to aid them. There is an egalitarian reason to aid someone if her situation is *unfair* relative to others, and whether this is so depends on pertinent facts of individual responsibility.

Second, even if there is no *egalitarian* reason to aid someone needy, many powerful normative considerations may dictate our doing so. These may include maximin or prioritarian considerations that give special weight to the claims of the worse off, humanitarian considerations to ease pain and suffering, utilitarian reasons to promote the general welfare, virtue-related reasons of compassion, mercy, beneficence, and forgiveness, and so on. As I have argued elsewhere, egalitarians are rightly committed to pluralism, and we have to be sensitive to the *full range* of reasons for aiding the needy besides those of comparative fairness.

But third, where other morally relevant factors are sufficiently close, egalitarian reasons of comparative fairness may help determine who has the strongest moral claim on scarce resources. For example, if one *has* to choose between who gets the last available bed in the intensive care unit, perhaps it should go to the innocent pedestrian, rather than the drunk driver who ran into him. (Though this point raises many complicated questions, some of which I shall return to shortly.<sup>26</sup>)

Fourth, regarding comparative fairness, it is crucial that one determine appropriate comparison classes, so that one is comparing all relevant types of behavior in the same way.

For example, it would be objectionable to downgrade the medical claims of AIDS patients who engaged in unprotected sex, if one wasn't similarly prepared to downgrade the medical claims of pregnant women who engaged in unprotected sex, or perhaps obese stroke victims who did nothing to curb their appetite.

Fifth, in accordance with my point about option luck, it is important for comparative fairness that one not merely compare the “losers” of those making poor choices with the “winners” of those making good choices, but that, in addition, one compare the winners and losers of *both* categories with each other. Most people who overeat don't have a stroke, and most helmetless motorcyclists don't end up in the emergency room. Thus, regarding comparative fairness, one must remember that full responsibility for one's choices doesn't entail full responsibility for one's predicament. Indeed, as Kant rightly saw, the two are only loosely, and coincidentally, connected. Correspondingly, consideration of equality as comparative fairness requires that we pay attention not only to *actual* outcomes, but to the extent to which different people end up better and worse off than the expected value of their choices. Unfortunately, I cannot pursue these issues here.

Let us return to the case of the drunk driver who was fully responsible for getting drunk and then hit a pedestrian. By hypothesis, the drunk driver is responsible in a way the pedestrian is not for both being in need of urgent care.<sup>27</sup> And I suggested that this may provide some reason for giving the ICU's last available bed to the pedestrian rather than the driver, as it might be unfair if the “guilty” person *responsible* for the accident were saved rather than the “innocent” victim of his behavior. But, as I said, the situation is complicated. We might say there is an important *local* reason of comparative fairness to favor the pedestrian over the drunk driver in this case, attributable to their different degrees of

responsibility for the specific situation they each now face; but there are also *global* reasons of comparative fairness to consider, at least *ideally*, from an egalitarian perspective in determining who should get the last hospital bed.

Suppose that the drunk driver was a saint who had never been drunk before and had no reason to believe that his getting drunk would produce such a tragic outcome. Suppose, further, that despite the vast good he had done for others, his own life had been filled with suffering and tragedy. Next, suppose that the pedestrian was an evil man who had harmed countless innocents, but whose own life had overflowed with good fortune. Here, egalitarianism might favor giving the last bed to the driver, rather than the pedestrian, notwithstanding the driver's responsibility for their current dire predicament.

I submit, then, that individual responsibility *is* important from the egalitarian perspective, but it clearly isn't *all* that matters. Moreover, insofar as it does matter, *global* responsibility for one's overall character and predicament matters, not merely local responsibility for any specific predicament one confronts.

An interesting question is whether egalitarians should treat both "local" and "non-local" components of one's global responsibility for a given predicament similarly, or whether they should give special weight to someone's "local" responsibility.<sup>28</sup> The latter view might be akin to the view that in promoting self-interest it can be rational to give special weight to one's *present* desires in contrast with one's past or future desires. I'm inclined to think that egalitarians should treat local responsibility similarly to the other components of global responsibility, but I'm not certain of this. As long as "local" responsibility is given the same weight for everyone in similar contexts, it may be both

consistent and desirable for egalitarians to give it special weight in assessing comparative fairness. This is an important issue requiring further thought.

The issue of responsibility has an important bearing on the relationship between comparative fairness and comparative justice. I used to think that “comparative fairness” and “comparative justice” were merely terminological variants of the same substantive position, with some people favoring one expression, and some the other, because of slightly different linguistic intuitions about the notions of “fairness” and “justice.” For example, some people who have the linguistic intuition that there can only be an *injustice* where there is an agent responsible for perpetrating the injustice, might prefer to describe inequalities resulting from natural events as involving comparative *unfairness* rather than comparative *injustice*. Hence, some who balk at the claim that it is *unjust* that some people are born blind, and others not, nevertheless agree that such inequalities are *bad*, and that the comparative *unfairness* of the situation constitutes a reason to alleviate such inequalities if we can. Still, I now think that comparative fairness and comparative justice represent two substantively distinct positions related to the role that responsibility plays in the two positions. Let me explain why.

As indicated previously, I believe that comparative justice involves comparative desert, where the desert is *moral* desert. So, as seen, the idea is that saints morally *deserve* to fare better than sinners, on the supposition that there is a meaningful notion of free will, and that the saints and sinners are responsible for their moral characters. So, as discussed previously, on my view the responsibility that is relevant to comparative *justice* is the responsibility for one’s character as a moral agent.

Advocates of comparative fairness *also* care about moral desert, because they, too, believe that it is, in a sense, unfair if a less morally deserving person fares better in

proportion to her character than a more morally deserving person does. So, like advocates of comparative justice, advocates of comparative fairness will think it is fundamentally important if people are responsible for their characters, and they need not, for example, object to inequalities between saints and sinners where those inequalities are morally deserved. However, I believe the notion of comparative fairness allows greater scope to the importance of responsibility than the notion of comparative justice. For we can be responsible for our choices, and their consequences, as well as our characters, and this is relevant to what we regard as comparatively fair in a way that extends beyond the narrower notions of moral desert and comparative justice.

Suppose John and Mary are both fundamentally decent people, but that they choose different, morally permissible, life paths. Consistent with meeting all his duties and obligations to others, John freely and responsibly chooses a path that will predictably benefit himself more than other paths available to him. Mary freely and responsibly chooses a path involving many selfless actions. She is constantly choosing to put others before herself, with the predictable result that she will end up worse off than she would have had she followed John's path. Naturally, John ends up better off than Mary.

From the standpoint of comparative *justice*, the situation is unjust. Mary is worse off than John, who is no more morally deserving than she. Indeed, it is arguable that Mary is *more* morally deserving than John, so that in a perfectly *just* world, she would fare even better than John. The advocates of comparative fairness may agree that in an important sense it *is* unfair that Mary fares worse than John, but in another important sense it is *not* unfair. Mary *could* have chosen to be as well off as John, without in any way shirking her duties or responsibilities. She freely and responsibly chose a path that she *knew* would leave her

worse off than John. Given this, it is arguable that her situation relative to John's is *not* comparatively unfair overall. Accordingly, perhaps the egalitarian need not object to the inequality between them, notwithstanding the fact that she had laudable reasons for choosing her path. In any event, the objection to the relative conditions of John and Mary seems weaker on grounds of comparative fairness than on grounds of comparative justice, and this is because the notion of fairness may give weight to considerations of responsibility beyond responsibility for one's moral character.

Similarly, suppose I can choose between two morally neutral lifestyles. One will be harder in the short run, but ultimately benefit me more over the course of my life. Being fully apprised of the differences between the two lifestyles, I freely and responsibly choose the easier path; while Mary, confronting the same choice, freely and responsibly chooses the harder one. By hypothesis, Mary and I may be equally *morally* deserving. So, from the standpoint of comparative *justice*, it may be bad, because unjust, if I end up worse off than Mary. But egalitarians may not object to the inequality between Mary and me. Though in one sense it may be unjust, and unfair, for Mary to fare better than I, in another important sense it is *not* comparatively unfair for me to be worse off than she. I *could* have been as well off as she, but freely and responsibly chose another path knowing its ramifications. Having made my bed, as it were, I now have to lie in it. Under such circumstances, one might reasonably think that, overall, the inequality between Mary and me is not (especially) unfair, and hence not (especially) objectionable.

Finally, consider the case of someone with a high moral character, overall, who responsibly commits a crime to promote some desirable end. Compare that to someone with a decent, but not especially high, moral character, overall, who responsibly follows the law,

perhaps simply for the self-interested reason that he fears jail. In the ideal world, the first person should fare better than the second from the standpoint of comparative justice, assuming that both are responsible for their characters. But is it comparatively *unfair* if the first person fares less well than the second, because she spends time in jail? Well, in one important respect—one where the notion of fairness tracks the notion of justice—it *is* comparatively unfair. But in another important respect, one that gives significant weight to individual responsibility for our choices and their consequences, it is not comparatively unfair. One person responsibly chose to break the law, another to abide by it; whatever their moral motivations and characters, it would be unfair if we simply ignored the role that their responsible decisions played in their predicaments.

In sum, I now think that though they are related, the notions of comparative justice and comparative fairness differ. On the assumption that there is a meaningful conception of free will, both attach important weight to the role that individual responsibility plays in the formation of our moral characters. So both pay attention to the extent to which we are morally deserving of faring well relative to others. But comparative fairness *also* attaches weight to the role that individual responsibility plays in our choices and their consequences.

Moral desert is central, but not all that matters from the standpoint of equality as comparative fairness. By the same token, as important as individual responsibility is, it is circumscribed, from the standpoint of comparative fairness, by the kinds of considerations presented in the fourth and fifth points noted above. Finally, as indicated, the discussion here assumes that there is a meaningful conception of freewill and individual responsibility. If there is not, then I believe that comparative justice and comparative fairness will amount to the same, egalitarian, view. In that case, all inequalities will be both morally undeserved, and

ones for which no one is responsible; hence, all normatively significant inequalities will be both comparatively unjust and comparatively unfair.

## B. Equality of what?

Many egalitarians have debated the following question: insofar as we are egalitarians, what *kind* of equality should we seek? A host of candidates have been championed, including: income, resources, primary goods, wealth, power, welfare, opportunity, needs satisfaction, capabilities, functionings, rights, and liberties. It is difficult to exaggerate this topic's importance, since equality of one kind often *requires* inequality of another. For example, equality of income may correlate with *inequality* of need satisfaction between the handicapped and the healthy, and vice versa.

I shall not offer a particular substantive answer to the "equality of what?" question. But I shall address a number of related topics, such as whether egalitarians should care about equality of welfare or opportunity, *ex ante* or *ex post* equality, and procedural or substantive fairness. Considering these topics will further illuminate the conditions of, and connections between, desert, fairness, responsibility, and equality.

I begin with a methodological remark. Philosophers favoring different conceptions of what kind of equality matters have gone to great lengths illustrating cases where rival conceptions have implausible implications. These philosophers seem to assume that such considerations provide good reason for rejecting the rival conceptions. Moreover, many seem to implicitly assume that concern for one kind of equality rules out concern for others. Unfortunately, on a pluralistic view of morality, to which *all* reasonable egalitarians are committed, such assumptions are dubious.

Elsewhere,<sup>29</sup> I have pointed out that the fact that ideals like equality, utility, or freedom sometimes have implausible, or even terrible, implications, does *not* show that those ideals do not matter. It merely shows that each ideal, alone, is not *all* that matters. Likewise, the fact that different conceptions of what kind of equality matters sometimes have implausible implications does not necessarily show that those conceptions do not matter. Equality, like morality itself, is complex. And more than one conception may be relevant to our "all things considered" egalitarian judgments. Perhaps different kinds of equality matter in different contexts. Or perhaps even in the same context there are strong reasons for promoting different kinds of equality. Thus, the "equality of what?" question may have several plausible answers.

My own view is that for comparative fairness egalitarians, a large component of their concern should be with *welfare*—specifically, with whether the distribution of welfare is comparatively fair; but as I use it "welfare" is a technical term that needs to be interpreted broadly, and with great care. It must appropriately include, among other things, most of the elements that Amartya Sen carefully distinguishes in his sophisticated account of functionings, capability sets, freedom, agency, and well-being.<sup>30</sup> However, I also think that for comparative fairness egalitarians, a large component of their concern should be with *opportunity*—specifically, with whether the distribution of opportunities are comparatively fair. Thus, the comparative fairness egalitarian will want both equality of welfare and equality of opportunity in those cases where people have made similarly responsible choices and where no one is more deserving than anyone else.

Suppose, for example, that we lived in a world not too unlike the actual one, in which a relatively small percentage of people were very well off, while the vast majority were much

worse off. Concern for equality of welfare would impel us to raise everyone to the level of the best-off. But suppose, given limited resources, this were not possible. Concern for equality of welfare might then impel us to redistribute from the better- to the worse-off. But if the percentage of better-off were small, this might do little to improve the worse-off; its main effect might be to reduce the better-off to the worse-off's level. Even if we think this *would* be an improvement regarding equality of welfare and even, perhaps, regarding total welfare, we *might* think it would *not* be an improvement all things considered,<sup>31</sup> and in any event it might not be politically feasible. Thus, we might conclude that in such a case we must accept, even if not happily, a significantly unequal situation regarding welfare.

Still, we might distinguish two versions of this scenario. In one, the better-off are members of a hereditary aristocracy. They, and their descendants, are guaranteed a place in the better-off group, while the worse-off and their descendants are destined to remain in the worse-off group regardless of their abilities or efforts. In a second version, there is genuine equality of opportunity. At birth, each person, and his or her descendants, has an equal chance of ending up in the better-off group.

By hypothesis, the two versions of the scenario are equivalent regarding equality of welfare. Yet, most would agree that the second is better than the first all things considered, since it is better regarding equality of opportunity. I think, then, that *qua* egalitarian, one should care about equality of opportunity. But this concern should be *in addition to*, rather than *in place of*, a concern for equality of welfare. The second situation may be *perfect* regarding equality of opportunity—but it still involves many who are worse off than others through no fault or choice of their own, in a way that involves comparative unfairness. The egalitarian, *qua* egalitarian, will regard this as objectionable. It would be better, regarding

equality, if, in addition to everyone having equal *opportunities*, those equally deserving actually fared equally well.<sup>32</sup>

The preceding considerations are relevant to several related topics, such as whether we should be concerned about *ex ante* equality—equality in people’s *prospects* concerning the lives they might lead—or *ex post* equality—equality in *outcomes* concerning the actual lives that people end up leading; and similarly, whether the egalitarian’s concern should be mainly with *procedural* fairness, or with some more robust outcome-related conception of *substantive* fairness, according to which an outcome that resulted from a perfectly fair procedure might nonetheless be substantively unfair and require amelioration. So, just as one should care about both equality of opportunity and equality of welfare (broadly construed), for similar reasons I think one should care about both *ex ante* and *ex post* equality, and also about both procedural fairness and a more robust outcome-related conception of substantive fairness. Moreover, while in some cases, perhaps, *ex ante* equality, or procedural fairness, will be all that is realizable, and in others our main concern might be with *ex post* equality, or substantive fairness, at times the different positions will be intimately related. So, for example, it is arguable that under certain circumstances, whatever outcome results from a situation that meets sufficiently demanding criteria for *ex ante* equality, or procedural fairness, will, in fact, also be guaranteed to meet the most plausible conception of *ex post* equality, or substantive fairness. Moreover, it is also arguable that under certain circumstances, no coherent account can be given of what *ex post* equality, or substantive fairness demands, independently of certain favorable conditions initially obtaining that would at least partially satisfy the criteria for *ex ante* equality or procedural fairness.

I cannot fully defend these claims here, but let me offer some observations to illuminate them.

Egalitarians recognize that in the game of life, each of us, to some extent, must play the cards we are dealt. But they also recognize that sometimes our cards are both dealt to us, and played for us. On this analogy, the concern for ex ante equality, and procedural fairness, reflects the concern that the deck should not be stacked against certain players, and that there should be no cheating in the play of the hand. So, minimally, the egalitarian wants each person's hand to be determined by a fair deal and fairly played. If, for example, the deck is stacked in favor of whites or men, so that they are always dealt aces and kings, while blacks or women are always dealt deuces and treys, that situation will be patently unfair, and it can be rightly criticized from the standpoint of ex ante equality or procedural fairness. Likewise, it will be unfair if the cards are dealt fairly, but unfairly played; if, for example, whites or males are allowed to look at the hands of blacks or women before deciding what cards to play.

Ensuring that each person's hand will be determined by a fair deal and played fairly insures that, in advance of the deal, the *expected value* of each hand is the same, and we can say that that meets an important criterion for ex ante equality or procedural fairness. But the egalitarian wants more than just a fair deal and a fair play, since, by itself, this would do nothing to preclude some people being dealt aces and kings, while others, no less deserving, being dealt deuces and treys. That is, in the game of life, the cards don't have to be *stacked* against particular groups or individuals for it to still *turn out* that some are born with extraordinary life prospects relative to others. For egalitarians this is deeply unfair, even if,

in an important sense, it is not *as* unfair as it would have been had it resulted from a “stacked” deck, say, of bias or discrimination.

So the egalitarian not only wants the *deal* to be fair, he wants, as it were, each *hand* to be fair. That is, he does not merely want the expected value of each hand to be the same *in advance* of each deal, he wants the expected value of each hand to be the same *after* the deal. Thus, it should not only be that *in advance* of bringing a child into the world, one can reasonably expect the expected value of its life to be as good as anyone else’s, but rather that any child that is actually brought into the world should face a constellation of natural and social circumstances that give its life prospects an expected value as good as anyone else’s. Notice, this view reflects a concern that in one way resembles an ex post view—since it seeks equality in people’s life prospects after the deal, as it were. But in another way it resembles an ex ante view—since it focuses on the expected value of people’s life *prospects*, rather than the outcome that will result when the hand is actually played, which is to say the value of the lives that the people actually end up *leading*. For my purposes, I shall count such a view as setting further requirements on the criteria that must be met for ex ante equality or procedural fairness to be fully satisfied.

But these criteria need strengthening. To see this, let us further develop our card analogy. Suppose that each person is to be dealt four cards, each of which represents a life prospect. Suppose further that one of these cards will be selected at random. If an ace is selected, someone will lead a very high quality life with a value of 20,000, if an eight is selected someone will lead a moderately high quality life of value 10,000, and if a deuce is selected someone will lead a very poor quality life of value 0. Now suppose that in outcome A each member of a large population has been dealt four cards. And suppose that as a result

of a completely fair deal, involving many decks, half the population has been dealt two aces and two deuces, while the other half has been dealt four eights. Here, we meet the initial criteria that prior to the deal the expected value of each life is the same, and we further meet the additional criteria that after the deal the expected value of each life is the same, namely 10,000. Still, although the *expected values* of their lives are the same, it is clear that some people in A face significantly different life prospects. Those who have been dealt four eights face the certainty of a life of value 10,000, and the statistically near certain outcome of ending up in their society's middle off group. Those who have been dealt aces and twos, face the equal probability that they will end up with a life of value 20,000 or a life of value 0, and it is certain that they will either end up in their society's best off group or its worst off group. Hence, whatever happens, it is *certain* that those who were dealt different kinds of cards will lead lives of significantly different value.

Contrast outcome A with outcome B, where, *everyone* is dealt four eights, and hence faces the certain prospect of living a life of value 10,000, or outcome C, where, *everyone* is dealt two aces and two deuces, and hence faces an equal probability of living a life of value 20,000 or a life of value 0. Clearly, there is a respect in which each person's overall life prospects are the same in B, and similarly in C, but not in A. I believe that the respect in which this is so reflects an important element of what one should care about insofar as one cares about ex ante equality or procedural fairness. Arguably, from the standpoint of ex ante equality or procedural fairness, B and C are both perfect. One should be indifferent between them, and each should be preferred to A.

If right, the preceding suggests that insofar as one cares about ex ante equality, or procedural fairness, one should not merely be concerned with the *expected value* of different

lives, either in advance of their coming to be, or even at birth. Rather, for each kind of life, L, with value V, that someone faces at birth with probability p, it will be desirable if everyone else, at birth, also faces a kind of life, L', with probability p, that also has value V. Note, this position does *not* commit one to the kind of radical egalitarian position that Kurt Vonnegut Jr. skewered in his notoriously anti-egalitarian diatribe "Harrison Bergeron," which would require that everyone be exactly the same in all respects.<sup>33</sup> On the view in question, L and L' may differ substantially in all sorts of respects, as long as their *overall* value is the same.

Suppose we fully achieved *ex ante* equality, or procedural fairness, along the lines suggested above. So, for every two people there would be a one-to-one correspondence of equivalent alternatives involving the different life prospects they faced, and the probabilities and values of those prospects. In this case, we would have met the egalitarian goal that no one should be disadvantaged relative to another merely by the circumstances surrounding their birth. Still, the egalitarian wants more than this, as such *ex ante* equality or procedural fairness would be compatible with undeserved *ex post* inequalities of any size. And egalitarians will object to such inequalities precisely when, and because, they involve the substantive comparative unfairness of some being worse off than others, though they are no less deserving and not responsible for their plight.

Consider an outcome like C above. Suppose, at birth, everyone faces one of two prospects with equal probability, either a very high quality life of value 20,000, or a very low quality life of value 0. Assume this reflects a fair situation, equivalent to each being fairly dealt a fair hand, and that pure chance will determine which kind of life they end up leading, so that no charge of bias or unfairness can be made regarding the "play of the hand." Even

so, given that no one is less deserving than anyone else or responsible for their situations, egalitarians will regard it as comparatively unfair if half the people end up with lives of value 20,000 and half with lives of value 0. Ex ante equality and procedural fairness may be desirable, but in such circumstances they are no substitute for ex post equality or substantive fairness. In such a case, at least, egalitarians would much prefer the fairer substantive outcome where each person lived a life of value 10,000.

Next, suppose that the game of life was “stacked” so that at birth certain groups had a much greater chance of ending up well off than others. Using our card analogy, imagine that some people have been unfairly dealt three aces and a deuce, while others have been unfairly dealt three deuces and an ace, but that, as before, a random selection of the cards will determine what life each person actually leads. Clearly, this situation would be objectionable from the standpoint of ex ante equality and procedural fairness, and presumably there would be egalitarian reason to try to prevent such unfairness in people’s initial starting points if one could. Still, *assuming that no one was less deserving than the others*, if, in fact, everyone had aces drawn, so that everyone ended up living equally high quality lives, egalitarians would see no reason to change the outcome; similarly, if everyone had deuces drawn. On the other hand, if half had an ace drawn, and half a deuce, egalitarians would favor redistribution from the better- to the worse-off no matter *who* was better off. Here, the concern for ex post equality and substantive fairness would dictate the egalitarian’s response to the actual lives led, and any concerns she might have about ex ante equality or procedural justice would play no role in *that* response.

Might the egalitarian simply focus on achieving ex post equality, and not worry about ex ante equality or procedural fairness? I think not. Let me make several points regarding this.

First, the concern for ex ante equality and procedural fairness reflect the view that it not only matters how people *end up*, it matters how they have been *treated*; for example, that they are treated *as equals* so that no one is discriminated against or otherwise dealt an unfair hand to play. Importantly, it also matters that each person be given a fair start from which to autonomously plan their life, so that each person is significantly responsible for their own lot in life. Moreover, such factors are relevant to telic considerations regarding the goodness of outcomes, and not merely deontic considerations of how people ought to act. Thus, for example, it is not only true that people *ought* to treat people as equals, it is true that treating people as equals is *itself* a good-making feature of outcomes. That is, other things equal, an outcome where people have been treated as equals is better than one where they have not.

Second, as noted in discussing equality of opportunity, there may be some cases where ex post equality is unobtainable, or undesirable all things considered, where it would be better, precisely because fairer, if the outcome resulted from an initial situation of ex ante equality or procedural fairness than if it didn't.

Third, ex post equality is desirable only when it reflects comparative fairness. So, as indicated earlier, other things equal, egalitarians should not want fully responsible criminals to end up equally well off as a law abiding citizens. Likewise, suppose that John's initial starting point enables him to live a life ranging in value from 10,000 to 20,000, while Mary's only enables her to live a life of value from 0 to 10,000. Even if John and Mary end up equally well off, with lives of value 10,000, egalitarians would have good reason to worry

that the outcome was comparatively unfair. Perhaps Mary, having done her best to take full advantage of her opportunities, ought to end up much better off than John, who may have responsibly squandered his abundant opportunities. So, comparative fairness egalitarians can't just ignore questions of ex ante equality and procedural fairness, and focus on bringing about outcomes of ex post equality.

But this raises a fourth important issue. One can't simply assume that Mary deserves to be better off than John, based on the extent to which they differed in maximizing their potential. Perhaps if John had been given Mary's initial starting point, he would have acted as Mary did, and vice versa. In that case, perhaps Mary and John deserve to be equally well off after all, despite their completely different, and seemingly unfair, initial starting points. This shows that it may be important to promote ex ante equality and procedural fairness, to ensure that people have sufficiently comparable starting points, in order to make meaningful judgments of comparative fairness.<sup>34</sup> Furthermore, if, contrary to fact, one could ensure that people's initial starting points fully met the robust criteria for ex ante equality and procedural fairness—so, in particular, people had been dealt similar hands in terms of talents, temperament, and life prospects—and if, in addition, one could later remove or rectify the influence of luck on people's choices—so, ultimately, each person was responsible for how they ended up relative to others; then, of course, the comparative fairness egalitarian *would* be fully satisfied with the outcome regardless of whether it involved ex post equality.

### Conclusion

This has been a long chapter. Let me give it a brief conclusion. In part one, I discussed various conceptions of justice, including justice as the respecting of rights, proportional justice as absolute justice, proportional justice as comparative justice, and

Rawls's conception of justice as fairness. I also discussed the distinction between *acting justly* and acting for *reasons of justice*, where the former involves *agent-relative* justice-based reasons, and the latter *agent-neutral* justice based reasons.

In part two, I discussed a view I call *equality as comparative fairness*, and explored its connection with luck egalitarianism, desert, free will, and the importance of choice and responsibility. I noted an important, but often overlooked, difference between comparative fairness and comparative justice, with responsibility playing a larger role for the former than the latter given a robust conception of free will. I also argued that egalitarians should not only be pluralists regarding competing moral ideals, they should be pluralists regarding equality itself. In particular, I argued that egalitarians should care about equality of both welfare (broadly construed) and opportunity, about both *ex ante* and *ex post* equality, and about both procedural and substantive comparative fairness.

I believe that each of the conceptions of justice and equality discussed are plausible and significant, and that they have different connections to, and commitments, regarding each other, and the notions of desert, rights, free will, responsibility, and luck. I have tried to illuminate many of these connections and commitments, and to explore some of their implications. But I am well aware that I have barely scratched the surface regarding these complex, interrelated, and fundamentally important notions. Much more work remains to be done.

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<sup>1</sup> Part I draws on my “Thinking about the Needy, Justice, and International Organizations,” *The Journal of Ethics* 8, 2004, pp. 349-395. Part II draws on “Illuminating Egalitarianism,” to be published in a political philosophy volume edited by John Christman and Tom Christiano in Blackwell’s series *Contemporary Debates in Philosophy*. I am grateful to Ruth Chang, Shelly Kagan, Frances Kamm, Jeff McMahan, Derek Parfit, and the editors, Carl Knight and Sofia Stemplowska, for their helpful comments; also to many others who have influenced my thinking about this topic, including John Broome, G.A. Cohen, Roger Crisp, Nils Holtug, Susan Hurley, Thomas Nagel, Jan Narveson, Ingmar Persson, Thomas Pogge, Peter Unger, and Andrew Williams.

<sup>2</sup> See “Justice as Fairness” *Philosophical Review* 67, 1958, pp. 164-194, *A Theory of Justice*, Harvard University Press, 1971, “Justice as Fairness: Political not Metaphysical,” *Philosophy and Public Affairs* 14, 1985, pp. 223-252, and *Justice as Fairness: A Restatement*, Harvard University Press, 2001, edited by Erin Kelly.

<sup>3</sup> The intimate connection between equality and fairness is indicated in my book *Inequality*, Oxford University Press, 1993, though, partly out of deference to Rawls, I didn’t use the expression “equality as comparative fairness” or refer to my position by that name until fairly recently; see, for example, “Egalitarianism Defended,” *Ethics* 113, no. 4, 2003, pp. 764-782 and “Larry S. Temkin,” in *Political Questions: 5 Questions on Political Theory*, edited by Morten Ebbe Juul Nielsen, Automatic Press/VIP, 2006, pp. 147-167.

<sup>4</sup> See, *The Republic*, Book I, and also Aristotle’s *Nicomachean Ethics*, Part V.

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<sup>5</sup> See, Nozick's *Anarchy, State, and Utopia*, Basic Books, 1974 and Narveson's "Welfare and Wealth, Poverty and Justice in Today's World," and "Is World Poverty a Moral Problem for the Wealthy," *The Journal of Ethics* 8, 2004, pp. 305-348 and 397-408.

<sup>6</sup> This view has historical antecedents in Plato and Aristotle (see note four), and was accepted by Kant and W.D. Ross. See, Kant's *Critique of Practical Reason*, Part I, and *The Philosophy of Law*, Part II, and Ross's *The Right and the Good*, Oxford, 1930.

<sup>7</sup> This view also has historical antecedents in Aristotle, who claimed that there should be equal treatment for equals, so that likes should be treated alike, and unalikes should be treated unlike. See, the *Politics*, 1282b lines 16-21, and the *Nicomachean Ethics*, Part V, especially 1131a lines 10-29.

<sup>8</sup> Other defenders of comparative desert are Louis Pojman and Shelly Kagan. See "Does Equality Trump Desert?" and "Equality and Desert" in *What Do We Deserve?: A Reader on Justice and Desert*, edited by Owen McLeod and Louis Pojman, Oxford, 1998, pp. 283-314.

<sup>9</sup> *Weighing Goods*, Basil Blackwell, 1991, p. 169. Broome's discussion is in response to an early draft of my saints and sinners example which later appeared in "Harmful Goods, Harmless Bads," in *Value, Welfare, and Morality*, eds. Frey and Morris, Cambridge University Press, 1993, pp. 290-324, and in *Inequality*, chapter nine. I responded to Broome in "Weighing Goods: Some Questions and Comments," *Philosophy and Public Affairs* 23, 1994, pp. 350-380, and also in "Equality, Priority, and the Levelling Down Objection," in *The Ideal of Equality*, eds. Clayton and Williams, MacMillan Press and St. Martin's Press, 2000, pp. 126-61.

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<sup>10</sup> Roughly, inequalities are normatively significant when they account for some people being better off than others. Not all inequalities are normatively significant, and an inequality that is normatively significant in some contexts may be insignificant in others.

<sup>11</sup> *A Theory of Justice*, p. 6.

<sup>12</sup> *Ibid*, p. 60.

<sup>13</sup> See *A Theory of Justice*, pp. 75-83.

<sup>14</sup> *Ibid*, p. 11.

<sup>15</sup> In “Justice as Fairness: Political not Metaphysical.” Revealingly, *A Theory of Justice*’s careful index has no entry for “free will.”

<sup>16</sup> Here Rawls acknowledged Allan Gibbard for originally formulating this intuitive idea.

<sup>17</sup> *A Theory of Justice*, p. 15.

<sup>18</sup> Rawls addresses justice between different societies in *The Law of Peoples*, Harvard University Press, 1999.

<sup>19</sup> See note five.

<sup>20</sup> It is not easy to spell out the criteria for which misfortunes we are, in the relevant sense, responsible. But I take it the issue is not merely one of unavoidability or *some* social role in the causal nexus. That is, on the view in question, I take it there might be cases where we are not required to ameliorate the effects of some "natural" misfortune, even if that misfortune was socially preventable. For example, even if society could develop and distribute a vaccine which would prevent natural blindness, on this view there might be no *requirement* regarding *justice* that it either do so or improve the lot of those born blind.

<sup>21</sup> See note three.

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<sup>22</sup> See Arneson, Richard, "Equality and Equal Opportunity for Welfare," *Philosophical Studies* 56, 1989, pp. 77-93; Dworkin, Ronald, "What is Equality? Part 1: Equality of Welfare," and "Part 2: Equality of Resources," *Philosophy and Public Affairs* 10, 1981, pp. 185-246 and 283-345, and Cohen, G.A. "On the Currency of Egalitarian Justice," *Ethics* 99, 1989, pp. 906-44.

<sup>23</sup> See Cohen's "On the Currency of Egalitarian Justice" and my *Inequality*.

<sup>24</sup> Here I'm assuming that one might have a duty to save the drowning child. But one might feel the same way about the case if we thought aiding the child was supererogatory. However, as I discuss below, perhaps not all instances of someone's ending up worse off than others as a result of supererogatory action would involve comparative unfairness and hence warrant egalitarian rectification.

<sup>25</sup> Ronald Dworkin distinguished between option luck and brute luck in "What is Equality?" See also Dworkin's *Sovereign Virtue*, Harvard University Press, 2000, chapters one and two. For an important critique of the distinction, see Kasper Lippert-Rasmussen's "Egalitarianism, Option Luck, and Responsibility," *Ethics* 111, 2001, pp. 548-579.

<sup>26</sup> An important question I shall not address is whether we should be concerned about inequalities between people over the course of their whole lives, or between corresponding segments of their lives (say, teenagers of today with teenagers from previous years), or between simultaneous segments of their lives (say, the elderly of today with the youth of today). See *Inequality*, chapter eight, and Dennis McKerlie's pioneering article "Equality and Time," in *Ethics* 99, 1989, pp. 475-491. This question is especially relevant regarding issues of responsibility; since, for example, it is

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questionable whether a sixty year old should be much worse off than his contemporaries, or previous or later sixty year olds, just because of some responsible action performed by his twenty-year-old self.

<sup>27</sup> I am aware, but here put aside, the important questions raised by Coase's theorem, according to which both the drunk driver and the pedestrian can be seen as responsible for the situation and imposing costs on each other. I'm willing to go out on a limb and assign the greater moral responsibility for the predicament to the drunk driver in most such cases! See Ronald Coase's "The Problem of Social Cost," in *The Journal of Law and Economics* 3, 1960, pp. 1-44.

<sup>28</sup> Carl Knight raised this question.

<sup>29</sup> See *Inequality*, "Equality, Priority, and the Levelling Down Objection," and "Egalitarianism: A Complex, Individualistic, and Comparative Notion," in *Philosophical Issues* 11, eds. Sosa, Ernie and Villanueva, Enriquea, Blackwell Publishers, 2001, pp. 327-352.

<sup>30</sup> See *Inequality Reexamined*, and also "Well-being, Agency, and Freedom: The Dewey Lectures 1984," *Journal of Philosophy* 82, 1985, pp. 169-220.

<sup>31</sup> For considerations supporting this, see my "A 'New' Principle of Aggregation," *Philosophical Issues*, 15, *Normativity*, edited by Ernest Sosa and Enrique Villanueva, 2005, pp. 218-234.

<sup>32</sup> Recall that I am elucidating a version of egalitarianism that expresses a concern for comparative fairness. I have tried to illuminate the relation between this conception and luck egalitarianism, desert, responsibility, and so forth. This view will only advocate equality of welfare or opportunity when this is warranted by considerations of

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comparative fairness. Hence, the comparative fairness egalitarian will regard it as bad, because comparatively unfair, if some are worse off than others in terms of welfare or opportunities through no fault or choice of their own, but not otherwise (subject to the qualifications discussed earlier). So understood, it is a mistake to contrast the concern for equality of welfare or equality of opportunity with luck egalitarianism. The views are intimately related, as the most plausible versions of each ultimately reflect a concern about comparative fairness.

<sup>33</sup> "Harrison Bergeron" appeared in *Welcome to the Monkey House*, Dell Publishing, 1998; it is reprinted in *Equality*, edited by Louis Pojman and Robert Westmoreland, Oxford University Press, 1997, pp. 315-318. Bernard Williams raised a worry similar to Vonnegut's in "The Idea of Equality," in *Philosophy, Politics, and Society*, Second Series, edited by Peter Laslett and W.G. Runciman, Basil Blackwell, 1962, pp. 110-131. Hugo Bedau dubbed the ludicrous view that everyone should be exactly the same "radical egalitarianism," in "Radical Egalitarianism," *Nomos IX: Equality*, edited by R. Pennock and J. Chapman, Atherton Press, 1967, pp. 3-27.

<sup>34</sup> Susan Hurley stressed this important point in "Luck and Equality," *Supplement to the Proceedings of The Aristotelian Society* 75, 2001, pp. 51-72, and in *Justice, Luck and Knowledge*, Harvard University Press, 2003.