



Capabilities and Justice: Does personal responsibility for capabilities matter?¹

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INTRODUCTION

When assessing the information base of justice the capability approach focuses not just on people's actual achievements of well-being, but their freedom to achieve functionings. One of the advantages of this approach is that it allows us to widen the information base by adding a causal dimension to analyses of capability deficits. So starving can be distinguished from fasting by noting whether a person has the freedom to be malnourished. Including this information in justice and policy considerations allows us to redirect our attention and resources to individuals who lack freedom. Yet, although freedom has figured prominently in discussions of the approach, the sense in which an individual's personal responsibility for his or her disadvantage is relevant for questions of justice and equality has received relatively little attention. This is surprising given the prominent role the concept of responsibility has played in recent debates about justice and equality. But it is also surprising because theories of justice and equality typically accept that taking responsibility for the consequences of one's choices is a key criterion in deciding when to permit inequalities. In what follows, I will argue that the role the concept of responsibility should play in assessments of compensation and redistribution in a capability-based account of justice needs clarification. Further, that while a capability account must address the issue of responsibility in certain contexts, these are more limited than many liberals and supporters of the capability approach suggest. In section I, I will look at the role and scope of responsibility in recent debates in liberal political theory. In relation to the starving/fasting

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example above, many liberal theorists claim that the fasting person has exercised their freedom and the result, though unfortunate, is their responsibility and plausibly not a matter of injustice. In section II, I will consider how Amartya Sen and Martha Nussbaum have dealt with this issue and, in section III, I will discuss two objections to using responsibility as a criterion for deciding whether to permit inequalities. My approach will be to determine where and for what reason (moral, epistemological) we should take responsibility into account. Finally, in section IV, I will outline an approach that is consistent with the capability framework by focusing on what I take to be the ethos of the capability approach.

Before proceeding, I should say something about why I will focus on equality within a system of national justice and not on some of the other fields in which the capability approach has been prominent. The capability approach has been employed in the fields of international development, global justice and debates about equality. In common with other approaches to personal and social advantage, in all of these spaces it functions as a metric against which outcomes of personal and social advantage can be judged. Each of these spaces introduces different constraints on the extent to which various capabilities might be achieved. For instance, the available resources needed to implement a capability approach might be more severely constrained where standards of living are particularly low, or where social problems are acute. This is often the case in international development and within international justice more generally. In both of these areas capability deficits are often severe. So severe, in fact, that there are good reasons to think that our focus should be on addressing these deficits and not, perhaps, on attributing individual blame or praise to the disadvantaged. In contrast, capability deficits within systems of national justice are often subject to determinations concerning individual praise and blame. For instance, debate in recent liberal theory has focused on when an individual's responsibility for their disadvantage is politically relevant. One of the reasons for this is that in developed societies there are more options for citizens as well as more resources to redistribute. This is not to deny that severe poverty does not exist in European or North American countries or that because a citizen of a particular country has access to more resources he or she, therefore, deserves them. But because of the general wealth of those countries and the relatively large range of choices that people have, personal responsibility is relevant for determining when to permit inequalities. Personal responsibility is still very important for determining how we might address issues of disadvantage in the future, but because of the often life-threatening nature of these capability deficits we often put considerations of responsibility to one side. Whereas, it has been in connection with debates surrounding equality within a national setting that the issue of the role and scope of responsibility has played a central role. It is to these issues that I now turn.

I. EGALITARIANISM AND RESPONSIBILITY

The idea that it is fair that we should bear the costs of the decisions for which we are responsible and be compensated for bad luck for which we are not responsible is a powerful and important idea in egalitarian thought. Its influence on debates about equality and egalitarianism is profound. What Elizabeth Anderson has called 'Luck Egalitarianism' can

be characterised by precisely this idea.² Luck egalitarianism is a family of theories whose defining trait is that the goal of egalitarianism is to eliminate the effects of bad brute luck. What is relevant for our purposes is the important role that responsibility plays for determining when to permit inequalities. There are different versions of these responsibility-based views to be sure, but let me very briefly sketch the most influential version put forward by Ronald Dworkin.³

While the subject of considerable debate, Dworkin's account of the role of responsibility nonetheless serves as a good example of how the concept of responsibility functions as a criterion for deciding when individuals should be compensated for disadvantage. According to Dworkin, equal concern is the sovereign virtue of political community and showing such concern is how governments gain legitimacy.⁴ Dworkin's interpretation of this ideal of equality is equality in the space of resources, wherein equality is achieved by providing everyone with a set of resources that satisfies an envy test. As a way of identifying when to permit inequalities Dworkin introduced the distinction between option luck, which is a matter of 'how deliberate and calculated gambles turn out...'⁵ and brute luck, which is a matter of 'how risks fall out that are not in that sense deliberate gambles'.⁶ As presented here, the distinction between these two types of luck corresponds to those situations and events that are a result of a person's choice and those that are not. Dworkin makes it clear that these two types of luck separate the person from their circumstances. This distinction is crucial to liberal egalitarians because society, according to Dworkin, should aim to improve the position of people who are physically handicapped or otherwise unable to earn a satisfactory income, for example—but should not aim to mitigate or compensate for differences in personality—for differences traceable to the fact that some people's tastes and ambitions are expensive and other people's are cheap, for instance.⁷

So the person with expensive tastes will not attract egalitarian concern because those tastes are seen by Dworkin as falling on the option luck side of the divide and, therefore, the responsibility of the person and not the political community.

There is an important qualification given shortly after this passage which assigns some tastes, what Dworkin refers to as 'obsessions' or 'cravings', as belonging to people

² E. Anderson, 'What is the Point of Equality?', *Ethics*, 99/2 (1999).

³ Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality*, (Harvard: Harvard University Press, 2000). For other key statements see: Richard Arneson, 'Luck Egalitarianism and Prioritarianism', *Ethics* 110/2, 339-49; Cohen G.A., 'The Currency of Egalitarian Justice', *Ethics*, 99/4, (1989), pp. 906-943; J. Wolff, 'Fairness, Respect and the Egalitarian Ethos', *Philosophy and Public Affairs*, 27/2, (1998), 97-122; P. Van Parijs, 'Why Surfers Should be Fed', *Philosophy and Public Affairs*, 20/2, (1991), 101-31; J. Roemer, 'A Pragmatic Theory of Responsibility for the Egalitarian Planner', *Philosophy and Public Affairs*, 22, (1993), 146-66; S. Scheffler, 'What is Egalitarianism?', *Philosophy and Public Affairs*, 31/1 (2003); E. Anderson, 'What is the Point of Equality?', *Ethics*, 99/2 (1999).

⁴ Dworkin, *Sovereign Virtue*, p.1.

⁵ *Ibid.*, p.73.

⁶ *Ibid.*

⁷ *Ibid.*, p.286.

accidentally. If someone has a preference that they do not want, because say, it is hard to satisfy or he or she does not identify with it, then Dworkin argues that it should be viewed in the same way as a handicap, for which one is not responsible. The distinction Dworkin makes here is between tastes or preferences ‘that define what a successful life would be like’ and those that do not.

Dworkin’s recently published elaboration of these views involves two separate arguments why equality of resources has a better understanding of egalitarian insights than his critics. The first argument is an appeal to ordinary morality in a rather unconvincing way. Dworkin claims that we just find it bizarre to think of ourselves as needing to be pitied for having chosen this or that course of action or set of beliefs. Ordinary people, he says, ‘take consequential responsibility for their own personalities’.⁸ His second argument is to claim that our tastes are something that we might be said to identify with. He asks us to imagine someone who has an expensive involuntary taste for photography. Though the person recognises that there are hardships associated with his taste, if he were offered a pill to remove his taste he would decline it because, for him, photography is one of the things that is important in his life. That he would decline the pill in this case shows that his commitment to photography is part of a complex web of beliefs and judgements which has led him to affirm his commitment to photography and it would be wrong to view this person as someone to be pitied or assisted because of this involuntary taste. Dworkin’s argument is that causal responsibility for coming to have a taste is irrelevant to consequential responsibility. I will take it that Dworkin’s second argument is the stronger of his two arguments. Dworkin’s definition of responsibility then is: A person is responsible for their choices, tastes or preferences when they are endorsed by that person as being central to their conception of the good. And, where they have been authentically formed.⁹

There is not the space here to go through other luck egalitarian discussions of equality, but we should note that Dworkin’s distinction is widely used as a starting point for discussion of responsibility. For instance, despite his relocation of Dworkin’s cut between option and brute luck G. A. Cohen argues along similar lines to Dworkin. Cohen’s response to Dworkin’s distinction between option and brute luck is to claim that egalitarian concern should be guided by a different distinction, that between responsibility and luck. Cohen’s cut differs from Dworkin’s in two ways. First, it awards redress to both welfare and resource disadvantages, instead of just resource disadvantage. But for our present purposes the main difference is that he ‘foregrounds’ responsibility as he claims this is more faithful to Dworkin’s own intuition about egalitarianism, which is that no one should suffer because of bad brute luck. Cohen’s argument for his own responsibility/luck distinction is that what should guide egalitarian concern is whether or not disadvantage is incurred through choice, and both expensive tastes and resource deficiency might not have occurred through an agent’s choices. Cohen’s assignation of responsibility is both, as he puts it, ‘actual and

⁸ Ibid., p. 290.

⁹ Dworkin’s requirement for authenticity concerns the extent to which a person has the freedom to ‘engage in activities crucial to forming and reviewing the convictions, commitments, associations, projects, and tastes that they bring to the auction’. Ibid., p.159.

counterfactual'.¹⁰ On Cohen's view, a person is responsible for a taste or preference if it is traceable to a subject's choice and where he/she would choose the taste or preference. Call this, 'the counterfactual account of responsibility'.¹¹

In defending his responsibility-catering prioritarianism (RCP), Richard Arneson similarly defends a prominent role for responsibility. Arneson argues that,

I myself am inclined to think that if two persons voluntarily engage in high stakes gambling, from which the loser emerges with unfavorable future life prospects, it is intrinsically, not merely instrumentally more valuable to provide the means to a one-unit gain of well-being to someone who is just as badly off as the unlucky gambler but arrives at this condition through bad luck that is beyond his power to control than the unlucky gambler.¹²

¹⁰ Cohen, 'The Currency of Egalitarian Justice', p. 920. In responding to Cohen's claim that even if people have not suffered bad luck in their tastes, they might be said to have suffered bad luck in other people's tastes, causing the goods they desire to be expensive, Dworkin introduces a further distinction between kinds of luck. Dworkin admits that it is down to chance whether tastes of others make one's own taste expensive but denies that this should be seen as a matter of compensation. Instead, what he claims is that other people's tastes are features of the world just as natural environments are and are, in fact, 'parameters of justice', Dworkin, *Sovereign Virtue*, p. 299.

¹¹ Extending the scope of luck to cover preferences may well be a more egalitarian approach to the question of when egalitarian concern should be engaged. But despite these differences Cohen argues that the proper aim of egalitarianism is described in the following way; 'its purpose is to eliminate *involuntary disadvantage*, by which I (stipulatively) mean disadvantage for which the sufferer cannot be held responsible, since it does not appropriately reflect choices that he has made or is making or would make.', Cohen, 'The Currency of Egalitarian Justice', p. 916. Further on he writes, 'On my understanding of egalitarianism, it does not enjoin redress of or compensation for disadvantage as such. It attends, rather, to 'involuntary' disadvantage, which is the sort that does not reflect the subject's choice.', *Ibid.*, p.920. For recent discussion of this debate see: Ronald Dworkin, 'Sovereign Virtue Revisited', *Ethics*, 113 (2002); Andrew Williams, 'Dworkin on Capability', *Ethics*, 113 (2002); Mathew Clayton, 'Liberal Equality and Ethics', *Ethics*, 113 (2002).

¹² Arneson R., 'Luck Egalitarianism and Prioritarianism', *Ethics* 110/2, (2000) p. 8. For Arneson's earlier views see: Arneson, R. (1989), 'Equality and Equal Opportunity for Welfare', *Philosophical Studies* 56 pp. 77-93. To some extent the power of Arneson's appeal to responsibility is gained through a focus on a narrow conception of responsibility. For example, an egalitarian might respond that even if his objection is accurate many cases of disadvantage are not like the one Arneson highlights. For instance, We might divide these cases into different classes of comparison. Arneson's case is a *simple* comparative case in that it asks who we should aid when faced with a choice between two disadvantaged people, one responsible one not. But many cases of bad option luck are not like this. Comparative cases can be further divided into what I will call *complex* comparative cases. A complex comparative case might involve comparing very different options. For instance, there might be a choice between giving assistance to someone with bad option luck to lift them out of destitution or giving the resources to someone who is above a threshold and will use the resources to enhance their well-being to very high levels. Here again the intuition is not as obvious as it at first seems. If the second individual was extremely rich and the first individual was now destitute as a result of a prudent choice that had gone wrong, would we automatically distribute all our pot of resources to individual 2? There are plausibly a class of complex comparative cases which are not captured by Arneson's examples.

While Arneson's position differs from the two above in defending prioritarianism and not equality, it nonetheless still condones potentially severe disadvantage when it is a matter of bad option luck.

It is not my aim in what follows to adjudicate between the different conceptions of responsibility as such. Let me summarise these conceptions. For Dworkin a person is consequentially responsible when their choice results from their personal characteristics with which they identify and which have been formed authentically. For Cohen, disadvantage is a matter of egalitarian concern where a person's situation is a result of a choice which itself results from a character trait that the person was not responsible for acquiring and would not choose to acquire. While Dworkin's cut seems to place more responsibility with an agent than does Cohen's, both accounts foreground responsibility as one of the key criteria for distinguishing between those who warrant egalitarian concern and those who do not. Both of these accounts structure their understanding of how we should conceive egalitarianism in terms of the ideal of fairness. It is fair that we compensate for bad brute luck and unfair if we compensate for bad option luck. Arneson's view is perhaps more explicit than the other two in emphasizing a prominent role for responsibility.

II. THE CAPABILITY APPROACH AND RESPONSIBILITY

As is well known, when assessing the information base of justice the capability approach focuses not just on people's actual achievements of well-being, but their freedom to achieve functionings. According to Sen, the advantages of expanding the information base to include freedom and not just achievement are twofold. First, including freedom allows us to appreciate the opportunities that a person had to achieve various functionings. Part of the reason that Sen considers this important is because of its relevance for aspects of social and political analysis. But clearly one part of political analysis where this freedom is important concerns judgements of people's responsibility for their disadvantage. One of the advantages of an approach that focuses on freedom to achieve well-being is that it allows us to widen the information base by adding a causal dimension to analyses of capability deficits. As we saw above, starving can be distinguished from fasting by noting whether a person has the freedom to be malnourished.¹³ The second reason why freedom is important is that choosing itself may be directly relevant to a person's well-being. Here freedom might be intrinsically valuable to a person's life. I want to take it for granted that introducing freedom into our

A third type of case might be where, because of institutional structures, it makes little or no difference whether we aid someone with bad option luck. There are many cases where someone suffers bad option luck and it is not a choice between them and another person directly. If a society has established a health program to combat malaria among aid workers and it makes little difference whether the anti-malaria tablets are produced in large or small quantities, then it might be that there is no discernable cost difference in expanding the distribution to the people who got malaria through their own choices. Call this the 'cost indifference' comparative case.

¹³ Amartya Sen, 'Well-Being, Agency and Freedom', *The Journal of Philosophy*, 82/4 (1985), p. 201.

information base does provide significant advantages over a purely achievement based approach. Sen's approach seeks to include freedom in the assessment of what a person is entitled to claim from society. But what needs further clarification is what role the concept of responsibility should play in assessments of permissible inequalities in a conception of justice.

As we saw above, one of the ways in which freedom is important for social and political analysis is as a criterion for determining whether an inequality is a matter of justice or merely a private concern. Sen has stressed the importance of freedom as we saw, but has not clarified his understanding of the role of responsibility, even though it is clearly one of the central aspects of political analysis on which a freedom based approach allows us to focus. Sen has discussed this to some extent, however. Part of Sen's critique of Rawls was based on the need to acknowledge the difficulties that might arise for a person in converting primary goods into actual freedoms if they suffered from illness or more conventional constraints.¹⁴ Sen argued that there would be disadvantages suffered as a result of conversion problems, but it is also true to say that the consequences should not be seen as being the responsibility of the agent. Sen's critique has thus increased our understanding of when someone can be held responsible. He also notes the interdependence of notions of freedom and responsibility by stressing that responsibility requires freedom of the sort advocated by the capability approach. Through providing basic capabilities an individual will be freed from the constraints of ill health and poor education as well as provided with significant options about which she might responsibly deliberate. Thus the capability approach both recognises the importance of responsibility and promotes it by increasing freedom. Further, he argues that it might be counterproductive were social responsibility to replace individual responsibility.¹⁵

However, it is the more contentious issue of where a person has effective freedom over his or her choices yet chooses badly or foolishly that the issue of personal responsibility begins to bite. In places Sen identifies himself with the general distinction that we observed earlier between choices that are under our control and those that are not. Here the importance of distinguishing between freedom and achievements becomes apparent. As we saw above, for the capability approach it is more appropriate to see the claims of individuals on society in terms of the freedom to achieve rather than actual functioning.¹⁶ In addition, one of the advantages of the capability approach is that it allows us more information on whether a person had opportunities to achieve various important functionings. Not only does the addition of freedom here provide us with more information, but he seems to suggest that this information should be used to determine the justice or otherwise of inequalities. He writes that where a person is able to exercise freedom yet wastes their opportunities such that an inequality results, that, plausibly, no injustice has occurred.¹⁷ Redescribed in terms of the starving/fasting example discussed above, the rich and religious faster is clearly responsible

¹⁴ Amartya Sen, 'Equality of What?', *The Tanner Lectures on Human Values*, ed., S. McMurrin (Cambridge: Cambridge University Press, 1980).

¹⁵ Amartya Sen, *Development as Freedom*, (Oxford: Oxford University Press, 1999), ch. 12.

¹⁶ Amartya Sen, *Inequality Reexamined*, (Harvard: Harvard University Press, 1995), p. 148.

¹⁷ Sen, *Development as Freedom*, pp. 283-89; Sen, 'Capability and Well-Being' *The Quality of Life*, eds., M. Nussbaum and A. Sen, (Oxford: The Clarendon Press, 1993), p.38.

for his malnutrition, whereas the starving person is not. If, as suggested, freedom should be a factor in our political analysis, then the addition of responsibility will often be decisive in concluding that some capability deficits will not be the responsibility of the state. Of course, incorporating responsibility might be done in a number of ways. One could use it as a criterion only when basic capabilities were not in danger, such as when a person jeopardised not his health but only his wealth. Alternatively, one could follow the example of some theorists of equality and argue that even consequences of choices that led to severe disadvantage should be borne by the agent. I am not suggesting that either of these approaches are what Sen would opt for, merely that to rule out either approach we need further arguments about the role and scope of responsibility.

We should note that Sen's use of responsibility is sensitive to the (often serious) information constraints that accompany judgements about the presence or absence of freedom. He notes that we might have to forego focusing on the freedom and just concentrate on achievements in the presence of uncertainty about whether a person was in control or a victim of bad luck.¹⁸ But it still seems that for Sen, where we can be sure that we are dealing with responsible adults who are exercising genuine choice, if their choices go wrong, then it is possible to argue that no injustice has occurred. But as we will see, this claim will depend on just what unfortunate consequences occur as a result of the choice.

Nussbaum: a threshold view

One way of understanding the capability approach that might allow us to deal with a conception of responsibility is through the idea of a threshold. This is, indeed, the model that Nussbaum advances. She is in favour of a threshold, 'beneath which it is held that truly human functioning is not available to citizens; the social goal should be understood in terms of getting citizens above this capability threshold'.¹⁹ In *Women and Human Development* Nussbaum's aim is to provide the philosophical underpinning to basic constitutional principles that any government could implement. As such, Nussbaum's use of the capability approach offers a surer way of dealing with at least some distributional questions because it does not concern itself with capability deficits above the threshold.²⁰ Like Sen's interest in basic capabilities as opposed to all possible capabilities, it identifies not just a 'space', but identifies some capabilities as more important than others.

Nussbaum's account does not make use of the agency/well-being distinction favoured by Sen, believing instead, that the functionings/capability distinction captures the important aspects of the approach. These and other differences aside, Nussbaum's threshold approach

¹⁸ Sen, *Inequality Reexamined*, pp. 148-50.

¹⁹ Martha Nussbaum, *Women and Human Development*, (Cambridge: Cambridge University Press: 2000): p.6. Nussbaum's main justification for this view is that without a certain level of capability in these central areas people are not able to live in a truly human way. Nussbaum believes that truly human functioning can be the subject of an overlapping consensus, *ibid.*, p.74.

²⁰ While offering more definite information on which capabilities are important, Nussbaum's approach raises problems concerning how it might be possible to agree on her list of capabilities.

nonetheless raises similar questions about the role and scope of responsibility to Sen's. Sideline considerations of capability deficits that are above the threshold still does not tell us what to do when someone exercises their capabilities in a way that is foolish or irresponsible, and that leads to them dropping below the threshold. Nussbaum, of course, allows that there might be cases where people choose not to take up certain capabilities and turn them into functionings, but this is a different issue.

Nussbaum's version of the capability approach also recognises each person as a source of agency, stressing that people are typically the best source of what is good for them.²¹ She also argues that capabilities and not functionings are the proper target of public action because, for one thing, they treat people as adults and not children. Part of how we treat people as adults is to respect their own conceptions of the good life. She claims that citizens should be provided with capabilities and then be able to 'chart their own course after that'.²² Where a person has opportunities for sexual satisfaction yet chooses celibacy we should respect their choice to abstain from that particular capability. On Nussbaum's view, a person should have responsibility for their choices and we should grant them the freedom to exercise this responsibility. But there are at least two ways of interpreting this claim. The first way, which is what I think Nussbaum intends, is that we should respect people's freedom to use their capability set in the way that is consistent with their life plan. Doing so recognises them as an end and not just a means. We can call this 'choice responsibility'. But it is not clear how far this impulse extends. Recognising people's responsibility might also mean letting them bear the costs of their choices as well. On this second interpretation, where someone makes foolish choices that leads to a capability loss — say through smoking or gambling — we might permit them to suffer some measure of capability deficit and not regard it as a matter of justice. Call this interpretation 'outcome responsibility'. At any rate, it is not clear whether Nussbaum thinks that people should bear the costs of their choices when this would take them below a threshold level of capabilities. As both interpretations are consistent with her position, we need further arguments to clarify the role and scope of responsibility in these contexts.

While both Nussbaum and Sen address the question of people's responsibility in different and important ways, it remains unclear how each of them would respond to the issue of bad option luck that leads to basic capability deficits. As we saw above, Sen indicated that he would observe the brute/option luck distinction, but it is not clear to what extent and when. Nussbaum's threshold approach is similarly ambiguous on how to respond to capability deficits caused by bad option luck. The position is consistent with either choice or outcome responsibility. It may well be that neither advocate intends as large a role for responsibility as some other recent theorists of justice, such as Dworkin and Cohen. But if this is the case, then we need to be aware of the arguments for what I will call a 'responsibility ignoring' approach to justice. In light of recent debates about equality and responsibility, I will elaborate what I think is the best response to these questions. Such an elaboration is warranted because some conceptions of the role of responsibility that are consistent with the positions outlined above lead to very harsh results for the disadvantaged. Second, it is

²¹ *Ibid.*, p. 51.

²² *Ibid.*, p. 87.

important to be clear about this response if only to understand the type of ethos or ideal that a capability approach to justice should adopt. I will argue that a capability approach is consistent with a properly egalitarian ethos, one which will limit the role and scope of individual responsibility with respect to basic capabilities. Interpreting the capability approach to equality as egalitarian will avoid some of the potentially harmful consequences of responsibility-based accounts of justice, which I set out below. There are two objections to responsibility-based capability approaches that are particularly relevant here. They are what I will call the ‘disastrous consequences’ and ‘epistemological’ objections.

III. THE COSTS OF RESPONSIBILITY

Disastrous consequences

As we have seen, many of those committed to upholding a conception of equality deploy a conception of responsibility to assess where assistance is justified. But many of those who claim to work in an egalitarian tradition have recently come under fire for letting responsibility considerations take precedence over other egalitarian intuitions. For instance, in an insightful article on equality, Elizabeth Anderson argues that recent writing on equality has lost sight of the proper aims and origins of egalitarian thought. The ‘luck egalitarians’, as she calls them, think that the main aim of egalitarianism is to compensate people for undeserved bad luck, leaving many victims of bad option luck to their fates. She claims that for those who exhibit bad option luck, luck egalitarians prescribe rugged individualism, where individuals are asked to take responsibility for their own choices even when that would leave them destitute. Where bad brute luck applies, they prescribe a pooling of risks and resources, but in a way that smacks of paternalism. Anderson also claims that luck egalitarianism fails the test of what a true egalitarian theory should be because it fails to treat people with equal concern and respect.²³

Under luck egalitarianism the victims of bad option luck fare particularly badly according to Anderson. She presents a series of cases that highlight the harshness of the doctrine. For instance, she asks us to consider the case of a negligent driver who injures himself in a car accident. All things being equal, the costs of initial emergency care and subsequent care should, on the luck egalitarian account, be borne by the driver because his actions are a

²³ Despite the appearance of humanitarianism, Anderson claims that the luck egalitarians also fail to treat the victims of bad brute luck with the respect and concern that they deserve. In particular, luck egalitarianism fails to properly identify who is worst off. For instance, she claims that Dworkin’s scheme to compensate those who insure against disability discriminates against those who fail to insure against rare diseases that they could not foresee contracting. And for those that luck egalitarianism does aid, it is deeply disrespectful. Towards those who are disabled, talentless or socially awkward, Anderson claims that the luck egalitarians would make intrusive judgements about their disadvantage in order to compensate them, effectively raising ‘private disdain to the status of officially recognised truth’ thereby reproducing the stigmatising approach of the Poor Laws, ‘What is the Point of Equality?’, p. 306.

result of option luck. Similar examples point to how luck egalitarianism abandons the prudent when their luck turns sour. For example, if someone chooses to live in a geographic location occasionally afflicted by cyclones, then the state would not be obligated to give them disaster relief if the worst happened. Similarly, workers who choose risky occupations might also not be compensated by the state should they suffer an accident at work.²⁴

The responsibility-based equality discussed in the previous section cannot easily avoid these examples. These cases are all instances of bad option luck in the Dworkinian sense. The negligent driver is not a victim of bad brute luck but of his or her own negligence.²⁵ Capability-based accounts of justice will also find it hard to avoid these harsh results if they adhere to an unmodified version of the option/brute luck distinction. As Anderson's examples show, bad option luck can lead to severe capability deficits. If we insist that the freedom that an individual made use of be employed to determine their eligibility for assistance of some kind, as at least some of Sen's comments indicate, then the capabilities deficits suffered will not be a matter of justice. Similarly, on the outcome responsibility interpretation, Nussbaum's threshold view is consistent with these inegalitarian results. So where someone's option luck goes wrong and they drop below the threshold, Nussbaum's view might plausibly not offer any compensation. While I am not claiming that these are the positions intended by defenders of the approach, their positions are at least open to these objections in the absence of arguments to limit the scope of responsibility.

In one respect, Nussbaum's insistence that a life is not properly human without a threshold of capabilities makes it easier to see what is wrong with a responsibility-based account of capability justice. If falling below a threshold level of capabilities will mean that a person does not lead a truly human life, then this at least provides a basis for limiting the scope of responsibility in those situations where there are severe capability deficits. Indeed, as I will argue below, this claim is consistent with an appropriate ethos of egalitarianism.

Uncertainty, information and the case of the unemployed

Apart from the disastrous consequences that might befall those who are made to bear the costs of their bad option luck, adhering to the option/brute luck distinction may also be difficult to administer. For many of the unemployed, if their level of benefits is tied to their responsibility for their situation, the use of responsibility criteria can lead to harmful results. Such procedures involve distinguishing between cases where a person is able but unwilling to work and cases where some other factor prevents them from working. Those responsible for making such evaluations typically ask about a person's motivation, their efforts made to secure employment, family situation, willingness to move locations, their past employment history and the reasons they are no longer employed. In effect, what such procedures seek to

²⁴ Anderson provides nine types of bad option luck that she thinks the luck egalitarians do not adequately address. *Ibid.*, pp. 296-99.

²⁵ Similarly for Cohen, so long as the person did not acquire their driving habits as a result of brainwashing or circumstances he could not otherwise avoid, then he would, all things being equal, forfeit the right to assistance if responsibility was the criterion for permitting deviations from equality.

establish is a person's personal responsibility for whether or not they are unemployed. While I do not wish to argue that it is impossible to determine responsibility for unemployment, there are epistemic reasons for doubting that this can be done accurately on a large scale as is typically required. We should note that this is typically done on a mass scale by employment agencies, often with limited resources. Except in glaringly obvious cases where a person either admits that they are not trying to get a job or they are caught perpetrating a fraud, it is often an imprecise process. There are a range of factors that might play a role here. For an assessment to be complete an assessor might have to consider a person's past responsibility in acquiring marketable skills, their efforts in finding jobs, the nature of the job market and, importantly, the person's motivation. All of these things produce a very complex picture out of which governments and their representatives have to decide the issue of personal responsibility. Consider a version of the case made by Anderson which she calls 'geographical discrimination among citizens'.²⁶ In many Western countries there are regions that are both remote from populous centres and lacking in sustainable employment. These regions have higher unemployment than is common in that country as a whole or even in the local state or territory. Where does responsibility for being unemployed lie for people who either remain in that region or voluntarily relocate to it? In the former case it might be impossible to go through all of the factors that might influence such an assessment. But it is easy to imagine that where a person has attachments and commitments to a location it might be possible for someone to leave that place but be very costly for them to do so. What these examples point to is that it is often hard to determine responsibility for being unemployed in a straightforward way.²⁷ This is not to say it is impossible, just that it is complex.²⁸ But it is also very important to get it right as the consequences for the individuals whose eligibility for welfare benefits is being assessed are often extraordinarily high. What might the consequences of judgements about eligibility for welfare be and why might the consequences be so high? Our first guide here is how such judgements about responsibility for unemployment operate in real world scenarios. In the United States, United Kingdom and Australia it is typical for welfare systems to deny or reduce benefits to those it deems to be

²⁶ Anderson, 'What is the Point of Equality?', p. 296.

²⁷ See also Brian Barry, 'Chance, Choice and Justice' in *Liberty and Justice*, (Oxford: Oxford University Press, 1989).

²⁸ Someone might object, as indeed Arneson does, that his account of responsibility was pitched at the level of ideal theory, whereas claims about epistemic difficulties are pitched at a lower level and so miss their mark, Arneson, 'Luck Egalitarianism and Prioritarianism', p.345. I cannot deal with this fully here, but let me note one possible response. Whether or not we endorse the employment of an ideal of responsibility as I have described it is tied up with the work that it is required to perform – whether it is cast in the right institutional setting. Using responsibility in some contexts is appropriate. For example, where two people both place small bets on a race and one loses we do not think that the loser has suffered an injustice. Nor do we think it particularly noteworthy that the winner gains a small reward. But things get less intuitive for the luck egalitarian where someone loses their health and not their wealth. We noted earlier Elizabeth Anderson's example of the negligent driver. In such a case we typically don't think that a person should be left to bear the costs of their own actions. One reason for this is that when consequences are severe enough that someone's life is threatened and we can save them an arguably more powerful intuition is that we should. It seems counter intuitive that what is most important here is that people be made to account for their choices. Without knowing something about the proper institutional setting it is difficult for ideals to perform one of their most important functions, that is as guides to action in the real world.

responsible for being unemployed. The severity of the consequences of this decision will of course vary from place to place, but in many of these welfare systems the financial and social impact of a reduction of benefits is often catastrophic for the unemployed. So, one might agree with conditional obligations but reject them as difficult to enact on epistemological grounds, as Sen suggests.²⁹

IV. THE ETHOS OF THE CAPABILITY APPROACH

Ideals

I have offered two primary reasons why a capability-based account of justice should ignore questions of responsibility in cases where individuals fall below a threshold of basic capabilities. These objections go some way towards providing the additional arguments that a capability approach requires in order to avoid going down the luck egalitarian path and prioritizing responsibility. But we should also note that, in part, these objections derive their force from the clash between responsibility criteria and other values to which egalitarians have typically adhered. Indeed, this claim has been the focus of recent discussion of the appropriate ethos for egalitarianism.³⁰ At issue is whether an ideal of making people responsible for their choices should have priority over other ideals. In closing, I want to briefly sketch why the capability approach is closer to an ideal of egalitarianism that does not give priority to a concept of responsibility, but instead is linked to an ideal of placing people in relations of equality with one another – an ideal of equal standing. In addition, I will argue that capability equality is also compatible with a more traditional and demanding form of equality than some of the weaker versions that are now sometimes associated with egalitarianism, including by some capability theorists.

A number of egalitarians, including Anderson in places, have sought to overcome the deficits of responsibility-based egalitarianism by focusing on the broader ethos or ideal of equality. Proponents of a broader ideal of equality stress that the aim of equality must include reference to something more basic than compensating deficits caused by faulty luck of whatever kind. Instead of focusing on the requirement to correctly allot the costs of choices and ameliorate the effects of brute bad luck, egalitarians should attend to things such as placing people in relations of equality with one another. Egalitarians who do not give priority to ideals of responsibility emphasise that egalitarianism is regulated by moral and political ideals, which are broader than luck egalitarianism in that they do not simply focus on allotting resources on the basis of a person's responsibility in causing their disadvantage. In a recent article, Samuel Scheffler helpfully distinguishes between moral, political and social

²⁹ Sen, *Inequality Reexamined*, pp. 148-50. We should note too, that the capability deficits that people might suffer as a result of bad option luck may also lack proportionality. If a person loses their health or mobility as a result of a poor choice, then the disadvantage they suffer as a result of their misfortune is out of proportion to their choice.

³⁰ Scheffler, 'What is Egalitarianism?', Larry S. Temkin, 'Egalitarianism Defended', *Ethics*, 113, 2003, 764-782.

ideals that might all play a part in regulating egalitarianism. The moral ideal of equality concerns the claim that everyone has equal worth and has a right to be treated accordingly. As a social ideal, equality relates to the goal of a society as a cooperative arrangement among individuals. As a political ideal, it stresses the claims that we are able to make on one another as citizens, the goal being to place citizens in relations of equality with one another.³¹

The moral ideal that everyone's life is equally important is shared by all types of egalitarians, as it is by most non-egalitarians as well.³² But while this is a necessary condition for being an egalitarian it is arguably not sufficient. While I cannot give a full account of these claims here, what distinguishes egalitarians is that they support a political version of this ideal, which aims to place people in relations of equal standing across a range of politically relevant indicators. Equal standing will have a negative aim, which is to remove barriers to equality of various sorts – oppressive social relationships, material wants and so on – and a positive aim, which will be to enable people to stand in relations of equality with one another by providing relevant resources to them directly or by establishing appropriate institutions. Establishing people in relations of equal standing will therefore cut across different dimensions of well-being. What is noteworthy about this version of egalitarianism is that it gives priority not to responsibility but to a broader ideal of equality.

In addition to being both responsibility ignoring and prioritising a political ideal of equal standing, I want to suggest that there is a third feature that is also required for a theory to be egalitarian, and that concerns the content of egalitarianism. Egalitarian theories are distinguished partly by the extent to which they equalise substantial elements of people's condition. To illustrate my point let me contrast my claim with some recent claims about egalitarianism.

A number of egalitarians have argued for a very weak form of egalitarianism that is excessively broad. In fact, egalitarianism now seems to encompass almost any concern for equality. Dworkin's claim that every plausible political theory exists on an 'egalitarian plateau', has gained wide acceptance.³³ The claim is that every plausible political theory assumes that the interests of the members of the community matter, and matter equally. The approach is now widespread. Indeed, Sen endorses this rather minimalist view. While claiming that all plausible approaches to the ethics of social arrangements require equality of

³¹ Scheffler, 'What is Egalitarianism?', p. 22. But we should note that even the luck egalitarianism would not dispute the relevance of a moral ideal of treating with equal concern and respect. It is not the denial of this ideal that is problematic, rather, it is the interpretation and the translation into the political ideal of equality. The problem with luck egalitarianism concerns giving priority to responsibility-based principles at the expense of the political ideal of placing citizens in relations of equality with each other, as this is how one treats them with respect.

³² Some authors who do not incorporate a theory of equality also call themselves egalitarians. Prioritarians or non relational egalitarians such as Derek Parfit, claim that what is important for egalitarians is prioritising the worst-off. I leave aside the question of whether egalitarians must adopt a theory of equality or merely priority. See Derek Parfit, 'Equality or Priority', *Ratio*, 10/3: 1997, 202-22.

³³ Ronald Dworkin, 'In Defense of Equality', *Social Philosophy and Policy*, Vol.1/1, 1983, pp. 24-5.

something, Sen claims that all these theories are egalitarian. He writes, ‘I also argue that this common feature of being egalitarian in some significant way relates to the need to have equal concern, at some level, for all persons involved’.³⁴ As he notes, such a definition would also include Robert Nozick’s *Anarchy, State, and Utopia* as among the list of egalitarian theories because of Nozick’s attempt to treat people as moral equals. But any egalitarian who includes Nozick as a fellow traveller is surely wide of the mark. While we might agree that a concern for equality at some level is required of a plausible political theory, that does not entail that all those theories are egalitarian. For a theory to be an egalitarian one, it needs a more substantial content than what I will call the weak egalitarian thesis of equal concern. The weak egalitarian thesis — a theory is egalitarian if it has some sort of basal equality — will not serve as a defining feature of egalitarianism. While it is no doubt true that all theories that deserve to be taken seriously will seek to equalise something, what they equalise will determine whether or not they are properly egalitarian. A theory that equalizes political rights for instance will not thus be egalitarian or only partially as it is a ‘weak’ egalitarianism. As well as being responsibility ignoring and appealing to a broader ethos of equality, egalitarians need to attend to substantial parts of people’s condition. While this might seem like an obvious point, it is worth restating it as the point seems to have been overlooked in recent debates.³⁵

Let me say a little more about what a richer account of egalitarianism might entail. We have pointed to the need for a richer account of egalitarianism that incorporates some of the concerns we referred to above, such as placing people in relations of equality with one another and thereby ensuring that people are treated with respect, which are two of the necessary features that I (stipulatively) define as being part of egalitarianism. Appealing to these broader moral and political ideals as some contemporary egalitarians do, is a way of distinguishing between weak and strong egalitarianism as well as countering some of the more unfortunate consequences of responsibility-based accounts. But we should also note that there are likely distributive consequences for this type of egalitarian ethos. While a fuller account of these implications would need to consider a whole range of theoretical and practical factors normally associated with distributive justice, likely implications might include: an emphasis on the public provision of key goods, and concern for substantive in addition to formal freedoms.

To return to our original starting point, I have argued that while the capability approach to equality is best interpreted as consistent with a strong version of egalitarianism, it has nonetheless been ambiguous on the proper role and scope of responsibility. Clarifying the ethos of the approach has helped to understand how to remove this ambiguity. Indeed, the two objections to responsibility-based accounts discussed above provide us with some indication of what should form part of this ethos. First, capability equality should aim to

³⁴ Sen, *Inequality Reexamined*, p.1.

³⁵ We can see that one of the differences between weak and strong egalitarian theory is that weak egalitarianism only subscribes to the ideal of moral equality, whereas a strong egalitarian will at least uphold the political ideal of equality. For a different way of making a similar point see J. Raz’s comments on ‘strict’ vs ‘rhetorical’ egalitarianism in *The Morality of Freedom*, (Oxford: Oxford University Press, 1986), pp. 227-233.

avoid the sorts of disastrous consequences that leave people without basic capabilities. Positively, this equates to a goal of enabling people to stand in relations of equality with one another. Second, if the epistemological objection is correct, then the approach should also aim to treat people with equal concern and respect. While these two arguments do not exhaust an egalitarian ethos, they are both consistent with our description of the ethos of the capability approach. If it is an egalitarian approach to justice as I have argued, then it should be responsibility ignoring below a certain threshold of basic capabilities, as to do otherwise would violate key parts of the egalitarian ethos. These conclusions find some support in Sen and Nussbaum's work as incorporating this more traditional egalitarian ideal seems to have been part of the aim of the capability approach as well. Both Sen and Nussbaum have argued that the aim of their respective approaches is to ensure that certain basic or central human capabilities are available to individuals. Nussbaum's threshold approach focuses on establishing a capability threshold, in part, because without human capabilities life may not be fully human, but also because it flows from a commitment to treat each person as an end. Sen's motivation seems less concerned to tie the importance of basic capabilities to being fully human. But it is nonetheless clear that the thrust of his approach suggests that basic capabilities are essential for people's lives to go well. For instance, in discussing the 'perspective of freedom' in relation to development, Sen stresses that his approach aims at substantial freedoms that provide people with the opportunity to achieve their conception of the good.³⁶ Leaving aside the question of which capabilities attract egalitarian concern and on how they might be justified, the list typically includes capabilities that seek to ensure substantial freedoms and to raise people to relations of equality with one another. The nature of the capabilities that are often listed as important includes an emphasis on the provision of public goods and on ensuring real freedoms. For example, the capability for health is likely to include actions by public agencies to remove threats to health — sources of infectious diseases, poor dietary habits and so on. These are typically public and not private tasks.

This is necessarily a limited conclusion concerning the distributive and other implications of the approach. For instance, it does not mean that responsibility should never play a role in an account of justice, merely that it should not figure where people are below a certain threshold. Above that threshold the option/brute luck distinction may be useful for determining who is entitled to various forms of public assistance. But it does mean that the role of responsibility needs more attention than it has hitherto been given. While a capability approach to justice is clearly freedom centred and closely attuned to the causal features of disadvantage, it remains ambiguous with respect to the role and scope of responsibility within an account of equality. By locating capability equality within a strong conception of egalitarianism, it is possible to argue that the approaches other commitments require us to limit the role and scope of responsibility within a capability approach to equality.

³⁶ Sen, *Development as Freedom*, ch. 1.

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