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DELIBERATIVE DEMOCRATIC EQUALITY

by

TRAVIS LANDON HOLMES

Under the Direction of Andrew Jason Cohen, PhD.

ABSTRACT

In what follows, I consider two influential views about distributive justice: democratic equality and luck egalitarianism. In examining and criticizing these views, I attempt to extract from each of them what I take to be important to building a complete conception of distributive justice. I then present and defend my own view, deliberative democratic equality, a view that can be described as a hybrid account of luck egalitarianism and democratic equality.

INDEX WORDS: Luck egalitarianism, Distributive justice, Democratic equality, Option luck, Brute luck, Deliberative Democracy.

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by

TRAVIS HOLMES

A Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of

Master of Arts

in the College of Arts and Sciences

Georgia State University

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2015

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DEDICATION

I dedicate this thesis to my family for it is through their support and guidance that this was made possible. Each of them figures importantly in my academic development but perhaps more crucially in the development of my character. Thanks are owed to my Mom and Dad who have lovingly supported me for longer and better than any kid could reasonably expect; especially my Mom, thanks for frequently talking to me and always being there for me. Your strength and wisdom are truly astonishing. To my Dad, whose patience and considerable abilities in his field are inspiring to me. To my sister whose sharp mind and academic acumen have pushed me to better myself. Although we seldom agree on the issues we discuss, I often admire your thoughtfulness and intelligence. Thanks also go to my friends Joseph and Chris. Despite living in the bright and scary world outside of academia, your passion and intellect are among the finest I have ever encountered. Thanks also to Sean for being a true friend and a great companion. Finally but certainly not least, thanks to Jacob Reisman, my friend and peer during my time at Georgia State. Your keen philosophical ability and truly unique personality have made you an excellent friend and an intellectual companion. I have had the privilege of being party to many stimulating and rich philosophical exchanges with you. Thank you for your generosity, warmth and keen insights into all things philosophic and literary. I hope our paths don't entirely diverge from here.

I especially dedicate this thesis in loving memory to Woody, whose very presence and affection have enriched my life more than he could ever have known. We were once and shall forever be brothers.

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1. INTRODUCTION

Proponents of egalitarian distributive justice can reach some agreement in answering the question “what does justice require?” They agree that equality is relevant to and required by justice in some important way. They also agree that in order to attain equality and satisfy justice that goods and resources will probably need to be redistributed. Despite these broad points of agreement, there is much room for differences to emerge. What tracks justice and how it can be measured, when and how much should a person be compensated to neutralize injustices and what kind of pattern of distribution is called for are all topics of considerable disagreement. Attempting to hash out answers to this second set of questions has touched off a considerable literature and different views of distributive justice have been born out of these debates.

One area which has spurred disagreement has been what role responsibility should play in matters of distributive justice. Most will admit that some people will experience hardship and some of these individuals will be badly off on account of choices they have made while others will suffer misfortune due to circumstances beyond their control. For luck egalitarianism, the responsibility or blameworthiness of a person who is badly off is of central importance to determinations about what they are owed as a matter of justice. Ronald Dworkin, a noted luck egalitarian, believes that the question of to whom justice is owed can be reduced to the question of who is badly off on account of circumstances beyond their control. Individuals who experience hardship owing to bad choices are not required to be compensated or aided as a matter of distributive justice. The responsibility of the worse-off in their own worse-offedness is of crucial importance to distributive justice.

Not all egalitarian theorists have seen eye to eye with Dworkin and luck egalitarianism on this point. A prominent counterexample is Elizabeth Anderson's democratic equality conception of distributive justice. According to Anderson, the responsibility of the badly off person in their own hardship is mostly an irrelevant consideration to distributive justice. Anderson takes the justifiability of a distributive view to all individuals in a society to be a much more important consideration. A view can be justified to all when it is a view that all could accept, where acceptance by all turns on the issue of whether or not all would be respected fairly were it to be instantiated. Absent this kind of justifiability, a view would fail to respect those individuals it fails to give justification to. Responsibility then, should take a back seat to respect and justification.

It is my contention that both of these views, luck egalitarianism and democratic equality, offer elements of crucial importance to building a legitimate conception of distributive justice. It might even be said that both views offer necessary conditions for a legitimate view about distributive justice. Dworkin requires that the accountability of the badly off person should figure importantly in determining what they are owed. Anderson requires that a legitimate view should respect all fairly and equally. However, if these are both necessary conditions then neither view by itself includes a full set of sufficient conditions for distributive justice. In fact, this will be my claim.

My project is to investigate whether a hybrid account of egalitarian distributive justice can be constructed out of luck egalitarianism and democratic equality. In order to do this, I begin by examining and evaluating each of these views in some detail, criticizing the shortcomings of each view and extracting the most attractive elements of each. I then sketch an outline of what a hybrid account might look like. My hope is that the view will be a legitimate conception of

distributive justice taking as desiderata the two necessary conditions mentioned earlier. This project unfolds over the course of three chapters. In the first and second chapters, I examine and evaluate Dworkin's luck egalitarianism and Anderson's democratic equality view. In the final section, I introduce and outline my own conception of distributive justice, deliberative democratic equality.

2 DWORKIN'S LUCK EGALITARIANISM

In this chapter, I first give a coarse grained sketch of Dworkin's view that involves explaining all of the components essential to his particular model of luck egalitarianism. In the second section, I will mention some important criticisms of Dworkinian luck egalitarianism –some original and some from the literature –that cast doubt on the view's ability to produce results consistent with its aims. Finally, in the third section, I will highlight what I take to be the most worthwhile aspects of the view. I end this section by concluding that while Dworkin's luck egalitarianism includes indispensable elements to a legitimate conception of distributive justice, it ultimately fails by itself to pass for a complete conception of distributive justice.

2.1 Dworkin's luck egalitarian view

There are four important elements that mark Dworkin's view as luck egalitarian and provide guidance for how holdings should be redistributed. Two general elements which establish theoretical foundations for the view are the distinction he draws between option and brute luck and the fact his view is a resourcist approach to distributive justice. Two elements which dictate how the view is to work are his use of the envy test to set the standard for equality and the use of hypothetical insurance markets to mete out redistributive shares. In this chapter, I will first provide a brief explanation of each of these features.

2.1.1 Option Luck versus Brute Luck

Dworkin's concern with the concept of luck, as well as his taking it to be a chief consideration when thinking about distributive justice, is most clear through his introducing and defining the distinction between option luck and brute luck. In order to both appreciate the difference between these two kinds of luck and understand the theoretical role they play in his view, it is helpful to revisit Dworkin's motives in shaping a conception of distributive justice.

Dworkin tells us that the primary aim of his view is to "make people's impersonal resources sensitive to their choices but insensitive to their circumstances."¹ This excerpt neatly sums up Dworkin's theoretical aims, but it will need a little unpacking. It is necessary to define what Dworkin means by personal versus impersonal resources as well as which states of an individual are classified as being due to her "choices" and which states are determined by her "circumstances."

Dworkin holds that the two facts that determine the fate of a person can be divided into two categories: "choices and circumstances." A person's choices are determined by their "ambition and character" where a person's ambition includes all of her "tastes, preferences, and convictions as well as [her] overall plan of life: [her] ambitions furnish [her] reactions or motives for making one choice rather than another."² A person's character "consists of those traits of personality that do not supply him with motives but that nevertheless affect his pursuit of his ambitions: these include his application, energy, industry, doggedness, and ability to work now for distant rewards, each of which might be, for anyone, a positive or negative quality."³ Clearly, much is subsumed under the heading of choice on Dworkin's view⁴, namely, an individual's personality, life plan and motives.

A person's circumstances are constituted by that individual's personal and impersonal resources. Personal resources are "his physical and mental health and ability –his general fitness and capacities including his wealth talent, that is his innate capacity to produce goods or services that others will pay to have."⁵ Here it is noteworthy that an agent's personal resources are all of

¹ Dworkin, *Sovereign Virtue*, 323.

² *Ibid.*, 322-323.

³ *Ibid.*

⁴ Dworkin's categorization of a person's preferences as being a matter of their choice and not circumstances has produced a large critical response. For more, see Knight, 2009.

⁵ Dworkin, *Sovereign Virtue*, 322.

those innate qualities which influence a person's ability to live a satisfying life with a particular emphasis on earning power. These resources are obviously non-redistributable and are not acquired by virtue of anyone's choice. They are all of those qualities of a person the possession of which is beyond her control. Impersonal resources are "those resources that can be reassigned from one person to another –his wealth and [the] other property he commands."⁶ Impersonal resources are an individual's material holdings. Since these are often shaped by one's personal resources, they are grouped under the heading of circumstances and not choice. Furthermore, unlike personal resources, impersonal resources are redistributable.

Now that the terminology has been clarified, we can properly examine Dworkin's primary theoretical aim. Dworkin's primary aim is to make people's impersonal resources "sensitive to choices but insensitive to their circumstances, i.e. personal resources." It follows that Dworkin will need to provide further explanation of how life events qualify as either being more reducible to a person's choices or their circumstances. This need is satisfied by Dworkin's introducing the distinction between option luck and brute luck. Option luck is defined as "a matter of how deliberate and calculated gambles turn out –whether someone gains or loses through accepting an isolated risk he or she should have anticipated and might have declined."⁷ Obviously, option luck can be good or bad; if a gamble pays off, a person experiences "good option luck" whereas if a gamble backfires, the individual has had "bad option luck." Consider the role of option luck in the decision of whether or not to undertake a certain profession like working as a corrections officer.⁸ In this case, the individual would know the risks going in and decide to take the gamble

⁶ Ibid.

⁷ Dworkin, *Sovereign Virtue*, 73.

⁸ This example might be objected to since choices are often limited by our circumstances. However, Dworkin might respond that there is still a range of choices even if certain options like investment banker are off the table due to a person's circumstances. If the person could still choose something else that is roughly as good rather than corrections officer as a profession, the outcome of this choice will be option rather than brute luck.

in spite of them. If the individual were to be harmed in the line of duty, they would be said to have experienced bad option luck. Notice that in cases of option luck, the outcome is mostly reducible to the person's choice which derives from their personality, life plan and motives⁹. In these cases, circumstances play a much lesser role since a situation of option luck is one where the actor knows the risks from the outset and presumably could have chosen not to undertake the gamble in the first place. Cases of option luck are not compensable under Dworkin's view; that is to say, an individual who suffers from bad option luck is not owed any compensation from the standpoint of justice. Since the individual knowingly undertook a gamble where they could have presumably done otherwise, instances of option luck are non-compensable.

Contrarily, brute luck is defined as "a matter of how risks fall out that are not in that sense deliberate gambles."¹⁰ These cases are more due to a person's circumstances or the innate qualities that impact their ability to lead a fulfilling life and acquire resources. An example of brute luck might be the sudden degeneration of a person's vision. At forty, an individual may suddenly lose their sense of sight not owing to any risk they had taken but from an unknown congenital condition. This person would have experienced "bad brute luck" since this individual's blindness is not a function of her poor choices or irresponsibility. Under Dworkin's luck egalitarian view this individual would be owed compensation. Cases of bad brute luck on Dworkin's view need to be compensated in order to satisfy the demands of distributive justice.

⁹ I use the qualifier "mostly" to describe the reduction between a person's option luck and choices since circumstances (both personal and impersonal resources) certainly play some role in a person's deliberations about whether to undertake a certain gamble. However, the primary determining factors, for Dworkin, would seem to ultimately be qualities such as a person's ambition and character rather than personal and impersonal resources. The two requirements Dworkin gives for x to be a case of option luck are good evidence that option luck reduces more to choice than circumstances: (1. that the actor know the risks from the start and (2. that the actor is capable of deciding not to take the gamble

¹⁰ Dworkin, *Sovereign Virtue*, 73.

What should be gleaned from the emphasis placed on evaluating cases as either a matter of option luck or brute luck is the importance Dworkin's view places on individual responsibility. This is a widely shared notion in luck egalitarian views and not an uncontroversial one. By drawing a clear distinction between option and brute luck, Dworkin provides theoretical means for determining whether an individual's lot in life is more a function of their choices or their circumstances. This is what enables him to partially realize his primary aim that his theory of distributive justice should make a person's individual resources sensitive to their choice but insensitive to their circumstances.

2.1.2 Equality of Resources

While Dworkin's view is similar to most other luck egalitarian views in drawing on the distinction between option luck and brute luck to determine what is justly owed to people, it differs importantly in terms of the currency it uses to parcel out distributive shares. Dworkin adopts a resourcist approach to facilitate his conception of distributive justice since he believes this kind of approach can sidestep many of the problems encountered by alternative views like those of welfarists.^{11, 12}

The use of a resourcist approach is motivated in part by the idea that people's decisions and the paying out of distributive shares affect others. This is perhaps, for Dworkin, the greatest virtue of the resourcist approach; his resources approach takes scarcity into account. He explains his choice to use resources as the basis for distribution by pointing out that “under equality of resources...people decide what sorts of lives to pursue against a background of information

¹¹ For more, see Dworkin, *Sovereign Virtue*, Ch. 1.

¹² By a resourcist approach, I mean the common distributive view that takes the amount of resources a person holds to be the most important, measurable individual condition to considerations about justice. Welfarist approaches believe that welfare is the most important, measurable condition.

about the actual cost their choices impose on others and hence on the total stock of resources that may be fairly used by them.”¹³ The priority Dworkin places on the concept of tradeoffs or the opportunity cost that the use of resources may have on other people accords nicely with Nozick's observation that the supply of certain resources is of limited quantity and that goods do not fall like manna from heaven¹⁴. The importance of the recognition of scarcity and the fact that distributive payouts are not made in a vacuum but that they inevitably affect others is manifest in Dworkin's adoption of hypothetical insurance markets as the theoretical decision procedure for determining distributions. Another advantage of the resourcist approach is that it permits Dworkin to more precisely quantify what is owed to a person. According to Dworkin his view is not dealing with an abstract feeling of wellbeing or an emotional state of contentment but a tangible mode of distribution. All of these advantages motivate his adoption of the resourcist approach.

C. Envy Test Equality

So far, a great deal has been said about luck and what justice requires in terms of redistribution from a micro standpoint (to each individual) but little has been said about the macro view or what constitutes equality for a society. To put this interrogatively, when is equality satisfied for a society under Dworkin's view? An answer is provided in the form of the envy test. Dworkin suggests we administer this test for the purpose of determining if a certain distribution is equal. In order for a distribution to be said to pass this test, the distribution needs to be envy free; a fair distribution will eliminate envy or one individual from preferring another's holdings to his own.

¹³ Dworkin, *Sovereign Virtue*, 63.

¹⁴ Nozick, *Anarchy, State and Utopia*, 198.

To sketch this point out a bit more, Dworkin asks us to imagine a hypothetical society where all of the resources are gathered and auctioned off amongst the members. The auction is understood to be conducted from an initial starting point where considerations of responsibility play no role; that is to say, all of the resources are up for grabs since no one has made choices which have affected their stockpile of resources. Each member is given an equal and fixed amount of bartering material with which they can bid on various resources. Under this auction, bidding will go on until a distribution has been reached where no member prefers or envies another person's bundle of resources to their own. Dworkin intends this final and ideal distribution to be *pareto optimal* since no resources could be taken from one and given to another without making some worse off. As Dworkin puts it "no division of resources is an equal division of resources if, once the division is complete, any [individual] would prefer someone else's bundle of resources to his own bundle."¹⁵ Another striking feature of the auction is that only impersonal resources and not personal resources are subject to bidding.¹⁶ Personal resources, like mental or artistic talent, can't be redistributed. Nevertheless someone's possession of a valuable personal resource could very well alter the upshot of the envy test. I may be envious of you even if I have a greater amount of impersonal resources but you are a gifted artist and I am not. To see why personal resources are omitted from the initial auction, consider the following example. Imagine a society that contains two people: Sarah and Raj. Sarah and Raj both hold an equal amount of impersonal, redistributable resources but are envious of each other's talents. Sarah is an excellent natural mathematician but envies Raj's singing talent where Raj envies Sarah's mathematical talent but is himself a great singer. Notice this poses a problem for reaching a redistribution that passes the envy test; resources can't be taken from Raj and

¹⁵ Dworkin, "What is Equality? Part 2: Equality of Resources," 285.

¹⁶ Knight, *Luck Egalitarianism: Equality, Responsibility and Justice*, 14.

given to Sarah without making Raj more envious and similarly resources can't be seized from Sarah and given to Raj without increasing Sarah's envy. Since neither Sarah's envy nor Raj's envy is more important in any way relevant to justice, it is difficult to envision a solution that accords with the envy test.

To solve this problem, Dworkin recommends that envy arising from shortfalls in talents and handicaps be left up to hypothetical insurance markets. The initial auction is meant to neutralize envy only with respect to impersonal and redistributable resources like material holdings. A division of impersonal resources where no one envies another's bundle and resources could not be redistributed without making anyone worse off is said to pass the envy test. Talents and handicaps, as well as unforeseen accidents like going blind at forty years old, are left to hypothetical insurance markets. I give a fuller explication of these markets now.

2.1.3 Hypothetical Insurance Markets

If the envy test is the yardstick by which the equality of an initial distribution is measured, and option luck and brute luck serve to determine whether compensation is owed at all, then hypothetical insurance markets are the means by which the size of the redistributive shares are determined. The envy test is meant to determine whether an initial distribution of impersonal resources, e.g. wealth, is fair. However, envy arising over personal resources like health or mental talent are left up to hypothetical insurance markets. The amount of compensation a person is due is reached by using the counterfactual consideration of how much the average person would have paid to insure against a particular risk from behind a thin veil of ignorance.¹⁷ This involves imagining a rational decision procedure that sees individuals placed

¹⁷ Knight, *Luck Egalitarianism: Equality, Responsibility and Justice*, 20.

behind a thin veil of ignorance. What is meant here by “veil of ignorance” is a hypothetical situation where individuals are making decisions while unaware of important information about their personal circumstances. Similar to Rawls, Dworkin uses a veil of ignorance as a hypothetical decision procedure where personal facts unimportant to justice can be abstracted away. Under the veil, on Dworkin’s view, individuals are fully aware of the odds of a particular malady befalling people on average and the likely effects this condition would have on their life-plan. However, they are unaware or ignorant of the level of their personal resources like mental talent and earning power as well as how probable it is for them as individuals to have a certain condition. They are then asked whether or not they want to buy insurance against a certain condition and if they desire to purchase the insurance, how much they are willing to set aside. Premiums or the level at which they would insure against a particular risk are determined by how many people are willing to buy insurance and how much compensation they desire to receive in the case of their having that condition. To give a brief description of how this process would work, let us return to our earlier example of the forty year old person who suddenly goes blind due to an undetected congenital condition. When considering how much compensation this person would be owed, we would ask at what level an average hypothetical person would have insured against the possibility of sudden blindness under this thin veil of ignorance. We might imagine that the average person likely would have insured against this kind of condition since it would have severe and constricting consequences for their lives. However, since this condition is fairly rare, the amount at which they would insure against this condition might be small. This amount, whatever it ends up being, that the average person would have insured against this condition given the facts about the condition’s severity and probability is what our middle aged blind person would receive as compensation.

It might be objected that this method of setting the amount of compensation fails the envy test since it does not follow that the amount at which the average person would insure against a particular disaster is commensurate with the amount of resources necessary to satisfy the envy test. Dworkin dismisses this worry by explaining “the effect of the hypothetical insurance strategy is not to eliminate the consequences of bad brute luck –bad luck that flows not from a gamble deliberately taken but from life itself –but only to mitigate it to the degree in and in the way that prudent insurance normally does.”¹⁸ Provided with this additional explanation, it would seem that even if the hypothetical insurance market,¹⁹ strategy fails as a means of distributive justice to satisfy the envy test, it succeeds in compensating victims of bad brute luck in the way Dworkin recommends, i.e. in the way normal insurance can. In other words, HIM evidently fails to yield equal distributions by Dworkin’s own lights when dealing with handicaps and talents, i.e. the envy test, but certainly can be said to succeed in the lesser aim of providing compensation commensurate with normal insurance companies.

2.2 Criticism

In what follows, I will advance a criticism against Dworkin’s luck egalitarian view. The criticism deals with the negative implications of his using HIM to determine compensatory, distributive shares by examining the results that HIM yield.

The use of HIM to mete out distributive justice is probably the most heavily criticized aspect of Dworkin’s view. An important criticism made by many of Dworkin’s critics focuses on the link between satisfying envy test equality and HIM. As mentioned in the previous section, HIM fails to satisfy the envy test for equality but this result is something Dworkin seems

¹⁸ Dworkin, *Sovereign Virtue*, 341.

¹⁹ Hereafter, HIM.

prepared to fully admit. A further defense on Dworkin's behalf might be to take the envy test as an ideal and perfect standard for justice which serves as something worth aiming at even if it can't be completely satisfied in non-ideal circumstances. However, even if this defense is satisfactory, additional problems persist. It isn't at all clear what connection exists between envy test equality and HIM. This criticism is made explicitly by Elizabeth Anderson who points out that "Dworkin's resort to the hypothetical insurance purchase of people who don't know their abilities suffers from a larger problem: he never explains why such hypothetical market choices have any relevance at all for determining what citizens owe one another."²⁰ To respond on Dworkin's behalf, one might point to the HIM as an acceptable strategy for compensation since it takes in to account the costs that compensation imposes on other people. What prevents the state from giving immense compensation to an individual who has fallen under exceptionally bad brute luck is the consideration that the compensation is ultimately paid out by others. Dworkin might claim that a legitimate system of distributive justice must not be too demanding and his view avoids this. If Dworkin is committed both to the envy test as a standard of equality, where no one envies another's bundle of goods over their own, and recognizing the burden that justice places on others, then perhaps HIM is an attempt to mark out a middle ground between these two commitments. However, this response will not suffice for reasons that will be examined in the critique to follow. Potential defenses notwithstanding, it is problematic enough for Dworkin that the link between HIM and the rest of his view is murky and can only be left up to conjecture.

I contend that Dworkin's HIM leads to extremely counter intuitive results about justice when taking into account the rest of his view. It is useful to recall that Dworkin intends for his

²⁰ Anderson, "What is the Point of Equality?" 309.

view to be insensitive to circumstances but sensitive to choice. In other words, cases of bad brute luck ought to be compensated whereas cases of bad option luck are non-compensable.

Consider the following example. An individual, call him John, is born with only one arm as a result of a rare genetic defect²¹. Since this condition will obviously limit John's life chances by constraining his range of options in careers alongside other negative effects, the individual files a claim for compensation. The insurance company then performs the counterfactual consideration of how much the average person would have insured against this condition from behind a thin veil of ignorance. The two greatest factors influencing the judgment of anyone deliberating behind the thin veil about whether to buy insurance are a condition's severity and probability. In the case of being born with one arm, the severity might be considered moderate and the probability would be exceedingly low. It is also important to remember that insurance works much the same way under the HIM as it does in traditional insurance markets; if insurance is purchased and never collected by the purchaser, the resources expended in purchasing it are not refunded. Also, a hypothetical deliberator is more likely to prioritize the purchase of insurance policies against conditions that are high severity and high probability. However, premiums for these kinds of conditions would be high since the high probability would mean more victims are being paid out and the high severity would imply a higher desired payout. After purchasing premiums against high severity, high probability conditions which carry high premiums, a hypothetical deliberator would presumably be even less likely to commit further resources to conditions of lower or moderate severity and probability. Given these factors, it is reasonable to conclude that, for the average deliberator behind the thin veil of ignorance,

²¹ Using the terms "defect" and "handicapped" to describe disabled persons might rightly be interpreted as insensitive. I use this language so that my criticisms employ terminology which is consistent with that used in Dworkin's view. I thank Christie Hartley and A.J. Cohen for raising this point.

agreeing to purchase insurance against being one armed is difficult. Why invest any resources in this kind of an insurance plan? Even a risk averse individual would likely forego purchasing this kind of coverage since both the probability of incurring this condition is exceptionally low and the severity is only moderate rather than high and they would have already committed a great deal of resources to buying premiums against conditions of high severity and probability. The one armed person might very well find themselves paid a pittance or turned away completely without compensation.²²

It is now appropriate to consider whether John's case can be said to satisfy the envy test and whether the view yields results that are insensitive to circumstances and sensitive to choices. The answer to this question will give insight into whether HIM produces the right kinds of results, whether it is consistent with the desiderata Dworkin has identified as important to distributive justice. To take the envy test first, if John receives little or no compensation for being one armed, it seems he will envy the bundles possessed by others, specifically, those who were lucky enough not to be born with just one arm. The paltry compensation John has received will do very little to mitigate the envy he will undoubtedly feel towards others. This is sufficient to show that, in John's case, HIM has failed to meet the standard set by the envy test. As a way of responding to this problem, Dworkin, as I suggested earlier, might claim that the envy test is simply an ideal at which his view aims; the fact that the compensation provided to John does not satisfy the envy test is not incontrovertible proof that his view falls short of its own expectations. Additionally, the envy test is counterbalanced by considerations about the burden the view will

²² Dworkin's HIM also operates under the unsupported assumption that these markets will be maximin, where people behind the veil of ignorance will seek to maximize the minimum as way of insuring against their being very badly off. It might be asked, "why should we think this?" Additionally, Dworkin provides only a thin veil of ignorance for people to hypothetically deliberate behind where they are aware of the probability of an individual having a certain condition in a population. Why not think people would adopt a maximax strategy against rare conditions or a more moderate strategy? Dworkin has little to say about these potentialities.

place on others. Dworkin is committed to presenting a view that is not overly demanding on others and the HIM is structured around this commitment as well as satisfying the envy test. It should come as no surprise that John's compensation fails to satisfy the envy test since Dworkin's LE includes commitments beyond the envy test.

However, this defense fails to explain away the problem in question. In John's case, he is an individual who suffers from a condition due to his circumstances that will drastically limit his life relative to others. The problem isn't so much that the HIM doesn't compensate him to the extent that he is no longer envious of those who are one armed but that the compensation is so little or nothing. Is this a view that is really "insensitive to circumstances but sensitive to choices"? Since his condition is rare and consequently insured against at a low level, he receives very little or no compensation for an extremely adverse set of circumstances. Any attempt to explain away this problem by pointing to the commitment Dworkin holds towards creating a view that respects the costs distributions pose on others seems wholly unsatisfactory. John could receive higher compensation and this wouldn't result in the view being overly demanding on others. It is on Dworkin to justify why his view does so little for John and claiming that John's compensation is justified since increasing his compensation would be "too demanding" seems to do insufficient explanatory work. As a result, Dworkin's view doesn't just fail the envy test but fails by such a wide margin that it calls the workability of the view into question.

This is merely one example of which there are many but it leads very quickly to the challenge that, in a variety of cases, the upshot of the HIM will not only fail to satisfy the envy test but fall well short of Dworkin's own intuitions about justice. The one armed person has obviously been dealt an unfavorable blow that qualifies as a case of bad brute luck. The potential

for this person to receive little to no compensation is sufficient to call into question whether Dworkin's view can produce outcomes that even come close to satisfying his own intuitions about justice, namely, whether his view remains insensitive to circumstances but sensitive to choices. Additionally, we can generalize from the particular case of the one armed person to any case where a person suffers from a condition as the result of bad brute luck and where an average person would insure against that condition at a level that is not only incommensurate with envy test equality but well below it. This is a far more serious charge than the criticism that HIM fails the envy test; it seems that Dworkin's view is ill equipped to produce the right kinds of results according to Dworkin's own standards about justice and equality. The view neither passes envy test equality nor is it a view of justice that is insensitive to circumstances and sensitive to choice.

2.3 Diagnosing Dworkin's Luck Egalitarianism

In light of the criticism presented in the last section, it is clear that Dworkin's luck egalitarianism ultimately falls short of being a workable model for distributive justice. Dworkin's use of HIM to determine the size of compensatory shares stands in direct tension with the greater ambition of his view that a just distribution should be insensitive to circumstances but sensitive to choices. Perhaps more damaging is the realization that HIM will often yield outcomes that are counter intuitive to the demands Dworkin makes on any legitimate conception of distributive justice. The case of the one armed individual can be generalized to show that HIM will produce counter intuitive results in a wide range of cases; any situation where an individual suffers from circumstances that are unlikely to be adequately insured against by an individual operating behind a thin veil of ignorance –where considerations of probability and severity play a determining role– will be a case where that individual receives subpar compensation if any at all.

If the view founders at this level and fails to pass for a workable and legitimate conception of distributive justice, it is worth asking if there are any elements of Dworkin's view that can be recovered as desirable elements to a better conception of distributive justice. I will identify two: Dworkin's acknowledging the importance of avoiding an overly demanding view and the emphasis placed on responsibility.

The emphasis placed on responsibility in the view is greatest in the use of the option and brute luck distinction. The purpose of this distinction is to permit the responsibility of disadvantaged individuals to factor into considerations about what is owed to them. The use of responsibility has great intuitive appeal; it follows that a victim of brute circumstances is somehow further entitled to compensation than an individual who has made bad choices. This element of responsibility might well be something worth preserving.

The focus on responsibility dovetails with Dworkin's larger attempt to remain cognizant of the burden distributive claims make on others. The option luck/ brute luck distinction places important restrictions on who should and shouldn't be eligible for compensation. This answers to his concern with not bankrupting a state and not making overly demanding claims on those expected to do the paying out. Whether this distinction is a legitimate way to determine eligibility for compensation aside, it significantly narrows down the amount of claims to compensation that can be made which concomitantly lessens demands on those making the payments.

Dworkin also avoids demandingness through his resourcist approach and HIM. Under this approach, he acknowledges the scarcity of goods in any society and uses this to constrain the frequency and amount of compensation being paid out. His use of HIM also allows him to avoid imposing overly demanding burdens on those who are charged with paying out the distributive

shares. The amount of a distributive share is directly determined by what amount a hypothetical person would have insured against the particular condition from behind a thin veil of ignorance. Again, leaving aside the question of whether this yields satisfactory results from the standpoint of justice, this decision procedure does significantly limit the amounts being paid out. Rare or mildly severe conditions have proportionately lesser compensatory pay outs and the burden on those paying out the compensation is kept light.

These two commitments of the view –the emphasis on the responsibility of the claimant and avoiding an overly demanding distributive scheme –may be ones worth retaining. It can at least be suggested that despite the lack of success of Dworkin’s view as a workable conception of distributive justice, these are important commitments to bear in mind going forward.

3 Democratic Equality

In the first section, I outlined and examined Dworkin’s luck egalitarianism. While I found this view to be attractive for its emphasis on the accountability of those being compensated and its sensitivity to those paying out the distributive shares, the view foundered insofar as it failed to live up to its own standards of equality and justice. This crucial flaw indicates an unsatisfying incompleteness with the view and a motive to keep looking at alternative views of distributive justice. In this section I will continue canvassing views of distributive justice by examining and evaluating Elizabeth Anderson’s Democratic Equality view.

In this chapter, I begin by providing a summary of Elizabeth Anderson’s view about democratic equality. The summary will consist of three parts: First, I will define democratic equality.

Second, I will survey the foundational principles about distributive justice that direct and shape Anderson’s view. Finally, I will describe the capabilities approach Anderson uses to determine

just distributive shares and entitlements. In the second major part of the chapter, I will offer a couple of criticisms against Anderson's view.

3.1 Democratic Equality: A Summary

3.1.1 Defining Democratic Equality

Anderson introduces the notion of democratic equality by first considering both the positive and negative aims of egalitarianism. Anderson observes that “negatively, egalitarianism seeks to abolish oppression –that is, forms of social relationship by which some people dominate, exploit, marginalize, demean and inflict violence upon others.”²³ Egalitarianism holds that treating people in these ways is unjustifiable save for “cases of punishment for crimes or defense against violence”; thus, the first goal of egalitarianism is to ensure negative rights protecting the right holder from oppression. Positively, egalitarianism “seeks a social order in which persons stand in relations of equality. [These persons] seek to live together in a democratic community, as opposed to a hierarchical one.”²⁴ The contention that democracy and equality are easily married concepts is made explicit here. If egalitarianism prohibits oppression and points toward a social order in which people are treated as equals, then a democratically structured society seems to be demanded by egalitarianism. To be a democratically equal participant in society is to stand in a relation of equality towards others with respect to having a voice in the political process as well as having one's basic rights and personal interests respected. Anderson defines the resulting notion of democratic equality by explaining “democratic equality denotes a kind of standing in civil society to make claims on others, that they respect one's rights, pay due regard to one's

²³ Anderson, “What is the Point of Equality?” 313.

²⁴ Ibid.

interests, and include one as a full participant in civil society, including those that inform democratic governance.”²⁵

3.1.2 Constructing Democratic Equality from Foundational Principles of Justice

While democratic equality has been defined, much remains to be filled in about how the view is constructed. Anderson provides five foundational principles about distributive justice that she claims democratic equality must accommodate in order for it to qualify as a legitimate distributive view. Her view is directly built up around these principles. These principles are as follows:

1. Such [egalitarian] principles must identify goods which people must have access to over the course of their entire lifetime.
2. Egalitarians should be able to justify such guarantees of lifetime accessibility without resorting to paternalism.
3. Egalitarian principles should offer remedies that match the type of injustice being corrected.
4. Egalitarian principles should uphold the responsibility of individuals for their own lives without passing demeaning and intrusive judgments on their capacities for exercising responsibility or on how well they have used their freedoms.
5. Such principles should be objects of collective willing.²⁶

Although democratic equality²⁷ has implications for but is not itself solely a view of distributive justice, it is helpful for our purposes to consider how these principles compare

²⁵ Anderson, “Democracy: Instrumental versus Non-Instrumental Value,” 219.

²⁶ Anderson, “What is the Point of Equality?” 314.

²⁷ Hereafter, DE.

against luck egalitarianism²⁸. The first principle, which requires that a legitimate conception of distributive justice identify which goods people must have lifetime access to in order to be democratically equal, is an obvious point of departure. Recall that Dworkin's brand of luck egalitarianism took access to certain goods and levels of resources to be contingent upon one's circumstances and choices. Under Dworkin's view, a person who had chosen badly, that is to say, experienced bad option luck, may lose access to goods and would not have a legitimate claim to compensation. Anderson's first principle advocates for a different kind of distribution when it comes to goods that are necessary for a person to qualify as democratically equal. On her view, a person has a permanent and unconditional claim to have access to those goods necessary to be a free and equal democratic citizen.

The second principle places a restriction on the kinds of justification that can be offered for the lifetime access to goods required by the first principle, namely, by ruling out paternalistic justification. Anderson identifies paternalism as something her view must avoid. It would be unacceptable on her view to coerce anyone to live at a democratic equality baseline. This stipulation rules out conceivable scenarios where individuals living below the democratic equality minimum are conscripted into accepting compensation in order to attain society wide democratic equality. Individuals choosing to live under this baseline for religious reasons, for example, are permitted to do so. Assistance or compensation is only made available to those who desire it.

The third principle specifies that the compensation made to worse off individuals must be oriented towards their particular hardship. An example might be a handicapped person being

²⁸ Hereafter, LE.

given resources that answer to their specific handicap, such as a wheel chair and ramps, which permit them to enjoy a level of well-being consistent with democratic equality.

Perhaps the greatest difference between LE and DE is captured by the fourth principle which prohibits the state from “passing demeaning and intrusive judgments on an individual’s capacity for exercising responsibility.” Anderson expands on this by pointing out that LE “fails to produce a society of equals” but succeeds “in reproducing the stigmatizing regime of the Poor Laws in which citizens lay claim to aid from the state only on condition that they accept inferior status.”²⁹ Under LE, individuals are required to supplicate themselves to the state by having their choices subjected to scrutiny in order to receive compensation. More pointedly, LE’s distinction between choices and circumstances and their status as evaluative criteria for compensation is dismissed as demeaning and harmful under DE.

The fifth and final principle, which claims that principles of justice should be the object of collective willing, claims that the foremost obligation in society is to collectively “secure the social conditions of everyone’s freedom” in ways that are justifiable to all.³⁰ Owing to the collective nature of this process, it will not be acceptable to secure freedom for some but not for others in spite of the reasons for their being worse off. A society must do whatever it can to establish conditions of social and individual freedom for all of its members in order to satisfy this principle. Otherwise, a society would not be operating on principles that are collectively willed by all.

²⁹ Anderson, “What is the Point of Equality?” 311.

³⁰ Ibid, 314.

3.1.3 *The Capabilities Approach to Distribution*

If DE can be defined as the form of equality of a political system and the five principles fix the aims and direct the view, then the capabilities approach motivate and guide the process of distribution. Anderson uses a capabilities approach to establish the level and exact nature of entitlements guaranteed under DE. This distributive approach draws a distinction between a person's functionings and their capabilities. A person's functionings are "those states of being and doing that reflect a person's autonomous ends."³¹ Examples include realization of the desires to be outgoing, raise children, play soccer and so on. A person's capabilities "consist of the sets of functionings she can achieve, given the personal, material and social resources available to her. Capabilities measure not actually achieved functionings but a person's freedom to achieve valued functionings."^{32, 33}

Now that a brief description of the capabilities approach has been laid out, it is necessary to consider exactly what this distributive account guarantees and provides. Anderson prefaces her delineation of what is entailed under the capabilities approach by explaining that DE "guarantees not actual levels of functioning but access to those levels." In other words DE does not coerce people into living at a certain level of functioning; if, for example, someone should chose to live at a level of functioning beneath what is necessary to be democratically equal for say religious reasons, they are permitted to do so. This follows directly from the second principle, which forbids paternalism. The second qualification Anderson makes is that DE

³¹ Ibid, 316.

³² Ibid.

³³ The capabilities approach Anderson uses is borrowed from Amartya Sen who pioneered the view. Sen claims that his distributive approach differs crucially from more traditional approaches like Rawls' primary goods and Dworkin's resourcist approach. Sen describes the disadvantages of Rawlsian and Dworkinian metrics by observing "the resources a person has, or the primary goods that someone holds may be imperfect indicators of the freedom a person really enjoys to be this or that" since "the personal and social characteristics of different persons differ greatly." The capabilities approach captures what is truly important to individual well-being. Sen, *The Idea of Justice*, 37-38.

“guarantees not effective access to equal levels of functioning but effective access to levels of functioning sufficient to stand as an equal in society.” The implication here is that while everyone is guaranteed effective access to a minimum level of functioning –viz. whatever is required for a person to be democratically equal– people are not guaranteed equality beyond this minimum. Equality for Anderson is political equality which does not entail equal standing in all other areas. For example, if Person A and Person B are both democratically equal but Person A has attained higher levels of functioning such as maintaining a reputation as a well-respected poet and traveling the world but Person B hasn’t, Person B is not guaranteed access to an equal level of functioning where they also must be considered a reputable poet and engage in jet setting. In this way, Anderson’s capabilities approach is more clearly understood as guaranteeing effective access to a minimum level of functioning –whatever is required to be democratically equal– but only the freedom to pursue levels of functioning above this minimum. The third qualification Anderson makes is that DE “guarantees effective access to a package of capabilities sufficient for standing as an equal over the course of an entire life.” This allows her capabilities approach to stand in accordance with the first of her five principles about justice; a legitimate view of distributive justice must identify which goods a person should be guaranteed access to over the course of an entire life.

One advantage that DE can claim over LE should be immediately noticeable. By drawing a minimum level of functioning that all should be guaranteed effective access to, DE is not subject to many of the problems LE faced regarding the amount of compensation people were owed . Under DE, an individual is guaranteed whatever amount of compensation will allow them to reach the minimum of being a democratically free and equal member of society. This

amount is not subject to vary based on whether one is worse off due to their choices or their circumstances.

3.2 Criticizing Democratic Equality

In this section, I will target my criticisms specifically at how DE handles those individuals who are worse off on account of their own choices. The choices vs. circumstances distinction is not one that DE would acknowledge as important to distributive justice. My aim is to assess the view by examining the results it yields after eliminating responsibility and accountability from the set of evaluative criteria for making compensation to the worse off. This will involve two arguments: the first is a free rider objection and the second is an argument against the foundational principles in which DE grounds an individual's life-long and inviolable claim to at least a minimum level of resources consistent with democratic equality.

3.2.1 The Free Rider Objection

The observation that DE, given its theoretical commitments, may be susceptible to free riding is one Anderson herself acknowledges.³⁴ The view is especially prone to this kind of possibility owing to the commitment DE has to ensuring a resource minimum for all members of society over the span of their entire lives which is grounded in each individual's inviolable right to democratic equality. Recall that this right consisted of both the negative right that individuals remain free from oppression and the positive right that each individual stand in a relation of equality to others. Since a certain level of resources is necessary to enjoy this right, all members

³⁴ Anderson believes her view avoids problematic free riding since she sets the DE guaranteed minimum at a fairly low level. Levels of functioning over this minimum are open to opportunities but not guaranteed. Even if people were to free ride, Anderson believes that this wouldn't "bankrupt the state" or instantiate excessive costs since not much is guaranteed. This may reduce the potential for problematic free riding under certain conditions but does not serve as a decisive check against it. It presupposes that a society have a certain level of resources available and that not many people falling below the DE minimum choose to free ride which are both factors subject to wide variation.

are granted “effective access to a package of capabilities sufficient for standing as an equal over the course of an entire life.”³⁵ Further, effective access is not limited by considerations about individual responsibility. The fact that an individual is badly off on account of voluntary choices and another due to unfavorable circumstances makes no difference; each of these persons has an equal claim to have their situation remedied.

Given both the inviolability of the claim to compensation as well as the blind nature of the view towards an individual’s reasons for being badly off, free riding is not only possible but impossible to prevent. What stops an individual from living fast and loose, repeatedly engaging in bad gambles if nothing but criminal activity undermines their claim to a continued distribution? More problematically, what stops several individuals from repeatedly free riding?

In order to understand the severity of unchecked free riding, it is necessary to consider why free riding is objectionable. I give two primary reasons: first, unchecked free riding can eventually bankrupt or level down a society over time and second, free riding often leads to a culture of resentment between the well-off and the least well-off. I turn to the second reason first.

The stability and viability of a system of distributive justice depends in no small part on the system appearing fair to its participants. Just as a person who is less well-off could justifiably resent being unable to live a life of freedom and equality, a well-off person might justifiably come to resent shouldering the cost of redistribution in a system that includes no safeguards against free riding.³⁶ Even if very few people were to free ride, there would be no available knowledge regarding who was or wasn’t abusing the system. The resentment among the well-off would exist not on the basis of evidence that people were free riding *en masse* but rather due to

³⁵ Anderson, “What is the Point of Equality?” 318.

³⁶ The well-off might resent costs of redistribution even if the system was regarded as fair. The force of this objection is that their objections to costs are reasonable when the fairness of the system is in question.

the lack of information about how resources were being used. This resentment could lead to the well-off feeling alienated from society, predictably further dividing the society along economic lines. A system of distribution that permits free riding and is incapable of providing evidence that the system is running fairly is ripe for resentment and alienation.

Taking up the first reason as to why free riding is objectionable, namely, that it potentially leads to leveling down of a society over time, consider the following example. There is a society that can be divided into the three following resource groups: the first group, which accounts for 20 percent of the population, is worst-off. Each individual in this group holds a share of resources that places them below the DE minimum. The second group, which makes up 70 percent of the population, is moderately well-off. Each person in this group has a level of resources just above the DE minimum. The third group is comprised of the well-off. The share of resources of everyone in this group is significantly higher than the DE minimum. In this society, 20 percent of the population would have a legitimate claim to compensation on Anderson's view. Resources are then mostly redistributed from the well off to the worst off group since the middle group, the moderately well off, are only just above the minimum themselves and incapable of shouldering much of the costs of redistribution. Time passes and all is well. Eventually, a group of the originally worst-off 20 percent –say 5 percent of the population –which I will refer to as repeat offenders, begin to repeatedly free ride. These people, who care little for democratic equality, engage in risk seeking gambles; even though their odds are poor to win out in these gambles, they are comforted by the fact that they will always have access to at least a minimum level of resources, their accessibility to which is not constrained by their repeat offending. The costs are now much higher and burdensome for the well-off group. Consequently, due to the strain of excessive costs, many of them become just moderately well off and lose access to levels

of functioning that they previously had access to. They are faced with the dim prospect of reduced access to certain levels of functioning despite prudent decision-making and industriousness. Oppression has now simply been shifted from the bottom to the top and society. Over the long run, given multiple iterations, this could lead to a leveled down society. Unchecked free riding could have further negative ramifications for society such as the well-off group producing less due to a loss of productive incentive that foreseeably would lead to estimable losses in aggregate resource production. Knowing that much of their surplus reproduction will be redistributed downward, many formerly productive people might lose their incentive to keep producing at these levels.

What this example attempts to show is not the imminent outcome of DE but rather the dangerous potential it includes. What is of greatest concern is that nothing in Anderson's view guards against this kind of possibility.³⁷ The likelihood of this example does little to diminish its force. Further, this kind of scenario indicates a kind of tension between Anderson's principles of distributive justice and her view. Her fifth principle, which stipulated that a legitimate conception of distributive justice should involve principles that are "the object of collective willing" stands in conflict with her view, DE, since those who were in the top 20 percent would not likely agree to a system that drastically reduced their levels of functioning and well-being without strong justification. Given the unchecked potential for free riding, DE would seem to be a view whose acceptance by all would be at best questionable.

³⁷ This point is crucial since some will be unconvinced that rampant free riding will take place. The fact that the view does not safeguard against the possibility is the problem. Notice that this criticism does not rely on the predictive claim that free riding will take place but rather that nothing prevents it from taking place.

3.2.2 *The Right to Democratic Equality and the Strains of Commitment*

An Andersonian line of response to the free riding objection I have provided might be simply to bite the bullet; Anderson, while admitting that this society is far from ideal, would maintain that it fails to undermine DE since each individual's claim to democratic equality is grounded in an inviolable right. The right to democratic equality can't be overridden even in situations like the society I have described. Very often the exercise of individual rights can be inconvenient and even impose costs on others but this is hardly a sufficient set of reasons to infringe on or revoke a person's rights.

This deeper claim about the right to democratic equality is worth taking seriously but calls for a closer examination of the nature of the right itself. At issue specifically is what justifies the right to democratic equality on Anderson's view. Anderson uses contractualism to describe how rights are justified under DE. She defines contractualism as "the view that principles of justice are whatever principles free, equal and reasonable people would adopt to regulate the claims they make on one another."³⁸ She further describes contractualism as "seeking principles that are stable such that people can be motivated by their sense of justice to follow these principles over time." When principles are too onerous and "if the costs are too high, people will suffer from the 'strains of commitment' (Rawls, 1999)."³⁹

Following from her contractualist justification for rights and subsequent principles of justice, Anderson's DE will need to both posit rights and principles of justice that all can accept and also avoid designing a view that is subject to pushing the strains of commitment too far. This is nowhere more evident than her fifth foundational principle that calls for principles that are the object of collective willing.

³⁸ Anderson, "The Fundamental Disagreement between Luck Egalitarians and Relational Egalitarians," 3.

³⁹ Ibid, 17.

Rawls points out that when groups are attempting to reach an agreement about the principles of justice they must “weight the strains of commitment” which involves “asking themselves whether those they represent can reasonably be expected to honor the principles agreed to in a manner required by the idea of agreement.”⁴⁰ It should be asked of Anderson’s DE whether the foundational principles of justice that she provides would violate the strains of commitment. Specifically, would deliberative parties hypothetically agree to the first principle, which stipulates that “egalitarian principles must identify goods that persons should have access to over the course of an entire life,” in tandem with her fourth principle, which prohibits the state and other people from making “demeaning and intrusive judgments” about how the less well-off have used their goods, in meting out compensation. Notice that some foreseeable implications of these principles include that people will receive unconditional-lifetime access to a certain package of goods and their claim to this package can’t be altered by facts about how they have used them. If they should choose to free ride or use these goods recklessly there is no effect on their claim to these goods. Is the right to democratic equality and the foundational principles really such that all would agree to them? If one imagines themselves in either the well-off or moderately well-off groups, would they consent to principles that could potentially require heavy costs on them and a system that distributes shares regardless of the responsibility of the claimants? Such a view would seem to violate the strains of commitment. The answer to the first question, however, remains unclear. This, though, does not help Anderson. The consequence of lacking a definitive answer to the question is that Anderson can’t defend her view against free riding by pointing to the right everyone has to democratic equality and the foundational

⁴⁰ Rawls, *Justice As Fairness: A Restatement*, 103.

egalitarian principles she lists since it is unclear that this is a right and a set of principles that all would agree to.

3.3 Diagnosing Democratic Equality

In presenting DE, Anderson offers a view that not only considers the claim individuals have to certain goods as a matter of distributive justice but also the social effects and outcomes of the distribution. DE concerns itself with eliminating oppression and relational inequality amongst the members of a society. This is a notable improvement over LE, a view that based claims to compensation and framed distributive principles solely on facts about the individual. Additionally, by use of a minimum level of guaranteed functioning, DE is able to produce consistent and non-arbitrary redistributive payouts which guarantee the basic capabilities for functioning as an equal citizen. LE, on the other hand, was maligned by this problem since the hypothetical insurance market rarely issued pay outs that seemed non-arbitrary and agreed with Dworkin's intuitions about justice.

The problems with DE have already been enumerated and explained so I will only mention them in brief. The largest problem facing DE is free riding and the view's inability to constrain it. Dworkin's LE avoided this problem by not making compensation available to those who were badly off on account of choices. Unlike Rawls's difference principle, which allows society to diverge from an egalitarian distribution if some other distribution would be to the further advantage to the least well off, Anderson's view lacks this kind of versatility. The defenses DE provides to limit free riding are to set the guaranteed minimum at a sufficiently low level and count on a society having the right kinds of conditions in place such as little scarcity and little free riding. However, in societies that do not have these conditions, like the hypothetical one described earlier, DE is powerless to stop free riding from imposing highly

burdensome costs on others and precipitating an eventual leveling down effect. Further, even if society experiences little free riding, the well-off might still allege that the distributive system is unfair since it contains no checks against free riding. This might very well lead to a culture of resentment between the well-off and less well-off. In order to adequately prevent this scenario from arising, the view will require revision. This revision is likely to take the form of reintroducing accountability as an important consideration into formulating principles of distributive justice. In the following section, I will attempt to offer an account of distributive justice that incorporates elements from both the LE and DE approaches. This view will aim to avoid the problems described here and in Chapter 1. I turn to that view now.

4 DELIBERATIVE DEMOCRATIC EQUALITY

In the previous section, I took a close look at the democratic equality view of distributive justice. Much like luck egalitarianism, democratic equality included some valuable elements to a complete and legitimate conception of distributive justice⁴¹, namely, the consideration the view gives to all who are badly off regardless of what role they have played in their own hardship as well as the specification of a baseline for equality. The view, however, problematically ignores the role of the accountability of the claimant in their own hardship to the extent that it ends up being a view that is unfair and not one all could agree to. Compounding this problem is the fact that for Anderson a legitimate conception of distributive justice ought to be contractually grounded or one that all could agree to. In this section, I present a sketch of a view that both retains accountability as an important feature of distributive justice but also gives consideration to those who are badly off due to their own choices.

In this third and final section, I will introduce and explain my own conception of distributive justice, deliberative democratic equality. This view is a hybrid account combining elements from both the luck egalitarian and democratic equality positions. I will begin by considering some of the requirements essential to a legitimate conception of distributive justice. These considerations will be informed by some of the problems already observed with respect to luck egalitarianism and democratic equality. Next, I will introduce and lay out my view. My aim will be to show how this view can avoid the critical problems that maligned luck egalitarianism and democratic equality while managing to capture the basic advantages of these positions. Lastly, I will consider some criticisms against my view and then offer concluding remarks.

⁴¹ Anderson does not intend for her view to be simply a “conception of distributive justice” but rather a view about relational equality that has implications for distributive justice. I have chosen to examine and borrow from her view to build my own conception of distributive justice but I do not mean to suggest that this is how we should exclusively characterize her view.

4.1.1 Building a Legitimate Conception of Distributive Justice

In order to build a conception of distributive justice, it is necessary to identify some fundamental considerations that will guide and shape the principles that make up the view. I offer three such considerations. They are as follows: 1. Compensation provided should rectify the kind of injustice being corrected, 2. Principles of distributive justice should identify the basic goods that all should have access to over the course of a lifetime, and 3. Principles should be contractually justifiable or ones that all could agree to.

In order to explain these basic considerations, I will begin with the first two. Admittedly, the first two principles are extracted directly from Anderson's DE view. In defining the first principle, Anderson explains that "egalitarian principles [of distributive justice] should offer remedies that match the type of injustice being corrected."⁴² This casts resourcist approaches to compensation as illegitimate. If a person is poorly off because they are physically handicapped in a way that prevents them from using their legs, it is unacceptable to offer them a sum of money as compensation. Indeed, such a person could rightfully see themselves as receiving unjust treatment if they were unable to take part in democratic and social activities despite being well compensated financially. The second principle stipulates that a legitimate conception of distributive justice must pick out the set of goods that all individuals ought to have lifetime access to. Again, this differs sharply with Dworkin's LE approach. Recall that under his view, individuals who were badly off on account of their choices –i.e. victims of bad option luck– were ipso facto ineligible for compensation of any kind. My view, in agreement with Anderson, holds that individuals who are badly off on account of their own choices are still eligible for compensation; everyone should be able to voice their claim. It is important to note that this does

⁴² Anderson, "What is the Point of Equality?" 314.

not imply that all individuals are guaranteed effective access to these basic goods unconditionally. Even Anderson does not take this to be a fair summary of the principle. Rather, a legitimate conception of distributive justice must avoid disqualifying certain individual claims to compensation *ex ante*.⁴³

The last consideration is that principles of distributive justice must be contractually justifiable or capable of being accepted by all. This is similar to Anderson's own requirement that principles of distributive justice should be the object of "collective willing." What I mean by contractually justifiable is quite similar. Principles of distributive justice must be ones that all should ultimately accept. Principles can be rejected when a party to the agreement threatens to be treated unfairly by them. Principles must demonstrate respect for all involved by treating them with fairness. Meeting this requirement is often the most difficult task of views about distributive justice since very often the desires of those who make claims to compensation and those who must shoulder the burden of compensation stand in conflict with one another. What is required by contractual justification is that a middle ground be sought between these two points that both parties can reasonably accept. A view that goes too far in compensating those who are poorly off will likely not be justifiable to those expected to do the compensating and a view that doesn't go far enough will likely be unjustifiable to those making claims to compensation. Both of these parties –those compensating and those compensated– must ultimately be able to accept the principles of distributive justice. Dworkin's LE position would fail to pass muster on this requirement due to the stringent stance the view takes towards those who are badly off on account of choice. Anderson's DE would fail to be justifiable to both groups since it does not

⁴³ As far as what comprises the set of goods that all individuals should have access to, I follow Anderson in identifying basic medical care, the ability to secure available employment and participation in democratic processes as part and parcel of the basic set. For more, see Anderson, "What is the Point of Equality?"

place important restrictions against free riding and thereby threatens to impose onerous costs on those doing the compensating. Deliberative democratic equality will attempt to locate and assume a midpoint. If the view I present in the following section doesn't do a better job in answering to this concern then it will be just as unsuccessful as LE and DE in this respect.

4.2 Deliberative Democratic Equality

The view I will now explain is similar to Anderson's DE but includes modifications that can better satisfy the three requirements I gave in the previous section about what should shape a legitimate conception of distributive justice. Like Anderson, my view contends that everyone has a right to democratic equality. So too, my view assumes a capabilities approach which gives everyone effective access to a level of goods consistent with a level of democratic equality. Beyond this baseline, higher levels of functioning are open to opportunities. The differences between my view and DE are traceable to the different ways in which the right to democratic equality is grounded in each view. An explanation of these differences is a natural starting point for introducing deliberative democratic equality.

For Anderson, the right to democratic equality is a fairly stringent right that can't be overridden by considerations of how responsibly the right holder has acted in exercising their right. To do this would be to pass "demeaning and intrusive judgments on their capacities for exercising responsibility or how well [a person has] used their freedoms."⁴⁴ So long as a claimant has not committed a criminal act or consciously chosen to live below the minimum, they ought to be kept at a level of democratic equality. However, as I explained in the previous chapter, Anderson's view avoids making demeaning and intrusive judgments about claimants at the

⁴⁴ Anderson, "What is the Point of Equality?" 314.

expense of providing a view all could accept⁴⁵. The complete omission of the accountability of a rights holder means DE is incapable of preventing free riding and this foreseeable problem is one that would preclude hypothetical contractual agreement.

DDE also posits a right to democratic equality held by all but this right is conditional upon important facts about the rights holder. These facts include the claimant's track record or how many times they have filed claims to compensation, the information they could reasonably be expected to have knowledge of, and what the severity of their circumstances are. Only the minimum facts necessary to prevent unbridled free riding are taken into consideration in placing limiting conditions upon the right to democratic equality. Placing such conditions on the right to democratic equality allows DDE to satisfy its own requirement about providing principles which must be ones all could accept. I will now give a fuller exposition of DDE.

DDE uses a luck egalitarian criterion to distinguish between claims to compensation. For those claimants who make claims to compensation due to hardship beyond their control or cases of bad brute luck, they are compensated no differently under DDE than under DE; they are brought up to a level of democratic equality by receiving compensation which is tailored to match the nature of their hardship. For the individual who does not have use of her legs because of a congenital disease, she would receive access to goods which would enable her to play an equal part in democratic processes, attain employment and achieve a level of functioning consistent with democratic equality.

For those claimants who make claims on the basis of hardship which arise from their choices or cases of bad option luck, these individuals are compensated differently. These

⁴⁵ Again, it is important to recognize that Anderson does not intend her view to be solely about distributive justice but about achieving social equality. For her, the problem that I am describing might be less pressing since this is not the primary aim of her view.

individuals submit their claims to panels which survey the facts of the case, deliberate collectively and then vote to determine whether the claim should be granted. It is important to add that these panels do not vote on the level of compensation; compensation is fixed as whatever would be required for the claimant to reach a level of functioning consistent with democratic equality. Rather, these panels are responsible for determining whether the claim should or shouldn't be granted. Given that this is an important feature of DDE, it is necessary to give a further description of the panels themselves.

The panels which review and vote on claims to compensation filed by victims of bad option luck are made up of those members of the community who, along with others, share in paying out the compensation. They might consist of six community members. Not coincidentally, these panels are similar to juries, so selection for serving on them could be conducted in the same way we select juries with community members being selected to serve at random. Further processes of culling those selected on the basis of responding to questions about distributive justice might be used to help avoid including biased panel members⁴⁶. Since it is important to avoid intrusion and protect the privacy of the individual filing the claim, these panels are kept blind about the identity of the claimant. Claimants should not be publicly shamed and so cases are handled on a numbered basis. The information that these panels are presented with include the track record of the individual in question or the prior number of times they have filed claims to compensation, the information that the individual might have known in making the decision which led to hardship as well as the severity of the claimant's situation and extraneous factors like the amount of dependents that the claimant provides for. These panels then deliberate with one another, similar to juries, about whether the individual should or

⁴⁶ There is simply no way to legislate out biased panel members but this step might help reduce bias similar to the way jury members are selected. I thank Dr. Cohen for raising this point.

shouldn't be granted compensation. In the course of deliberation, the members of the panel must give public reasons to support their decision. By forcing the panel members to justify their decisions to one another in deliberative dialogues, unfair or biased decisions are curtailed as much as possible. Another important feature of this system is that the burden of proof is situated in favor of the claimant. Only if a majority of the six members, at least four, vote against compensation does the claim go uncompensated. This means that the panel members are not deciding whether to vote on behalf of a claimant but whether to vote against them. By making the requirements fairly high—four members of a panel voting against a claimant on the basis of public reasons—DDE aims to avoid treating victims of bad option luck unfairly. If a claimant does have their claim voted down by a panel, they are still eligible to refile their claim. It can be suggested that they be permitted to have their case reheard every six months and that the panel be made aware that they have had to live under the DE minimum for that period of time since this would influence one of the voting criteria, namely, the severity of the claimant's situation. The object is not to permanently vote members out of society but rather to prevent abuses against the system by considering the basic accountability of the claimant.

So far my description of DDE has been mostly instructional in sketching out the view. Further advantages of this view beyond its ability to better satisfy contractual justification can and will be given. Deliberative democratic equality is funded by deliberative democracy which “is rooted in the intuitive ideal of a democratic association in which the justification of the terms and conditions of association proceeds through public argument and reasoning among equal citizens.”⁴⁷ Additionally, deliberative democracy relies strongly on processes of “public justification.” DDE, through the use of deliberative panels, attempts to institutionalize a process

⁴⁷ J. Cohen, *Philosophy, Politics, Democracy*, 21.

of public justification regarding distributive justice. It is in these panels that all citizens are permitted an equal voice and an equal role in collectively deciding whether a claim should go through. In such a process, the very citizens who must take on the costs of compensation are allowed to participate directly in deciding to grant it. This not only trims back the feelings of alienation that stem from citizens having policies dictated to them from afar but permits them to exercise and strengthen their own deliberative and political capacities. DDE not only incorporates public justification as a part of distributive justice but through allowing direct participation, enhances the political capacities of its citizenry.⁴⁸

Another advantage that can be claimed by DDE is that it is far more likely to produce results that satisfy our intuitions about distributive justice relative to LE and DE. Our intuitions might be briefly expressed as endorsing the following two features of a distributive system: first, that it allows all claimants to file for compensation –i.e. no one is initially denied the opportunity to state their case. Second, our conception of distributive justice should include a mechanism that prevents obvious abuses on the system so as to avoid being a view that not all could reasonably accept. The superiority of DDE in appealing to these intuitions over LE and DE can be illustrated by way of example. Consider the following two claimants. The first, Katya, has recently been paralyzed in a skiing accident on a moderately hazardous slope. She is forty years old and has never filed a claim for compensation. She also has a young son who depends on her. The second claimant, Bryan, has recently lost a considerable amount of money on high risk investments; perhaps he has purchased a large volume of lottery tickets. Bryan has made several claims to

⁴⁸ The participation of citizen's in political processes, which DDE requires, is said to have high instrumental value for society by John Stuart Mill. Mill explains "We may consider, then, as one criterion of the goodness of a government, the degree in which it tends to increase the sum of good qualities in the governed, collectively and individually, since, besides that their well-being is the sole object of government, their good qualities supply the moving force which works the machinery." For more, see *Considerations of Representative Government*, Ch. 2 "The Criterion of a Good Form of Government."

compensation in the past and has no dependents. For a luck egalitarian, the sole object of consideration in determining whether a claim should be granted is whether the hardship was due to circumstances beyond a person's control (brute luck) or the result of poor choice (option luck). Given this kind of procedure, under LE, both claimants would be denied compensation –both claimants are in their predicaments due to their choices. As Anderson has pointed out, this approach ends up being difficult to reconcile with further considerations important to justice such as the amount of societal oppression that would result and what these judgments would portend for the long term standing of individuals in democratic societies. In the case of Katya, refusing to allow her to even have her claim heard because her hardship was preventable, a ruling which may force her to live a low quality of life and subsequently be shut out from participating in democratic processes, seems counter to justice. Even disallowing Bryan from having his claim heard seems unduly harsh. Hence, under Anderson's own view, DE, both Katya and Bryan would be compensated up to the democratic equality minimum. Although this produces the right intuitive result with respect to Katya, it is less clear than an individual like Bryan should be granted compensation. In his case, there was a surfeit of information available that indicated his plan to buy a huge number of lottery tickets had a low probability of success and was thus an irrational decision. Also, Bryan has repeatedly filed claims in the past because of bankruptcy due to ill-chosen gambles. Allowing someone like Bryan to repeatedly file and receive compensation while wholly ignoring what role they have played in their current hardship and how they used compensation issued in the past is tantamount to permitting free riding.

Unlike LE or DE, DDE's results are not hard and fast in either of these cases. DDE argues that distributive claims must be publicly justified and anyone is allowed to have their claim heard. Both the accountability of the claimant as well as respect for their privacy is

incorporated into the decision procedure for distributive claims. The claimant is allowed to build the best case for justifying their being compensated. Panel members collectively deliberate by offering public reasons to advance their position, for or against. In Katya's case, it is likely that she would be granted compensation by a deliberative panel. Her clean track record of filing for compensation together with her accident being less preventable and her having a dependent party would probably result in her being compensated given the lack of public reasons operating against her. In Bryan's case, it is unlikely that he would be compensated since he both had access to information that made his bet irrational and a long track record of filing for compensation. In neither the case of Katya or Bryan is the outcome certain since it is ultimately up to the deliberative panels. However, in light of the way the decision procedure is framed under DDE it is likely it would produce the right intuitive results of compensating victims of bad option luck who honestly are in a position of need and weeding out those individuals who appear to be chronically abusing the system.

4.3 Criticizing Deliberative Democratic Equality

In this section, I will turn my attention towards two objections against the view of distributive justice I have introduced.

The first objection I will consider is one likely to be made by a proponent of democratic equality. Recall that like DE, DDE takes itself to be advocating and protecting a right to democratic equality which is held by all. This right, as explained by Anderson, involves two aims: a positive and a negative one. The positive aim of the right is to "seek a social order in which persons stand in relations of equality" while the negative aim is "to abolish oppression – that is forms of social relations by which some people dominate, exploit, marginalize, demean

and inflict violence on others.”⁴⁹ The greatest shortcoming of LE from a democratic equality perspective is that it fails to prevent the circumstances which give rise to oppression, namely, the impoverishment of individuals that prevents them from taking part in democratic processes. By ruling against all claims to compensation made by victims of bad option luck on a prima facie basis, LE problematically relegates these members of society to the periphery and makes them susceptible to oppression by others. Contrariwise, DE compensates anyone who falls below the democratic equality minimum irrespective of the reasons for their hardship. This goes a long way towards achieving both aims of democratic equality in seeking to eliminate societal oppression.

Like LE, DDE does permit some individuals to go uncompensated. Those individuals voted against by deliberative panels are, for a time, made to live below the democratic equality minimum. Although presumably far less individuals would be in this position under DDE than LE, any person made to live under such conditions, who is both law abiding and desires not to be in such a condition, is suffering injustice according to DE. If DDE advances a right to democratic equality but allows some individuals to live below these baseline conditions, the view is internally inconsistent. The problem then with DDE is that the view tries to have its cake and eat it to. On pain of being inconsistent, it can't both endorse a right to democratic equality which aims to stamp out oppression via a universal guaranteed minimum while forcing some individuals to live below this minimum.

To this objection, I offer the following line of response. The observation that DDE would be inconsistent in both promoting a right to democratic equality but denying some individuals compensation is tenuous. Rights very often come with restrictions which prevent individuals from exercising them in ways that infringe on the rights of others. The conditions that DDE

⁴⁹ Anderson, “What is the Point of Equality?” 313.

places on the right to democratic equality are meant to properly contour the right in this kind of way. Take the example of a right to free speech. Although all individuals in liberal democratic societies are granted a right to free speech, certain restrictions attendant upon this right are also reasonably accepted. An individual has a right to preach hateful and racist rhetoric but such an individual is not guaranteed an audience. People are under no obligation to sit and listen to this kind of diatribe. Also, individuals are not permitted to use their right to free speech to put others in positions of peril. The shopworn example of being disallowed from yelling fire in a crowded theater is one example. Both cases, which are restrictions on the right to free speech, are hardly seen as inconsistent but reasonably taken instances of necessary exemption. The right to free speech does not extend over and against the rights of others. The right to democratic equality, I argue, is not meaningfully different. While DDE advocates for this kind of right which is held by all it also places restrictions against individuals using this right in way that harmfully interferes with others. Individuals hold a right to democratic equality which means they are guaranteed a level of functioning consistent with democratic equality unless evidence indicates they are attempting to free ride or abuse the system. The compensators should not be forced to make compensation to those who have attempted to use their right to the detriment of others. Such instances of abuse are not matters of justice and should not be subsumed under the right to democratic equality.

A second criticism I will consider is that DDE harmfully restricts the autonomy of its subjects by limiting their capacity to change and evaluate their lives through its system of uncertain compensation. Gerald Dworkin argues that “the state must recognize the autonomy of persons –i.e. the capacity of persons to stand back from their current ends and ideals, to question their value and to attempt to change them if necessary. In order to recognize this ideal of

autonomy, the state must not justify its actions on the basis that some ways of life are better than others.”⁵⁰ Under DDE, it can be pointed out that some citizens would lack the capacity to change their life since certain risks they might take in changing their life, if they were to fall through, would go uncompensated. The threat of falling below the democratic equality minimum and being denied compensation might bar them from taking these kinds of risks. Consider the case of an individual who has little money and wants to become a lawyer. Such a person might take out large loans with their ability to pay them back predicated on gaining employment after law school. Given the notoriously poor job market in the legal profession, this plan entails a high degree of risk; after attending law school, they might be unable to secure a job. If this individual thinks that failure would cause them to fall below the democratic equality minimum and that a deliberative panel would be unlikely to compensate them,⁵¹ this could very well affect their decision to pursue their ambitions about working in law. These kinds of problems would hang over most individuals who live barely above the democratic equality minimum. One might point out that DDE promotes a risk averse life for individuals just above or at the democratic equality minimum that turn, problematically limits their autonomy.

In response, it is important to note that DDE assumes a capabilities approach to distributive justice that guarantees a level of functioning consistent with democratic equality to all which is conditional upon facts about the rights holder but leaves higher levels of functioning open to opportunities. In order to have an equality of opportunities capabilities approach, DDE would call for aid and subsidies to increase the accessibility of certain opportunities for

⁵⁰ G. Dworkin, “Autonomy,” 453.

⁵¹ Reasons for thinking a deliberative panel would be unlikely to grant such a claim to compensation are based on the panel’s considering the information available to the claimant at the time they made the decision which has precipitated their hardship as part of the decision criteria. Given the wide availability of information about the poor job market in law, a panel may be less sympathetic to an individual like the one in the example.

individuals like the law school applicant. People who live at or just above the democratic equality minimum could draw upon these resources in order to pursue costlier ambitions that would otherwise be closed to them. DDE requires that such measures are taken so as to ensure that capabilities are equally open to opportunities. The scenario described above where individuals who possess few resources are painted into a corner with regard to their ambitions would fail to satisfy other commitments of the view. I submit that DDE when examined in totality does not harmfully restrict the autonomy of its citizens but is committed to protecting it.

4.4 Concluding Remarks

The greatest motivation in providing an original conception of distributive justice was to offer a view that can avoid the problems facing LE and DE while producing the right intuitive results. I have argued in this section that DDE is a view capable of accomplishing these two aims. Its most advantageous feature is the creation of a distributive process that requires public justification between the two parties in a distributive schema, both the claimant and their compensators. This feature is intended to answer to the contractualist challenge facing views about distributive justice, namely, a view that can be reasonably agreed to by all. I make no pretense in suggesting that the description of DDE provided in this section can act as anything more than an outline of such a view but it is hoped that at least what has been accomplished is the development of better guidelines for what a legitimate conception of distributive justice must include.

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