

Justice as the fair distribution of freedom : Fetishism or stoicism ?

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There are very few political philosophers whose work I find as congenial as Richard Arneson's. In some of his recent writings, however, including the one which I have been asked to comment on here, I believe he is moving in the wrong direction. Before characterizing this move and explaining why I think it is wrong-headed, let me briefly describe the relevant philosophical landscape¹.

1. Distributive justice : outcome-oriented versus freedom-oriented

Contemporary theories of distributive justice can conveniently be partitioned into entitlement conceptions, such as Robert Nozick's (1974) but also David Gauthier's (1986), and equal-concern conceptions, such as John Rawls's (1971) but also all variants of utilitarianism. According to the former, implementing distributive justice basically consists in designing institutions that respect and enforce pre-institutional individual entitlements. According to the latter conceptions, the implementation of distributive justice basically consists in designing institutions that attend equally to the interests of all. Equal-concern theories can usefully be further partitioned using two other distinctions. Depending on the criterion they select, they can be purely distributive (as when they require maximal equality, whatever the cost), purely aggregative (as when they require the sum total or the average to be maximized) or intermediate (as when they require the maximization of the minimum score). Depending on what they take to be the distribuendum, i.e. the variable whose distribution matters to justice as such, not as a proxy or a causal factor, they can be either outcome-oriented – if what counts is people's

¹ Earlier versions of this chapter were presented at the conference «The ethics and economics of liberty» (Cergy-Pontoise, 21 June 1995) and at the 1996 meeting of the September group (New York, 7 September 1996). I am particularly grateful to Dick Arneson and Jerry Cohen for useful reactions.

achievements, what they end up with – or opportunity-oriented – if what counts is people's real freedom, their potential².

As regards the first of these three distinctions, Arneson's contribution to this volume takes for granted that what we need is an equal-concern theory. As regards the second one, I suspect that he would go for an intermediate conception, even though his references to Mill and Dworkin indicate that he intends his argument to apply to purely aggregative and purely distributive conceptions too. As regards the third distinction, Arneson opts unambiguously for a (not fully specified) outcome-oriented conception against opportunity-oriented ones, including the one he presented and defended himself in a sequence of influential articles (Arneson 1990, 1991, 1992).

Before scrutinizing the main arguments behind Arneson's conversion – and, by the same token, behind the emerging disagreement between us – , let me dwell a little on the diversity of the conceptions that populate the two sets that the third distinction generates. Outcome-oriented conceptions include all welfarist conceptions, from Mill's (1861) classical utilitarianism to Tinbergen's (1943) welfare egalitarianism, from conceptions that interpret welfare as the experience of pleasure (and the absence of pain) to those that construe it abstractly as rational goal achievement. They also include conceptions of justice that take income, or consumption, or income-leisure bundles, or functionings in Sen's (1985) sense as the distribuendum. They even include perfectionistic conceptions of justice that take as their distribuendum a particular conception of what is good for people, irrespective of whether these people attach any importance to it.

Opportunity-oriented (or real-freedom-oriented) conceptions, on the other hand, can be further differentiated along three dimensions. For the sake of simplicity, I shall list them using (maximum) equality as the relevant criterion. But analogous distinctions apply if more aggregative criteria are used, such as maximin. Firstly, what should be the relevant time span? Should opportunities be equalized "at the start", as people enter adult life, or throughout life at regular intervals?

Secondly, how broadly should one conceive the obstacles that need to be removed for opportunities to be equal? Does the equalization of opportunities reduce to abolishing all forms of discrimination on grounds of gender or race, religion or sexual preference, height, looks or age? Does it involve the equalization of the external endowments people are granted by bequests and gifts? Does it involve further the equalization of the internal endowments they derive from their genetic make up and their social background?

² Note that opting for an outcome-oriented conception does not prevent one from giving great importance to opportunities, as classically illustrated by Mill's utilitarian defence of liberty. Nor does opting for an opportunity-oriented conception prevent one from granting a key role to the satisfaction of people's preferences. The latter are of crucial importance, for example, if opportunities are assessed in terms of how high a level of welfare they give access to, or in terms of the competitive value of the resources they require (see below).

Thirdly, what metric should be used? Should opportunities (on the appropriate time scale and in the appropriate range) be equalized, for example, in the sense that the extent of the freedom they afford should be the same for all? If so, does this mean that they should be able to do the same things, or the same number of things, or the same number of significantly different things, or sets of things which are, in some sense, of the same spatio-temporal size? Or is it rather the subjective value of people's freedom that is to be equalized? If so, should this value be understood as the welfare that can be achieved by making the best possible use of one's opportunities, i.e. the level of utility associated with the optimal element in the option set, or rather as the welfare directly associated with the set of opportunities as a whole (which will depend on the value of the best option, but may also be affected by the size of the set)? Or should one equalize the objective value of people's opportunities, understood for example as their access to a number of functionings whose nature and weight are determined in the light of a certain conception of man's objective needs, not of each individual's subjective wishes? Or finally, should one not instead equalize the social value of people's opportunities, understood as the opportunity cost to others of the appropriation of the resources these opportunities require and approximated by the competitive value of these resources?³

2. The simple case for real freedom

On this background, one can easily state the central intuition behind the choice for an opportunity-oriented (or real-freedom-oriented) conception of distributive justice, well expressed by Arneson [pp. 11, 18] himself in terms of an ethical division of labour between society and its individual members. It is not society's business to make people happy, let alone equally happy, or to make them achieve any other outcome one may wish to attach special importance to⁴. But it is society's business, perhaps even its primary business, to secure to its members an equal (or at least fair) distribution of opportunities to achieve whatever outcomes they may care about. The fact that equal opportunities will not lead to equal happiness, or equal

³ Typical "extent metrics" are defended, for example, by Pattanaik & Xu (1990), Steiner (1994) and Carter (1995); typical "subjective value" metrics by Musgrave (1974) and Arneson (1990); a typical "objective value" metric by Sen (1985, 1992); and a typical "social value" metric in the treatment of external endowments by Dworkin (1981) and Van Parijs (1995a). Undominated diversity, which I propose as the criterion that should apply to internal-endowment-based freedom (ibid., chapter 3), can be assimilated to an extremely modest version of the "subjective value" metric. Note that none of the three types of "value metric" (as opposed to the "extent metrics") entails an "evaluative conception of freedom" in the sense in which Arneson [p.9 sqq] uses this expression. According to each of them, the value of one's freedom is not what defines how much of it one has, but what determines how much of it one should get.

⁴ Making opportunities, rather than outcomes, the locus of distributive justice does not prevent one from talking about a fair or unfair distribution of outcomes, but only in the derivative sense that it came about as the result of a fair or unfair distribution of opportunities.

achievement along any other dimension, is not an imperfection of this conception of social justice, but a reflection of the requirement that people should bear the cost of their actions and preferences.

This same fundamental intuition is sometimes expressed in a more roundabout way, by starting from a typical outcome-oriented conception, say equality of welfare. Such a conception gives rise to the standard objection that it is unfairly generous to people with expensive tastes – people with preferences whose satisfaction at any given level requires more resources than those of the average person – and unfairly mean to people with adaptive tastes – people whose preferences can be satisfied more cheaply than average because they adjusted to the meagre resources at their disposal. Now, one can attempt to accommodate this twofold objection while sticking to an outcome-oriented approach. For example, one might think of requiring equality of income rather than of welfare. But by focusing on one particular dimension (among the many that get amalgamated into welfare measures), one would have become unacceptably narrow: think of the people who work harder than others and could legitimately claim, on grounds of justice, a higher income. Or one might think of requiring equality along a number of dimensions, say income, leisure, health, etc. But by requiring such multidimensional equality (without trade offs across dimensions), one would have clearly become unacceptably rigid. Faced with such difficulties, it is tempting to leave aside marginal modifications and give up altogether the project of defining distributive justice as equal achievement or equal success and move on to the task of characterizing it as equal (or fair) opportunity.

But it is precisely this temptation that Arneson now wants to resist. He does not challenge that « if society has given Smith a fair share of help, and Smith squanders the resources available to her and ends up living badly, Smith's unfortunate plight does not trigger further obligations on the part of society ». But he does challenge what « might seem an easy step from this assertion [...] to the further claim that what society owes the individual is to be specified in terms of some notion of positive freedom, resources, or opportunities » [p.18]. What are his arguments ?

3. First objection : Freedom as fetish

One argument derives directly from the central claim of his contribution : « Is some version of positive [i.e. real] freedom fit to be a foundational value, so that a society is just in its distributional practices just in case the distribution of freedom is fair ? My answer is that freedom is an instrumental, not a fundamental value » [p. 16]. Admittedly, « some people may value freedom for its own sake » [p. 16], but the main reason why people care about freedom lies elsewhere : « both my present uncertainty about my future circumstances and my uncertainty about my goals and preferences render it reasonable for me that I have wide freedom in the

future » [p.10 ; also p. 17]. Moreover, freedom can be supported by straightforward consequentialist considerations, such as Mill's argument to the effect that freedom is important for the sake of fostering experiments [p. 17]. Hence « freedom is a means to well-being as well as a means to the achievement of non-well-being goals that individuals have reason to value [...] The theory of justice should prize freedom but not make a fetish of it » [p. 17].

Fair enough. But I cannot see anything here that could shake the intuitive case sketched above in favour of an opportunity-oriented approach. For the choice of opportunities as the locus of distributive justice does not commit one to denying that it is outcomes that ultimately matter to people. It is not based on the belief that people care about freedom for its own sake. As presented in the previous paragraph, the rationale behind this choice holds just as much if freedom does not matter as such to any of them. It holds just as much if welfare is the only “foundational value”, in the sense that the value to each person of anything else, including freedom, is derived from the value they ascribe to welfare. It is not because outcomes are what people care about that justice or injustice can be read from the distribution of these outcomes, rather than from the distribution of the opportunities to reach them.

4. Second objection : Tough luck for bad choosers

However, Arneson presents a second argument that is not vulnerable to this objection. Freedom, he rightly points out, « will be differentially valuable to persons depending on their differing abilities to make good decisions. The correct theory of distributive justice must appropriately balance the well-being of the less competent and the well-being of the more competent [whether they are better at gathering or processing information or endowed with a stronger will]. If the fundamental basis of interpersonal comparison is ‘real freedom’ [...], this conflict of interest between better choosers and worse choosers is resolved one-sidedly in favor of the good choosers [...]. If my decision-making abilities are limited, more freedom is usually a benefit [...] but is sometimes inimical to my life prospects » [p. 18]. It is of course not enough to argue that adopting one metric (“real freedom”) will turn out to be better for some people and worse for others than if another metric (“outcome”) had been adopted. This is only an objection if one can show, using a different argument, that justice is a matter of equalizing success rather than opportunities. But Arneson's second argument against opportunity-based conceptions can precisely be understood as bringing out the uncomfortable implication that the incompetent, those who, for any reason, are bad choosers, are given an unfairly bad deal.

Those who insist, as I do, that talent-based opportunities should also be equalized, are unlikely to be moved by this argument. For they can fully share Arneson's moral intuitions and simply respond that the unequal ability to gather and process information and even the unequal

strength of people's will constitute, according to their view too, unfair states of affairs which their conception of justice requires them to correct. In fact, I cannot imagine any situation that could be construed as unjust according to an outcome-oriented approach that makes adequate room for individual responsibility, while not being interpretable as unjust according to an opportunity-oriented approach that construes opportunities so broadly that it encompasses the ability to turn opportunities into desired outcomes.

Might the outcome-oriented approach then not have the advantage of accommodating these moral intuitions in a simpler or less problematic way? Arneson himself is hardly explicit on how his responsibility-sensitive variant of the outcome-oriented approach should be formulated: « The limitation of social obligation by personal responsibility can be accommodated in a theory of justice without making positive freedom the fundamental basis of interpersonal comparison. For example, one might regard failures of individuals to behave responsibly as decreasing their deservingness, and hold that the goal of social justice is to maximin (or maximize, or leximin, or equalize, or whatever) the well-being of individuals who are most deserving, with lesser priority being assigned to helping the less deserving as well as those who already are well off » [p. 19]. Arneson is probably planning to spell this out more fully elsewhere. He may even have done so by now.⁵ But I cannot see how he can get around the powerful challenge to this project that stems from the following difficulty: in pluralistic societies such as ours, there is no homogeneous conception of what counts either as deserving behaviour or as a reward. In such a context, it seems so much simpler to forget about trying to fine-tune desert and reward and to focus instead on equalizing (or whatever) people's real freedom, their opportunities. I am not denying that finding a suitably unbiased metric for these opportunities is a tricky business. Indeed, a large portion of *Real Freedom for All* (Van Parijs 1995a) is devoted to precisely this task. But in the absence of an explicit alternative, I remain convinced that spelling out what a fair distribution of opportunities or real freedom involves is the simplest, least problematic way of acknowledging the importance "responsibility" and "deservingness" can claim, in a pluralistic society, on the strength of considered judgements I fully share with Arneson.⁶

5. An embarrassing afterthought : Stoicism and the preference for freedom

While scrutinizing the reasons behind my instinctive dislike for Arneson's recent move, I came to suspect that there was more involved than this conviction about how most conveniently to accommodate our shared intuitions about solidarity and responsibility, equality and desert.

⁵ See, in a related perspective, some of Marc Fleurbaey's (1995a, 1995b) recent work.

⁶ This is argued at more length in section 5.6 of Van Parijs (1995a) on the background of the metric of real freedom I develop in chapters 2 to 4.

Perhaps the strongest and deepest reason for my dislike had something to do with some of my beliefs about the nature of a good life and hence with an aspect of my ethical views which I, as a professed liberal, was committed to keeping tightly separate from my conception of justice.⁷ Let me explain what prompts this potentially embarrassing afterthought.

One can doubtlessly imagine that a tractable (responsibility-sensitive) version of equality of outcomes could be characterized so as to be abstractly equivalent to the most appropriate version of equality of (broadly construed) opportunities. Yet, this would not make the two approaches interchangeable. For the institutions each inspires will arguably generate different distributive patterns because of a difference in the initial presumption, and hence in the location of the burden of proof. An outcome-oriented approach starts with the requirement that everyone should reach the same outcome (somehow measured). If someone gets less than others, the natural response will be to shift resources so as to bring her up to the same level – unless it can be shown that her lower success was her fault. An opportunity-oriented approach, on the other hand, starts off by requiring an equal division of what doubtlessly counts as opportunities. If on this basis some turn out to achieve (what they regard as) poorer outcomes than others, they will be invited to make a better use of their opportunities, including possibly their opportunity to change their preferences – unless it can be shown that their freedom is, possibly in a subtle way, more limited than that enjoyed by others. Under appropriate specifications of outcomes and responsibilities, opportunities and choices, the two approaches will no doubt display a great deal of convergence: what one cannot plausibly be held responsible for will approximate what uncontroversially belongs to one's opportunities.

Because of the different points of departure, however, the burden of proof is naturally located on opposite sides. The convergence process will therefore tend to get stranded in the mud of unavoidably controversial factual claims, typically about how much of a person's poor achievement is due to a lack of capacity she cannot be held responsible for rather than to a lack of will. On the side of the outcome-oriented, a move (further) away from equal outcomes is required only if a lack of will can be demonstrated. On the side of the opportunity-oriented, a move in the direction of more equal outcomes is required only if a lack of opportunity can be exposed. Given the uncertainty surrounding many of the relevant facts, a sizeable gap is therefore most likely to persist between the distributive patterns that would emerge even from the closest variants of the two approaches.

This is the point at which one's conception of a good life may come to play a role. For how little one minds being stuck on the equal-opportunity side of the persistent gap is likely to be correlated with how much one is attracted by a stoic approach to life. Some of us find it comparatively more praiseworthy, or less strenuous, in their personal lives, to adjust their

⁷ In Van Parijs (1995b), I uncompromisingly defend against continental critics the liberal "neutrality" shared by most contemporary Anglo-American conceptions of justice. The possible interference pointed out below is therefore something that should leave me uncomfortable.

ambitions to the circumstances that happen to be theirs. For them, being stuck in the mud on the equal–opportunity side of the gap, conceding less than justice requires to the weakness of human nature, asking people to pull themselves together even in cases in which they could not, does not seem such a terrible thing. Not terrible enough, at any rate, to join Arneson on the other side of the gap – where some of the weak–willed are getting more than justice requires – and to assist him in the attempt to work out a responsibility–corrected equal–outcome conception of justice.

Here may well lie the deepest source of my instinctive resistance to Arneson’s conversion. Recognizing this does not undermine my earlier rebuttals of the two arguments he gives for making the move. But perhaps it should make me accept that one’s conception of the good life may, after all, legitimately affect one’s conception of social justice?

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