

Draft

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

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Introduction

When assessing the information base of justice the capability approach focuses not just on people's actual achievements of well-being, but their freedom to achieve functionings. One of the advantages of this approach is that it allows us to widen the information base by adding a causal dimension to analyses of capability deficits. So starving can be distinguished from fasting by noting whether a person has the freedom to be malnourished. Including this information in justice and policy considerations allows us to redirect our attention and resources to individuals who lack freedom. Yet, although freedom has figured prominently in discussions of the approach, the closely related notion of responsibility has received relatively little attention. This is surprising given the prominent role the concept of responsibility has played in recent debates about justice. But it is also surprising because theories of justice and equality typically accept that taking responsibility for the consequences of one's choices is a key criterion in deciding when to permit inequalities. In what follows, I will argue that the role the concept of responsibility should play in assessments of compensation and redistribution in a capability based account of justice needs further clarification. Further, that while a capability account must address the issue of responsibility in certain contexts, these are more limited than many liberals and supporters of the capability approach suggest. In section 1, I will look at the role and scope of responsibility in recent debates in liberal political theory. Many liberal theorists claim that the fasting person has exercised their freedom and the result, though unfortunate, is their responsibility and plausibly not a matter of injustice. In section 2, I will consider how

Amartya Sen and Martha Nussbaum have dealt with this issue and, in section 3, I will discuss two objections to using responsibility as a criterion for deciding whether to permit inequalities. My approach will be to determine where and for what reason (moral, epistemological) we should take responsibility into account. Finally, I will provide what I consider to be an approach that is consistent with the capability framework by focusing on what I take to be the ethos of the capability approach.

Before proceeding, I should say something about why I will focus on equality within a system of national justice and not on some of the other fields in which the capability approach has been prominent. The capability approach has been employed in the fields of international development, global justice and debates about equality. In common with other approaches to personal and social advantage, in all of these spaces it functions as a metric against which outcomes of personal and social advantage can be judged. Each of these spaces will introduce different constraints on the extent to which various capabilities might be achieved. For instance, the available resources needed to implement a capability approach might be more severely constrained where standards of living are particularly low, or where social problems are acute. This is often the case in international development and within international justice more generally. In both of these areas capability deficits are often severe. So severe, in fact, that there are often good reasons to think that our focus should be on addressing these deficits and not, perhaps, on attributing individual blame or praise to the disadvantaged. In contrast, capability deficits within systems of national justice are often subject to determinations concerning individual praise and blame. For instance, debate in recent liberal theory has focused on when we should consider an individual's responsibility for their disadvantage. One of the reasons for this is that in many developed societies there

are more options for citizens as well as more resources to redistribute. This is not to deny that severe poverty does not exist in European or North American countries or that because a citizen of a particular country has access to more resources he or she, therefore, deserves them. But because of the general wealth of those countries and the relatively large range of choices that people have, there is thought to be a role and scope for considering questions of personal responsibility. Blame and praise are still very important for determining how we might address issues of disadvantage in the future, but because of the often life-threatening nature of the deficits for individuals we often put considerations of responsibility to one side. Whereas, it has been in connection with debates surrounding equality within a national setting that the issue of the role and scope of responsibility has played a central role. It is to these issues that I now turn.

I Egalitarianism and responsibility

John Rawls's now well known emphasis in *A Theory of Justice* on the arbitrariness of our talents and the arrangement of social institutions to take this into account did much to set the parameters for the current debate about responsibility. But it is Ronald Dworkin's revision of the choice/circumstance distinction in his defence of his account of egalitarianism that is currently one of the most influential statements of the role of responsibility in liberal and egalitarian theory.¹ According to Dworkin, equal concern is the sovereign virtue of political community and showing such concern is how governments gain legitimacy.² Dworkin's

¹ For a discussion of how this debate has misinterpreted Rawls see Samuel Scheffler, 'What is Egalitarianism?', *Philosophy and Public Affairs*, 31/1, (2002).

² Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality*, (Harvard: Harvard University Press, 2000), p.1.

interpretation of this ideal of equality is equality in the space of resources, wherein equality is achieved by providing everyone with a set of resources that satisfies an envy test. As a way of articulating what decisions and their consequences people are to be held responsible for Dworkin introduced the distinction between option luck, which is a matter of ‘how deliberate and calculated gambles turn out...’³ and brute luck, which is a matter of ‘how risks fall out that are not in that sense deliberate gambles’.⁴ As presented here, the distinction between these two types of luck corresponds to those situations and events that are a result of a person’s choice and those that are not. Dworkin makes it clear that these two types of luck separate the person from their circumstances. To quote Dworkin:

It is true that this argument produces a certain view of the distinction between a person and his circumstances, and assigns his tastes and ambitions to his person, and his physical and mental powers to his circumstances.⁵

This distinction is crucial to liberal egalitarians because society, according to Dworkin,

should aim to improve the position of people who are physically handicapped or otherwise unable to earn a satisfactory income, for example—but should not aim to mitigate or compensate for differences in

³ Dworkin, *Sovereign Virtue*, p.73.

⁴ *Ibid.*, p.73.

⁵ *Ibid.*, p.81.

personality—for differences traceable to the fact that some people's tastes and ambitions are expensive and other people's are cheap.⁶

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

There is an important qualification given shortly after this passage which assigns some tastes, what Dworkin refers to as 'obsessions' or 'cravings', as belonging to people accidentally. If someone has a preference that they do not want, because say, it is hard to satisfy or he or she does not identify with it, then Dworkin argues that it should be viewed in the same way as a handicap, for which one is not responsible. The distinction Dworkin makes here is between tastes or preferences 'that define what a successful life would be like' and those that do not.

Dworkin's recently published elaboration of these views involves two separate arguments why equality of resources has a better understanding of egalitarian insights than his critics.⁷

⁶ Ibid., p.286.

⁷ There has been a large amount of critical discussion of Dworkin's position. The most widely cited response has come from G.A. Cohen, 'The Currency of Egalitarian Justice', *Ethics*, 99/4 (1989). Cohen's response to Dworkin's distinction between option and brute luck is to claim that egalitarian concern should be guided by a different distinction, that between responsibility and luck. He writes:

Whatever number of dimensions the space of disadvantage may have, egalitarianism, on my reading, cuts through each of its dimensions, judging certain inequalities of advantage as acceptable and others as not, its touchstone being a set of questions about the responsibility or lack of it for the disadvantaged agent. (921).

Cohen's cut differs from Dworkin's in two ways. First, it awards redress to both welfare and resource disadvantages, instead of just resource disadvantage. But for our present purposes the main difference is that he 'foregrounds' responsibility as he claims this is more faithful to Dworkin's own intuition about egalitarianism, which is that no one should suffer because of bad brute luck. On Cohen's view, A is responsible for x if x is traceable to a subject's choice and where A would choose x (x could be an event, taste or preference). For other

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

While the subject of considerable debate, Dworkin's account of the role of responsibility nonetheless serves as a good example of how the concept of responsibility functions as a

discussion of this debate see: Ronald Dworkin, 'Sovereign Virtue Revisited', *Ethics*, 113 (2002); Andrew Williams, 'Dworkin on Capability', *Ethics*, 113 (2002); Mathew Clayton, 'Liberal Equality and Ethics', *Ethics*, 113 (2002).

⁸ Dworkin, *Sovereign Virtue*, p. 290.

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

criterion for deciding when individuals should be compensated for disadvantage.¹⁰ The distinction also tracks a very important assumption in moral and political philosophy, which is that we should be held accountable for those choices for which we are in some way responsible. The thought that the costs of our own genuine choices should be borne by those responsible for them is widespread among liberals. Indeed, incorporating a strong conception of responsibility into his account of equality allows Dworkin to include what he thinks of as important in both conservative and radical writings and allows him to address the left's failure to attend to choice and the right's overemphasis on responsibility. Indeed, incorporating a sense of responsibility is common to liberals and conservatives alike. For example, conservatives such as Lawrence Mead make the claim that a strong notion of responsibility is needed to revive a sense of civic virtue and promote responsible behaviour.¹¹ Similarly, Elizabeth Anderson in a landmark piece that criticises what she calls 'luck egalitarianism' for its reliance on notions of individual responsibility, nonetheless argues for a conception of egalitarianism that features responsibility criteria for the unemployed.¹²

Responsibility based versions of justice are also common in contemporary public debate.

The wave of welfare reforms that has swept English speaking countries in recent years provides a typical case of how a concept of responsibility is often employed.¹³ It is now

¹⁰ For other key statements see: Richard Arneson, 'Luck Egalitarianism and Prioritarianism', *Ethics* 110/2, 339-49; J. Wolff, 'Fairness, Respect and the Egalitarian Ethos', *Philosophy and Public Affairs*, 27/2, (1998), 97-122; P. Van Parijs, 'Why Surfers should be Fed', *Philosophy and Public Affairs*, 20/2, (1991), 101-31; J. Roemer, 'A Pragmatic Theory of Responsibility for the Egalitarian Planner', *Philosophy and Public Affairs*, 22, (1993), 146-66; S. Scheffler, 'What is Egalitarianism?', *Philosophy and Public Affairs*, 31/1 (2003); E. Anderson, 'What is the point of equality?', *Ethics*, 99/2 (1999).

¹¹ Lawrence Mead, *Beyond Entitlement: the Social Obligations of Citizenship*, (New York: Free Press): 1986.

¹² Anderson, 'What is the Point of Equality?', p.321.

¹³ Robert E. Goodin, 'More than Anyone Bargained for', *Ethics and International Affairs*, 12 (1998).

commonplace for governments to inquire in great detail about the responsibility that individuals bear for their own unemployment. Such determinations are then used to set levels of benefits and participation requirements for things such as 'workfare' schemes. In much of popular morality there is an assumption that where someone is responsible for their unemployment this will alter the benefits that they receive. In many welfare systems the 'at fault' unemployed person may get reduced benefits or be liable for additional 'participation requirements', such as workfare. There are numerous other situations where responsibility based arguments are used to determine entitlements. People who take gambles, risky business decisions, who have expensive tastes and even parents might all be subject to judgements about responsibility.

I will discuss below whether the degree of severity for the loss should have any bearing on assistance that is provided. But for now we should note that many of the considerations that are pertinent in general debates about distributive justice and liberalism are also relevant in many of the spaces where the capability approach is deployed. We have already seen that the issue of responsibility is hotly debated in discussions between egalitarians, where deviations from equality are justified partly on the grounds of whether or not people are responsible for their situation. Indeed, much of the debate about which metric of equality has now turned to the issue of when to permit inequality, with much of the argument focusing on responsibility based arguments.

II The capability approach and responsibility

As is well known, when assessing the information base of justice the capability approach focuses not just on people's actual achievements of well-being, but their freedom to achieve functionings. According to Sen, the advantages of expanding the information base to include freedom and not just achievement are twofold. First, including freedom allows us to appreciate the opportunities that a person had to achieve various functionings. Part of the reason that Sen considers this important is because of its relevance for aspects of social and political analysis. But clearly one aspect of political analysis where this aspect of freedom is important concerns judgements of people's responsibility for their disadvantage. One of the advantages of an approach that focuses on freedom to achieve well-being is that it allows us to widen the information base by adding a causal dimension to analyses of capability deficits. As we saw above, starving can be distinguished from fasting by noting whether a person has the freedom to be malnourished.¹⁴ The second reason why freedom is important is that choosing itself may be directly relevant to a person's well-being. Here freedom might be intrinsically valuable to a person's life. I want to take it for granted that introducing freedom into our information base does provide significant advantages over a purely achievement based approach. Sen's approach seeks to include freedom in the assessment of what a person is entitled to claim from society. But what needs further clarification is what role the concept of responsibility should play in assessments of permissible inequalities in a conception of justice.

As we saw above, one of the ways in which freedom is important for social and political analysis is as a criterion for determining whether an inequality is a matter of justice or merely a private concern. Sen has stressed the importance of freedom as we saw, but has not placed

¹⁴ Amartya Sen, 'Well-Being, Agency and Freedom', *The Journal of Philosophy*, 82/4 (1985), p. 201.

quite so heavy an emphasis on the notion of responsibility, even though it is clearly one of the central aspects of political analysis which a freedom based approach allows us to focus on. However, individual responsibility is clearly important for Sen. Part of Sen's critique of Rawls was based on the need to acknowledge the difficulties that might arise for a person in converting primary goods into actual freedoms if they suffered from illness or more conventional constraints.¹⁵ Sen argued that there would be disadvantages suffered as a result of conversion problems, but it is also true to say that the consequences should not be seen as being the responsibility of the agent. Sen's critique has thus increased our understanding of when someone can be held responsible. He also notes the interdependence of notions of freedom and responsibility by stressing that responsibility requires freedom of the sort advocated by the capability approach. Through providing basic capabilities an individual will be freed from the constraints of ill health and poor education as well as provided with significant options about which she might responsibly deliberate. Thus the capability approach both recognises the importance of responsibility and promotes it by increasing freedom. Further, he argues that it might be counterproductive were social responsibility to replace individual responsibility.¹⁶

However, it is the more contentious issue of where a person has effective freedom over his or her choices yet chooses badly or foolishly that the issue of personal responsibility begins to bite. In places Sen identifies himself with the general distinction that we observed earlier between choices that are under our control and those that are not. Here the importance of distinguishing between freedom and achievements becomes apparent. As we saw above, for

¹⁵ Amartya Sen, 'Equality of What?', *The Tanner Lectures on Human Values*, ed., S. McMurrin (Cambridge: Cambridge University Press, 1980).

the capability approach it is more appropriate to see the claims of individuals on society in terms of the freedom to achieve rather than actual functioning.¹⁷ In addition, one of the advantages of the capability approach is that it allows us more information on whether a person had opportunities to achieve various important functionings. Not only does the addition of freedom here provide us with more information, but he seems to suggest that this information should be used to determine the justice or otherwise of inequalities. He writes that where a person is able to exercise freedom yet wastes their opportunities such that an inequality results, that, plausibly, no injustice has occurred.¹⁸ Redescribed in terms of the starving/fasting example discussed above, the rich and religious faster is clearly responsible for his malnutrition, whereas the starving person is not. If as suggested, freedom should be a factor in our political analysis, then the addition of responsibility will often be decisive in concluding that some capability deficits will not be the responsibility of the state. Of course, incorporating responsibility might be done in a number of ways. One could use it as a criterion only when basic capabilities were not in danger, such as when a person jeopardised not his health but only his wealth. Alternatively, one could follow the example of some theorists of equality and argue that even consequences of choices that led to severe disadvantage should be borne by the agent. I am not suggesting that either of these approaches are what Sen would opt for, merely that to rule out either approach we need further arguments about the role and scope of responsibility.

¹⁶ Amartya Sen, *Development as Freedom*, (Oxford: Oxford University Press, 1999), ch. 12.

¹⁷ Amartya Sen, *Inequality Reexamined*, (Harvard: Harvard University Press, 1995), p. 148.

¹⁸ Sen, *Development as Freedom*, pp. 283-89; Sen, 'Capability and Well-Being' *The Quality of Life*, eds., M. Nussbaum and A. Sen, (Oxford: The Clarendon Press, 1993): p.38.

This type of distinction is certainly employed in social and policy analysis as Sen suggests. But we should note that his use of it is sensitive to the often serious information constraints that accompany judgements about the presence or absence freedom. He notes that we might have to forego focusing on the freedom and just concentrate on achievements in the presence of uncertainty about whether a person was in control or a victim of bad luck.¹⁹ But it still seems that for Sen, where we can be sure that we are dealing with responsible adults who are exercising genuine choice, if their choices go wrong, then it is possible to argue that no injustice has occurred. But as we will see, this claim will depend on just what unfortunate consequences occur as a result of the choice.

Nussbaum: a threshold view

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

¹⁹ Sen, *Inequality Reexamined*, pp. 148-50.

²⁰ Martha Nussbaum, *Women and Human Development*, (Cambridge: Cambridge University Press: 2000): p.6.

basic capabilities as opposed to all possible capabilities, it identifies not just a 'space', but identifies some capabilities as more important than others.

Nussbaum's account does not make use of the agency/well-being distinction favoured by Sen, believing instead, that the functionings/capability distinction captures the important aspects of the approach. These and other differences aside, Nussbaum's threshold approach nonetheless raises similar questions about the role and scope of responsibility to Sen's. Sidelining considerations of capability deficits that are above the threshold still does not tell us about what to do when someone exercises their capabilities in a way that is foolish or irresponsible, and that leads to them dropping below the threshold. Would we still attempt to elevate them to the threshold even at the expense of other more responsible citizens? Nussbaum, of course, allows that there might be cases where people choose not to take up certain capabilities and turn them into functionings, but this is a different issue.

In addressing the objection that her approach is guilty of paternalism, Nussbaum's version of the capability approach also recognises each person as a source of agency, stressing that people are typically the best source of what is good for them.²¹ She also argues that capabilities and not functionings are the proper target of public action because, for one thing, they treat people like adults and not children. Part of how we treat people as adults is to respect their own conceptions of the good life. She claims that citizens should be provided with capabilities and then be able to 'chart their own course after that'.²² Where a person has opportunities for sexual satisfaction yet chooses celibacy we should respect their choice to

²¹ Nussbaum, *Women and Human Development*, p. 51.

²² Nussbaum, *Women and Human Development*, p. 87.

abstain from that particular capability. On Nussbaum's view, a person should have responsibility for their choices and we should grant them the freedom to exercise this responsibility. But there are at least two ways of interpreting this claim. The first way, which is what I think Nussbaum intends, is that we should respect people's freedom to use their capability set in the way that is consistent with their life plan. Doing so recognises them as an end and not just a means. We can call this 'choice responsibility'. But it is not clear how far this impulse extends. Recognising people's responsibility might also mean letting them bear the costs of their choices as well. On this second interpretation where someone makes foolish choices that leads to a capability loss — say through smoking or gambling — we might permit them to suffer some measure of capability deficit and not regard it as a matter of justice. Call this interpretation 'outcome responsibility'. At any rate, it is not clear whether Nussbaum thinks that people should bear the costs of their choices when this would take them below a threshold level of capabilities. As both interpretations are consistent with her position, we need further arguments to clarify the role and scope of responsibility in these contexts.

While both Nussbaum and Sen address the question of people's responsibility in different and important ways, it remains unclear how each of them would respond to the issue of bad option luck that leads to basic capability deficits. As we saw above, Sen indicated that he would observe the brute/option luck distinction, but it is not clear to what extent and when. Nussbaum's threshold approach is similarly ambiguous on how to respond to capability deficits caused by bad option luck. The position is consistent with either choice or outcome responsibility. It may well be that neither advocate intends as large a role for responsibility as some other recent theorists of justice, such as Dworkin and Cohen. Such a position would

be at least consistent with the ethos that is exemplified by the approach. But if this is the case we need to be aware of the arguments for what I will call a ‘responsibility ignoring’ approach to justice. In what follows, I will elaborate what I think is the best response to these questions. Such an elaboration is warranted because some conceptions of the role of responsibility that are consistent with the positions outlined lead to very harsh results for the disadvantaged. Second, it is important to be clear about this response if only to understand the type of ethos or ideal that a capability approach to justice should adopt. I will argue that a capability approach is consistent with a properly egalitarian ethos, one which will limit the role and scope of individual responsibility with respect to basic capabilities. Interpreting the capability approach to equality as egalitarian will avoid some of the potentially harmful consequences of responsibility based accounts of justice, which I set out below. There are at least two objections to responsibility based capability accounts of equality, which I will call the ‘disastrous consequences’ and ‘intrusive judgements’ objections.

III The costs of responsibility

a. Disastrous consequences

As we have seen, many of those committed to upholding a conception of equality deploy a conception of responsibility to assess where assistance is justified. But many of those who

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

Under luck egalitarianism the victims of bad option luck fare particularly badly according to Anderson. She presents a series of cases that highlight the harshness of the doctrine. For instance, she asks us to consider the case of a negligent driver who injures himself in a car accident. All things being equal, the costs of initial emergency care and subsequent care should, on the luck egalitarian account, be borne by the driver because his actions are a result of option luck. Similar examples point to how luck egalitarianism abandons the prudent when their luck turns sour. For example, if someone chooses to live in a geographic location occasionally afflicted by cyclones, then the state would not be obligated to give them

disaster relief if the worst happened. Similarly, workers who choose risky occupations might also not be compensated by the state should they suffer an accident at work.²³

The responsibility based equality discussed in the previous section cannot easily avoid these examples. These cases are all instances of bad option luck in the Dworkinian sense. The negligent driver is not a victim of bad brute luck but of his or her own negligence.²⁴

Capability based accounts of justice will also find it hard to avoid these harsh results if they adhere to an unmodified version of the option/brute luck distinction. As Anderson's examples show, bad option luck can lead to severe capability deficits. If we insist that the freedom that an individual made use of be employed to determine their eligibility for assistance of some kind, as at least some of Sen's comments indicate, then the capabilities deficits suffered will not be a matter of justice. Similarly, on the outcome responsibility interpretation, Nussbaum's threshold view is consistent with these unegalitarian results. So where someone's option luck goes wrong and they drop below the threshold, Nussbaum's view might plausibly not offer any compensation. While I am not claiming that these are the positions intended by defenders of the approach, their positions are at least open to these objections in the absence of arguments to limit the scope of responsibility. These examples point to the need to clarify the role and scope of responsibility.

In one respect, Nussbaum's insistence that a life is not properly human without a threshold of capabilities makes it easier to see what is wrong with a responsibility-based account of

²³ Anderson provides nine types of bad option luck that she thinks the luck egalitarians do not adequately address. See 'What is the Point of Equality?', pp. 296-99.

capability justice. If falling below a threshold level of capabilities will mean that a person does not lead a truly human life, then this at least provides a basis for limiting the scope of responsibility in those situations where there are severe capability deficits. Indeed, as I will argue below, this claim is consistent with an appropriate ethos of egalitarianism.

b. Uncertainty, information and intrusiveness: the case of the unemployed.

Apart from the disastrous consequences that might befall those who are made to bear the costs of their bad option luck, adhering to the option/brute luck distinction may also be harmful because it is demeaning and intrusive. Deciding between instances of brute and option luck may prove not only difficult, but also require excessive state intrusion into a person's private life. This is exactly how many of the unemployed are treated by the welfare systems in many Western countries. For many of the unemployed, if their level of benefits is tied to their responsibility for their situation, the use of responsibility criteria can lead to harmful results. For example, deciding whether someone is fit for work and there are jobs available is often an intrusive and demeaning judgement. A requirement to delve into the personal responsibility of citizens can be deeply intrusive of their privacy. Such procedures involve distinguishing between cases where a person is able but unwilling to work and cases where some other factor prevents them from working. Those responsible for making such evaluations typically ask about a person's motivation, their efforts made to secure employment, family situation, willingness to move locations, their past employment history and the reasons they are no longer employed. In effect, what such procedures seek to

²⁴ Similarly for Cohen, so long as the person did not acquire their driving habits as a result of brainwashing or circumstances he could not otherwise avoid, then he would, all things being equal, forfeit the right to assistance if

establish is a person's personal responsibility for whether or not they are unemployed by asking invasive questions about their lives. Subjecting the unemployed (who are already at a considerable disadvantage) to such intense scrutiny is not the best way to show them respect. Tying welfare benefits to other people's judgements about one's responsibility may also conflict with treating them with equal respect. If all one was trying to do was guarantee that a principle of fairness had been met, then this would not be so bad. But as I will argue below, capability based conceptions of justice appeal to a richer set of intuitions.

In addition, while I do not wish to argue that it is impossible to determine responsibility for unemployment, there are also epistemic reasons for doubting that this can be done accurately on a large scale as is typically required. We should note that this is typically done on a mass scale by employment agencies, often with limited resources. Except in glaringly obvious cases where a person either admits that they are not trying to get a job or they are caught perpetrating a fraud, it is often an imprecise process. There are a range of factors that might play a role here. For an assessment to be complete an assessor might have to consider a person's past responsibility in acquiring marketable skills, their efforts in finding jobs, the nature of the job market and, importantly, the person's motivation. All of these things produce a very complex picture out of which governments and their representatives have to decide the issue of personal responsibility. Consider a version of the case made by Anderson which she calls 'geographical discrimination among citizens'.²⁵ In many Western countries there are regions that are both remote from populous centres and lacking in sustainable employment. These regions have higher unemployment than is common in that country as a

responsibility was the criterion for permitting deviations from equality.

²⁵ Anderson, 'What is the Point of Equality?', p. 296.

whole or even in the local state or territory. Where does responsibility for being unemployed lie for people who either remain in that region or voluntarily relocate to it? In the former case it might be impossible to go through all of the factors that might influence such an assessment. But it is easy to imagine that where a person has attachments and commitments to a location it might be possible for someone to leave that place but be very costly for them to do so. What these examples point to is that it is often hard to determine responsibility for being unemployed in a straightforward way.²⁶ This is not to say it is impossible, just that it is complex. But it is also very important to get it right as the consequences for the individuals whose eligibility for welfare benefits is being assessed are often extraordinarily high. What might the consequences of judgements about eligibility for welfare be and why might the consequences be so high? Our first guide here is how such judgements about responsibility for unemployment operate in real world scenarios. In the United States, United Kingdom and Australia it is typical for welfare systems to deny or reduce benefits to those it deems to be responsible for being unemployed. The severity of the consequences of this decision will of course vary from place to place, but in many of these welfare systems the financial and social impact of a reduction of benefits is often catastrophic for the unemployed. So, one might agree with conditional obligations but reject them as difficult to enact on epistemological grounds, as Sen suggests.²⁷

IV The ethos of the capability approach

²⁶ See also Brian Barry, 'Chance, Choice and Justice' in *Liberty and Justice*, (Oxford: Oxford University Press, 1989).

²⁷ We should note too, that the capability deficits that people might suffer as a result of bad option luck may also lack proportionality. If a person loses their health or mobility as a result of a poor choice, then the disadvantage they suffer as a result of their misfortune is out of proportion to their choice.

I have offered two primary reasons why capability based account of justice should ignore questions of responsibility in cases where individuals fall below a threshold of basic capabilities. These objections go some way towards providing the additional arguments that a capability approach requires in order to avoid going down the luck egalitarian path. But we should also note that, in part, these objections derive their force from the clash between responsibility criteria and other values to which egalitarians have typically adhered. Indeed, this claim has been the focus of recent discussion of the appropriate ethos for egalitarianism. There are variations on what exactly an egalitarian ethos should be, but the basic thrust of the criticisms of responsibility based egalitarianism is that it have lost sight of the intuitions that motivate egalitarianism. Instead of focusing on the requirement to correctly allot the costs of choices and ameliorate the effects of brute bad luck, egalitarians should attend to things such as placing people in relations of equality with one another, ending oppression, or ensuring that people are treated with respect. These more traditional egalitarian requirements are broader than the responsibility considerations we discussed above and they are closer to what has usually been associated with egalitarianism.

Through its focus on equality and ensuring thresholds of basic capabilities the versions of the capability approach discussed above should also be seen as part of a broadly egalitarian approach to justice. But we should be clear about what this entails, as the term egalitarian has become very broad. In fact, egalitarianism now seems to encompass almost anyone with a concern for equality, in whatever form. Dworkin's claim that every plausible political theory exists on an 'egalitarian plateau', has gained wide acceptance. The claim is that every plausible political theory assumes that the interests of the members of the community matter, and matter equally. On this view, debate about equality concerns itself not with the question

of the justification of equality, but with what conception best suits the abstract thesis of equality. The approach is now widespread. Indeed, Sen endorses this rather minimalist view. While claiming that all plausible approaches to the ethics of social arrangements require equality of something, Sen claims that all these theories are egalitarian. He writes, 'I also argue that this common feature of being egalitarian in some significant way relates to the need to have equal concern, at some level, for all persons involved'.²⁸ As he notes, such a definition would also include Robert Nozick's *Anarchy State and Utopia* as among the list of egalitarian theories because of Nozick's attempt to treat people as moral equals. But any egalitarian who includes Nozick as a fellow traveller is surely wide of the mark. While we might agree that a concern for equality at some level is required of a plausible political theory, that does not entail that all those theories are egalitarian. As I have suggested, for a theory to be an egalitarian one, it needs a stronger set of conditions than what I will call the weak egalitarian thesis of equal concern. The weak egalitarian thesis — a theory is egalitarian if it has some sort of basal equality — will not serve as a defining feature of egalitarianism. While it is no doubt true that all theories that deserve to be taken seriously will seek to equalise something, what they equalise will determine whether or not they are properly egalitarian.

Let me say a little more about what a richer account of egalitarianism might entail. Many authors have pointed to is the need for a richer account of egalitarianism that incorporates some of the concerns we referred to above, such as placing people in relations of equality with one another and thereby ensuring that people are treated with respect, which are two of the necessary features that I (stipulatively) define as being part of egalitarianism. Appealing

²⁸ Sen, *Inequality Reexamined*, p.1.

to these broader moral and political ideals as some contemporary egalitarians do, is a way of distinguishing between weak and strong egalitarianism as well as countering some of the more unfortunate consequences of responsibility based accounts. But we should also note that there are likely distributive consequences for this type of egalitarian ethos. While a proper account of these implications would need to consider a whole range of theoretical and practical factors normally associated with distributive justice, likely implications might include: an emphasis on the of public provision of key goods, and concern for substantive in addition to formal freedoms.

Focusing on narrow responsibility accounts of egalitarianism ignores these broader and more central requirements. But this weaker account of egalitarianism is also arguably not in keeping with the central commitments of capability based accounts of justice either. While I cannot go into this issue in detail, a brief discussion is warranted. As a social and political ideal, egalitarianism is concerned with placing people in relations of equality with one another. This indeed, seems to have been part of the aim of the capability approach as well. Both Sen and Nussbaum have argued that the aim of their respective approaches is to ensure that certain basic or central human capabilities are available to individuals. Nussbaum's threshold approach focuses on establishing a capability threshold, in part, because without human capabilities life may not be fully human, but also because it flows from a commitment to treat each person as an end. Sen's motivation seems less concerned to tie the importance of basic capabilities to being fully human. But it is nonetheless clear that the thrust of his approach suggests that basic capabilities are essential for people's lives to go well. For instance, in discussing the 'perspective of freedom' in relation to development, Sen stresses that it his approach aims at substantial freedoms that provide people with the opportunity to

achieve their conception of the good.²⁹ Without entering an opinion on which of these capabilities we should concern ourselves with and on how they might be justified, the list includes, variously, capabilities that seek to ensure substantial freedoms and to raise people to relations of equality with one another. The nature of the capabilities that are often listed as important includes an emphasis on the provision of public goods and on ensuring real freedoms. For example, the capability for health is likely to include actions by public agencies to remove threats to health — sources of infectious diseases, poor dietary habits and so on. These are typically public and not private tasks.

To return to our original starting point, if we interpret a capability approach as being egalitarian in the strong sense, then there will be a conflict between responsibility based accounts and other parts of the egalitarian ethos. I have argued that while the capability approach to equality is best interpreted as consistent with a strong version of egalitarianism, it has nonetheless been ambiguous on the proper role and scope of responsibility. Clarifying the ethos of the approach has helped to understand how to remove this ambiguity. Indeed, the two objections to responsibility based accounts discussed above provide us with some indication of what should form part of this ethos. First, capability equality should aim to avoid the sorts of disastrous consequences that leave people without basic capabilities. Positively, this equates to a goal of enabling people to stand in relations of equality with one another. Second, if the demeaning and intrusive judgement argument is correct, then the approach should also aim to treat people with equal concern and respect. While these two arguments do not exhaust an egalitarian ethos, they are both consistent with our description of the ethos of the capability approach. If it is an egalitarian approach to justice as I have

²⁹ Sen, *Development as Freedom*, ch. 1.

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