

## Preserving fairness: Williams against Cohen on just inequality

The view that the choices people make are, in principle, relevant to what they are owed from others is very widely affirmed. Slightly more narrowly, the idea that such choices make a difference to the fairness of outcomes has a similar pre-reflective popularity. Many find it quite intuitive to suppose, for instance, that if one person wastes what another person saves the resulting outcome is not one against which the latter person has a complaint of unfairness. What might otherwise have been an unfair inequality is rendered fair because of the choice from which it results. This very general thought has found particular and acute expression in the context of distributive justice in the form of the view that has become known as luck egalitarianism. Over at least the last quarter of a century, luck egalitarianism has gained considerable traction as a view about what justice requires. Whilst many views concerning distributive justice affirm the idea that choice is relevant to the justification of inequality, few make the connection between *choice* and the *fairness* of inequality as central and fundamental as luck egalitarianism. Namely that it is fair, in a thoroughgoing sense, for an individual to be better or worse off than others if and only if this a consequence of the choices of that individual.

An important part of the luck egalitarian view is, therefore, the thought that the choices an individual makes can render fair the inequalities that emerge between them and others. In a surprising development, however, this very thought has been challenged by one of luck egalitarianism's foremost advocates. In one of his final papers, G. A. Cohen (2011) tentatively drew back from the orthodox luck egalitarian commitment to the fairness of choice-derived inequalities.<sup>1</sup> In doing so, Cohen drew a distinction that had, at least in the context of egalitarian distributive justice, had been hitherto underappreciated and, indeed, remains so. Broadly, Cohen maintained that although the responsible choices individuals make deprive them of *grounds for complaint* at being worse off than others, this is not for the reason that their choices render that inequality *fair*. Cohen's revised position therefore represents a departure from the luck egalitarian view; a view which seemed to maintain that individuals worse off than others because of their choices lack a complaint at the bar of justice *precisely because* their choices render such inequality fair. In contrast, Cohen sought to open a separation between the fairness, or otherwise, of the outcomes of individuals' choices and the kinds of complaint had by those worse off through their own choosing.

Cohen's claim has both theoretical and practical import. Given the widespread acceptance of the thought that choice has relevance for whether and which inequalities are justified, the issue Cohen engages has considerable import in helping to clarify the particular grounds on which they might be and, to that extent, potentially refining and making more perspicuous the intuitive judgements many people share in this context. Moreover, we find innumerable and extensive manifest inequalities present in the contemporary world, both locally and globally, many of which are related in various ways to the responsible choices agents make. Understanding the fairness pedigree, or otherwise, of such inequalities may have a real relevance for deciding which such inequalities justice requires us to counteract.

The origins of the luck egalitarian view are ordinarily traced through Ronald Dworkin's famous distinction between brute luck and option luck. Under that distinction, option luck is 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,*" (Dworkin 1981, p. 293) in contrast to brute luck which is "*a matter of risks fall out that are not in that sense deliberate gambles*" (Dworkin 1981, p. 293)<sup>2</sup> The luck egalitarian view then, broadly stated, is that inequalities in option luck are fair, and therefore pro tanto just, whereas inequalities in brute luck are unfair, and therefore pro tanto unjust. Cohen staged his own departure from the luck egalitarian view in the aforementioned respect by framing an explicit response to Dworkin's defence of option luck inequalities.<sup>3</sup> Cohen analyses a set of two cases – one involving gifts, the other involving gambles – from which he concludes that inequalities are in general not rendered just as a result of persons' responsible choices. He contends that although the inequalities might be 'legitimate', in the sense that no one has a right to complain that they are worse off, they are nevertheless not just, because choices cannot render fair otherwise unfair inequalities (Cohen 2011, p. 133).<sup>4</sup>

Cohen's challenge to the justice of option luck inequalities has recently attracted a response from Andrew Williams (2013), who defends Dworkin's position against the Cohen critique on the grounds that it misses the distinctively interactive character of Dworkin's view of equality. Dworkin's Equality of Resources view, and, by implication, luck egalitarianism more generally, can resist Cohen's doubts by emphasising the sense in which what individuals choose to do with their equal allocation affects what it is to treat them fairly. Here I assess the Williams response to Cohen's manoeuvre and I argue that although it delineates the attraction of the Dworkin view, it does little to refute Cohen's conclusion. This is a consequence of a broader methodological divergence between Williams and Cohen when approaching issues of social justice; leading Williams to, in effect, dismiss the socio-political relevance of Cohen's views on the unfairness of chosen inequality, rather than give reason for thinking Cohen is mistaken. Williams' defence of Dworkin against the Cohen critique thereby depends on a particular and contestable account of what kinds of reasons are relevant to the political. At least to this extent the Williams response to Cohen represents a helpful illustration of the differences between two competing approaches to conceptualising fairness. However by showing that Williams' response to Cohen falls short of a refutation I emphasise how Cohen's discrimination between the fairness of inequalities on the one hand and their legitimacy on the other can be of potential service for clarifying the different bases which we might have for objecting to inequalities and, in turn therefore, when we might see them as justified.

I first briefly detail the content of Cohen's self-proclaimed 'Anti-Dworkin Argument'. Second I explain Williams' invocation of the interactive account as response to Cohen's case. Third I explore Williams' claim that on the interactive account certain fairness reasons are 'cancelled' and argue that depending on how this mechanism of cancellation is understood it either begs the question or else fails to contest the precise claim that Cohen makes. Furthermore, I suggest that one of Williams' own arguments might be thought to presuppose the very validity of that Cohen claim. Fourthly I reflect on the distinctively political dimension of Williams' argument and suggest this as further evidence of a failure to meet Cohen on his own terms. Fifthly and finally I offer some support for the potential value of Cohen-type claims even if, like Williams, one is unconvinced of their direct political salience.

## I The anti-Dworkin argument

Cohen's criticism of Dworkin and apparent turn away from the luck egalitarian commitment to the justice of choice-derived inequalities is presented by way of two examples. In the first, two individuals, A and B, between whom there is a relevantly equal distribution, choose to gamble half of their assets of \$100,000 against one another (Cohen 2011, p. 132). They put up \$50,000 each in a winner take all 50-50 coin toss, resulting in one of the pair emerging with \$150,000, the other with only \$50,000 in total. This, Cohen rightly explains, is a paradigm case of option luck in which, for Dworkin and many others, the justice of the inequality is preserved in virtue of the fact that it issued in the right ways from the responsible choice of the relevant parties. The second example involves a set of people, again characterised by the relevant equal distribution, who unanimously will that members of the group give half their assets to two of their number – Sarah and Jane. As a result of the gifts Sarah and Jane are both better off than the other members (Cohen 2011, p. 133). Again, Cohen concludes that the unequal distribution is not a just one.

In service of his contention that choice-derived inequalities do not preserve justice in distribution, Cohen draws a distinction, critical to his argument, between legitimacy and fairness. An outcome is legitimate where no-one can justifiably complain about it on the grounds that it wrongs her.<sup>5</sup> Cohen's notion of fairness is perhaps still vaguer than that of legitimacy. Substantively, Cohen, like Dworkin, is of the view that fairness requires a certain kind of distributive equality. More broadly, for Cohen, the notion of fairness denotes the sense in which a distribution is "*appropriate to everything to which a distribution ought to be appropriate.*" (Cohen 2011, p. 131) Having drawn the distinction in this way, Cohen's (2011, p. 131) crucial move here is to drive a wedge between the fairness of a distribution and its legitimacy – that there is a criteria by which to judge the fairness of an initial distribution, prior to the exercise of anyone's choice, and then a further and distinct question as to the steps (through choices) by which any subsequent distribution counts as legitimate.

Both the gamble and gift cases, Cohen argues, are ones in which the emergent distribution is unfair, and in *that respect* unjust, but nevertheless legitimate, and to *that extent* just. This is presented in opposition to Cohen's understanding of the Dworkin view, that the inequalities emergent from the gamble and gift cases are, in Cohen's words, "*both legitimate and entirely just... [responsible choice] confers unqualified justice on an unequal outcome that would otherwise be an unjust outcome.*" (Cohen 2011, p. 133)<sup>6</sup> Against the Dworkin view, Cohen argues that the criteria by which the initial distributions in both gamble and gift cases are judged fair – namely in virtue of their being *equal* – convicts the outcomes of those cases as unfair – because *unequal*. As such, the outcomes of such gambles and gifts are not fair according to the criteria that rendered the initial distributions fair. Even if they are thereby *legitimated* by the responsible choices of the affected parties, there is a stain of unfairness that precludes the attribution of *unqualified* justice.

## II Williams' interactive equality

In contradistinction to Cohen's position in this context, and in support of the Dworkin view, Williams (2013, pp. 72 – 74) draws a distinction of his own between what he terms *interactive* and *additive* accounts of the relation between equality and choice. Interactive accounts maintain that “*how individuals respond to their opportunities also sometimes makes a difference to what it is to treat them fairly.*” (Williams 2013, p. 73) In contrast, additive accounts hold that “*the equality present within the initial distribution possesses a value that is worth preserving regardless of the choices about how to transform the distribution that individuals might prefer to make.*” (Williams 2013, p. 74) Whereas Cohen's claims concerning the unjust character of inequalities legitimated by choice make sense from an *additive* perspective, they are, Williams claims, at odds with an *interactive* view. He thereby makes the case in response to Cohen by attempting to substantiate the attractiveness of the interactive account in favour of an additive one.

Let me begin by noting that, so characterised, Williams' statement of the interactive equality account fails, strictly, to contradict Cohen's Anti-Dworkin argument. Williams offers a deontic claim about what it is to *treat individuals fairly*, however Cohen's argument is best understood in terms of a telic claim about the *fairness of outcomes*.<sup>7</sup> It's consistent with Cohen's argument to hold that treating individuals fairly is related to respect for legitimacy considerations but that doing so can nevertheless result in unfair outcomes. To see how these respective deontic and telic ways of thinking about equality might come apart in a different context, imagine having to decide how to distribute a single, indivisible dose of life-saving medical treatment between two patients, both in equal need and with equal claim to it. In cases of scarcity such as this (with an absence of relevant discriminating factors), it's plausible to think that we might *treat the patients fairly* by flipping a coin to determine who receives the treatment (which by stipulation we have only one dose of). The winning patient receives the dose and the losing patient does not. It's quite consistent with this to say that although we *treated the patients fairly* the distributive *outcome is unfair*.<sup>8</sup> To be clear, then, Cohen's argument is telic in the sense that it evaluates the quality of outcomes whereas Williams' response to Cohen is deontic insofar as it first and foremost addresses the reasons agents have for acting. I will suggest in the following that the differences in the respective framing of the issue is symptomatic of a more general methodological departure between Williams and Cohen.

Central to the interactive account is that “*equality present within an initial distribution is valuable only provisionally, and in ways dependent on choices that individuals prefer to make.*” (Williams 2013, p. 74, his emphasis) As such it's instructive to consider in what sense the value of equality in the initial distribution is ‘provisional’. One thing Williams claims for the provisional value of initial distributive equality is that there is no “*general and robust reason to preserve an equal distribution regardless of what individuals prefer to choose.*” (Williams 2013, p. 74) Alone, however, this seems to be simply a denial of Cohen's suggestion that there might be a general defeasible reason to preserve equality in distribution: of fairness.<sup>9</sup> Williams further explains equality's provisional value by claiming that “*equality often matters, in part because the presence of an equal distribution may sometimes be part of*

*the background conditions that explain why choices produce certain normative consequences.*” (Williams 2013, pp. 73 – 74) For instance, plausibly only when the distribution between parties is initially equal are the distributive inequalities that issue from their choices wholly fair. Yet if this is the sense in which distributive equality has value on the interactive account, it’s slightly misleading to label the value *provisional*, which would seem to connote its value being dependent on further factors obtaining. ‘Provisional’ value is not provisional at all in *that* sense but unequivocally required as a necessary condition for fair distributive outcomes that emerge from individuals’ exercise of responsible choices.

Furthermore, of course, the idea that initial equality lends normative significance to distributive outcomes consequential on responsible choices is not something denied but positively emphasised by Cohen. In the context of the gift example in which members create inequality by unanimously willing in favour of gifts to Sarah and Jane, Cohen explains that “*the criteria that endowed the unanimous choice in favour of Sarah and Jane with legitimating power... was the **justice of the initial situation**,*” (Cohen 2011, p. 133, my emphasis) and “[T]he **initial just situation** renders unanimity legitimating.” (Cohen 2011, p. 133, my emphasis)<sup>10</sup> The difference between Cohen and Williams is that Cohen insists that initial distributive equality is required for the legitimacy rather than the fairness of the outcome.

Perhaps, though, for Williams the value of equality is provisional in the sense that it has *no value* beyond its being a necessary background condition for the emergence of a fair distributive outcomes. He might maintain, for instance, that we value the fairness of choice-responsive distributive outcomes, and initial equality has value *solely as* a pre-requisite for that fairness. But this would be, I think, a puzzling claim to make. One might wonder, for instance, if inequality in an initial distribution undermines the fairness of resulting choice-derived distributions, why is this not because that initial inequality is itself unfair?<sup>11</sup> Of course, some forms inequality in the initial distribution might corrupt subsequent choice-derived distributions for a variety of non-fairness reasons. If inequality gives some individuals the power to coerce or exploit others this might damage the normative respectability of the choice-derived outcomes issued from such power imbalances. But these are further factors, only contingently connected with initial distributive inequality, and Williams seemingly accepts the view that initial inequality can *itself* undercut the fairness of choice-derived distributions. If so, and inequality itself undercuts the fairness of such outcomes, the natural way of explaining this is that the unfairness of the initial inequality carries over into the distribution subsequent to the distribution. An explanation of this sort presupposes inequality in the initial distribution as a bad-making feature; it manifests an unfairness which in turn bleeds into unfairness in the subsequent distribution that results from choices. Accepting this, however, seems to concede Cohen’s claim that the initial distribution is fair because equal.<sup>12</sup> In which case, should Williams argue that, for the interactive account, choices render *unequal* distributions entirely fair, he still faced with Cohen’s (2011, p. 133) challenge to explain why the resulting unequal distribution is fair even though it is not fair *by the same criteria* that renders the initial equal distribution fair.

Now, Williams could argue that the initial distribution is fair not because it is equal, but because of the *absence of unchosen inequality*. To put this in terms of the Dworkin Equality of Resources view that Williams defends, the initial distribution is fair because it is

endowment insensitive (Williams 2013, p. 68 and Dworkin 1981, p. 311). Subsequent unequal distributions that emerge in the right ways from responsible choices preserve that same endowment insensitivity. Framed in this way, the criterion that judges the initial distribution a fair one is the *very same* that judges the resulting unequal distribution fair. This is on the right lines as far as a response to Cohen's challenge goes. However much as this might clarify the nature of the Dworkin commitment to the fairness of choice-derived inequalities, it does not, of itself, represent an answer to the puzzle Cohen presses precisely because Cohen can reasonably ask for an explanation as to what is different between choice-derived inequality compared with choice-independent inequality that makes *only the latter unfair*. Now, as I will explain, Williams does offer what purports to be a basis to discriminate between chosen and unchosen inequalities along these lines. The value of Williams' argument in this context is, however, to articulate an alternative way of approaching questions of distributive justice, rather than as an effective contestation of Cohen's claims concerning choice and fairness.

### III Cancelling reasons of fairness

Crucially, a defining feature of the interactive account Williams defends that distinguishes it from additive views is the thought that "*choice may sometimes **cancel** certain fairness-based reasons for a political community to secure or preserve an equal distribution.*" (Williams 2013, p. 74, his emphasis) As such, equality has provisional value because the fairness reasons it issues are *cancelled* by considerations of choice in the sense that any normative reasons we might otherwise have for preserving that equality are entirely eliminated. In support of this claim, Williams (2013, pp. 75 – 77) argues that we have strong 'donor-based' reasons to transfer some of our resources to others, for instance to descendants, and 'expressive' reasons to pursue a life we prefer even if it results in (or risks) or being worse off than others. The donor-based and expressive reasons are of a character and strength such that they cancel the reasons of fairness in favour of maintaining an equal distribution.

The idea that reasons of fairness in favour of maintaining the initial equal are *cancelled* is important for Williams because something like it is necessary in order to deny Cohen's claim that there is "***some** sort of injustice, even if not an injustice, all things considered.*" (Cohen 2011, p. 133) Williams offers little explicit analysis of how he understands reason cancellation beyond a reference to Joseph Raz (1999). In the cited passages Raz (1999, p. 188) offers examples that clarify the sense in which he understands cancellation. One such example involves a terminally ill friend whose deterioration means that the reason I previously had to prolong their life is cancelled. Another relates to my friend releasing me from a promise I had made to meet him, cancelling that reason I had to do so (Raz 1999, p. 27). Raz puts the cancelling dynamic as follows, that: "*[O]nce a reason for action is cancelled it stops being a ground for the action, or for faulting or regretting its non-performance.*" (Raz 1999, p. 187) The cases Raz presents suggest that this cancellation obtains in virtue of the fact that the very grounds for the reason are removed.<sup>13</sup> In the illness case it is because the desirability of the prolongation of life is transformed (because it now involves suffering of too severe a nature, for instance) that the normative reason to do so is not grounded; in the promising case it is because the relation of promise-binding is eliminated

that the reason previously generated by that relation is now absent. Call this cancellation as grounds-removal.<sup>14</sup>

If this how Williams understands cancellation then were he to appeal to it as a basis for rejecting Cohen this would simply beg the question. That is, if he were to contend that responsible choices remove the unfairness grounds pertaining to inequality because choices cancel reasons of fairness, this would simply presuppose a denial of Cohen's position in order to reject it. In that sense this parallels the possible Williams claim, considered above, that only unchosen inequality manifests unfairness. In any case, though, based on the case Williams makes in defence of the interactive equality view there's considerable evidence that Williams does not understand cancellation in this grounds-removal (and potentially question-begging) way.

Williams presents cancellation via an appeal to the *presence* of independent further considerations; namely the importance of our donor-based and expressive reasons to allow choice-derived inequalities. Contrast this with the kind of cases to which Raz appeals in which the *absence* of conditions result in reasons being cancelled. Only when my friend's condition is no longer sufficiently desirable or when the promise-binding relation is eliminated are my reasons in respect of either cancelled. Indeed, Williams explains this cancelling in terms of "*positive grounds... that derive from the value of choice.*" (Williams 2013, p. 80) In this way, Williams' way of understanding cancellation is better interpreted as an appeal to the kind of thing John McDowell (1998) refers to as the 'silencing' power of reasons under which some reasons deprive other considerations of their status as normative reasons entirely. Those reasons, McDowell writes, are such that "*on occasions when they co-exist with considerations that on their own would be reasons for acting otherwise... [are rightly seen as] not overriding but silencing those other considerations – as bringing it about that, in the circumstances, they are not reasons at all.*" (McDowell 1998, p. 17) A reading of cancellation as 'silencing' of the kind to which McDowell appeals does not involve a challenge to the grounds of the normative reasons but a claim that those normative reasons are wholly extinguished by further considerations. To put it differently, there is a conflict between reasons in which one side is wholly eliminated, rather than, in the case of being merely *overridden*, being defeated whilst leaving a residue in place.<sup>15</sup>

Further to this, and just as significantly, Williams (2013, p. 73) couches his argument primarily in terms of terms of deontic reasons to *treat persons fairly*. As I suggested in the foregoing, by framing the argument in these terms, Williams seems to address a different question from the telic one of whether there is a pro tanto badness in the form of unfairness in the distributive *outcome*.<sup>16</sup> The natural reading of Williams' notion of cancellation, then, is as a direct challenge to the deontic reasons, rather than a claim that the would-be telic grounds are removed. Call this cancellation as 'silencing'. Williams' claim that donor and expressive reasons *cancel* other would-be reasons of fairness in favour of distributive equality in this way directly concerns the normative reasons we do or don't have in regard to responding to inequalities. However, under the dynamic of cancellation thus understood, even if it's true that the cancelling power of donor-based and expressive reasons means we lack *any* reason to eliminate distributive inequality, even a defeasible one, it is simply a further question whether, in an evaluative sense, the distributive inequality is in any respect bad. Hence Cohen's claim that it is indeed bad, because unfair, is not addressed by the reason-cancelling

move that Williams makes. Thus understood, Williams' argument ignores the putative evaluative badness of the inequality and simply denies its normative force.

If indeed Williams understands cancellation in this 'silencing' sense, one might make the further and stronger claim that Williams' own argument *presupposes* the evaluative badness (in the form of unfairness) that Cohen claims. One might think, that is, that the very idea that some reasons are *cancelled* in the 'silencing' sense suggests that there is *some* sense in which they need to exist in the first place, as opposed to simply not being issued at all. One way of thinking about this is to see the status of cancelled reasons in counterfactual terms – as reasons that would have applied to an agent in the absence of the cancelling reason. However to admit that there is some embryonic, even counterfactual, sense in which the reason exists/existed seems to concede that there is something bad about the distributive inequality that counterfactually generates normative reasons.

Moreover, Williams' cancellation of normative reasons metaphor opens up the further question of whom the fairness reasons to correct distributive inequality are cancelled for. Clearly, if 'cancellation' indeed is the right way to think about the normative dynamics here, a state of affairs can entail cancelled reasons for some and not others. Consider, for instance, an army training exercise in which one of the trainees is injured enough to hamper them to struggle to complete the training exercise but not enough to demand external medical attention that would call training to a halt. A drill instructor might have any reason to help the injured trainee cancelled by the fact that injuries of this sort are part of what the training is designed to teach trainees to deal with and overcome, but fellow trainees might nevertheless retain reasons to help one among their number.<sup>17</sup>

#### IV Fairness and the political

Williams offers some answer to this by indicating that the reasons are cancelled in the domain of the political.<sup>18</sup> This is understandable given that he defends Dworkin's Equality of Resources in the context of supporting a broader form of political liberalism against Cohen's approach (Williams 2013, pp. 81 – 83). In fairness to Williams, then, his claim regarding the power of choice to cancel certain reasons is better thought of as a sympathetic portrayal of a Dworkin-inspired way of thinking about social justice, rather than a case which undermines Cohen's denial of the fairness of chosen inequality.<sup>19</sup> He argues that "*choice may sometimes cancel certain reasons for a political community*," (Williams 2013, p. 74) and that individuals possess "*a power to cancel the fairness-based reasons for political institutions*." (Williams 2013, p. 75) In the same vein he denies that "*anything of genuine political value*" is lost when there is inequality generated in the rights ways by responsible choices (Williams 2013, p. 76). Egalitarianism is "*more politically promising*," Williams tells us, "*if it embraces an interactive account of the relation between choice and the value of equality*." (Williams 2013, p. 77) How politically promising a given way of understanding equality is and what egalitarian reasons apply to individuals in a political community are unquestionably important considerations on which to reflect when thinking about how we ought to live together and treat one another as equals. However they are considerations that are simply



further to the prior question, broached by Cohen, concerning how we should evaluate distributive inequality related to choice. This question is prior not in the sense that it is *more important* but that it is a question that bears, at least in principle (and so subject to subsequent possible cancellation) on what egalitarian claims we are able to make on one another in a variety of contexts, including the political.

Williams (2013, p. 81) addresses the above issues by way of posing a ‘Liberal Objection’ to egalitarian patterned principles in general on the grounds that for political liberalism we should not guide political decisions in accordance with controversial, contestable normative principles, even where those normative claims happen to be true. The principle that even choice-derived inequality always entails an unfairness is of the kind that Williams takes to have this contestable character, making it an inappropriate principle on which to depend in the context of governing political relationships.<sup>20</sup> He considers the possibility that those, like Cohen, who affirm principles of this sort might grant the objection, but remain committed to their truth of their principles, even if it’s a truth without bearing on *political* justice. To put this slightly differently, Williams appears to concede that the kind of cancelling of reasons to which he appeals at the level of the political nevertheless leaves intact the evaluative claim regarding the unfairness of choice-derived inequality that I interpret Cohen to make.<sup>21</sup> However, Williams suggests that “*taking this option... amounts to a withdrawal from the relevant battlefield... because equality of resources is **not** a complete theory of the value of outcomes but... a theory designed to govern the conduct of a political community.*” (Williams 2013, p. 82, his emphasis) But, to extend Williams’ own metaphor, this supposes that Cohen was engaged first and foremost in *that* battle to begin with.

## V The different lessons from Williams and Cohen

I want to conclude by saying something more conciliatory but also defensive. Two things are worth emphasising here in fairness to Williams. Firstly that his critique of Cohen is itself constructed as a defence of Dworkin. Insofar as Williams is engaged in articulating the *political* character of Dworkin’s equality of resources view in a way that purports to insulate it against an implication of Cohen’s attack this isn’t an unreasonable manoeuvre. So, one might plausibly argue that the Cohen critique is not directly relevant to the kind of project with which Dworkin is engaged. This, I think, is the most important insight present in Williams’ response to Cohen. Secondly Williams correctly observes that Cohen (2011, p. 141) does allude to the practical and political import of the Anti-Dworkin argument, for instance concerning rights of bequest. To this extent, disputing the political import of Cohen’s claims is not illegitimate.<sup>22</sup> Notably Cohen begins his remarks in this context by emphasising that it matters purely *theoretically* to know what justice consists in. He also contends that his argument has implications as to how we should assess capitalism – that, if the argument withstands scrutiny, it tells us that capitalism involves unfairness in relation to option luck inequalities as well as brute luck ones (Cohen 2011, p. 141). Of course Cohen takes this to have the kind of political import that Williams’ argument purports to block. But, as Cohen notes, this is also of theoretical relevance.<sup>23</sup> In this way, Cohen’s argument is first and foremost an analytical, evaluative one; part of a constructive process in which

considerations of potential normative significance are uncovered, enabling us to more clearly elucidate their character and identify how they fit together.<sup>24</sup>

Whilst Williams' appropriately proclaims that Dworkin's view is not a full account of value, so Cohen might argue that his is not a full account of political justice, or, as Cohen might term it, 'rules of regulation'.<sup>25</sup> In this way, the Williams reply to Cohen's critique is symptomatic of their broader divergence over how to approach distributive justice, with Williams, in his own words, embracing a "*systematic theory of distributive justice that economizes on appeal to intuitive judgements*" in contrast to what he perceives as Cohen's reliance on "*unsystematic balancing judgements*." (Williams 2013, p. 83) Cohen's focus is on one piece of the puzzle; Williams' on how it fits with some of the others. Even if it's true that Cohen's distributive unfairness lacks political import, it's not the case that Cohen's argument, if correct, lacks significance *tout court*. If nothing else, the putative distributive unfairness, if it obtains, itself illuminates the character of the donor and expressive reasons to which Williams appeals. Namely, if Williams is right, it exposes their *cancelling force*.

In addition, Cohen's argument, again if correct, shows us the reasons that *can't* be advanced in favour of distributive inequality. The claim seemingly advanced by many proponents of luck egalitarianism that certain choice-derived inequalities are *required on grounds of fairness* is directly undercut if the truth of Cohen's contentions holds up. One familiar claim made in the context of socio-economic inequalities, for instance, is that redistributing to those who are economically disadvantaged as a result of their own responsible choices is unfair. Firstly Cohen's view would suggest that the undoubted initial intuitive appeal of this thought can be explained in terms of the lack of claim the disadvantaged have (on, say, the better off), rather than in terms of the positive fairness reasons in favour of that inequality. Secondly it implies that redistributing is not, at least in certain particular respects, positively *unfair*.

What's more, though, and I think Cohen would have agreed, questions of fairness are not simply political questions and reading political philosophy is not important just for politics. Indeed, more specifically, questions of distribution arise in a plethora of different contexts including, for instance, for voluntary associations or the familial.<sup>26</sup> There's little reason to think that the salience of the value of fairness is restricted to the domain in which Williams questions its normative relevance. I would suggest, then, that even if the lesson from Williams that not all considerations of value have a strong or direct bearing on what we ought to do politically is a sage one, the evaluative significance and normative relevance of Cohen's conclusions are not wholly dissipated.

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## Notes

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<sup>1</sup> Truth be told, although Cohen has commonly been viewed as an advocate of the orthodox luck egalitarian commitment to the fairness of choice-derived inequalities, several of his general endorsements of the general luck egalitarian approach fall short of an explicit affirmation of all of the details of that position. He writes that the purpose of egalitarianism is to “eliminate *involuntary* disadvantage, by which I (stipulatively) mean disadvantage for which the sufferer cannot be held responsible, since it does not reflect the choices that he has made.” (Cohen 1989, p. 917, his emphasis) Strictly this does not entail an endorsement of the fairness of forms of disadvantage that do reflect the choices he has made. Similarly, in later work, Cohen (2008, p. 8) explains about luck egalitarianism that “I still believe it in a general way” but doesn’t say more about what that general way is and about which, if any, of the more specific aspects he has any reservations. How far Cohen’s move, discussed in the below, is a genuine revision to his settled convictions about the fairness of inequality is not of great significance for the detail of the argument here.

<sup>2</sup> Dworkin (1981, p. 293) goes on to illustrate: “If I buy a stock on the exchange, then my option luck is good. If I am hit by a falling meteorite whose course could not have been predicted, then my bad luck is brute (even though I could have moved before it struck if I had any reason to know where it would strike).”

<sup>3</sup> Interestingly, where Cohen and Dworkin had previously agreed that option luck inequalities were fair, Cohen (1989, p. 32) had explicitly credited Dworkin with having guided his own thinking in that regard and, more generally, steering the course of a compelling version of egalitarianism in that direction.

<sup>4</sup> Strictly, Cohen stops short of explicitly arguing that *no* choices can render inequality fair, rather than legitimate. To do so would require addressing arguments grounded on desert, for instance. One way of thinking about Cohen’s claim, then, is that absent a convincing story as to why a given set of consequences are in some sense *deserved* by the choosing individual, the inequalities should be seen as (merely) legitimate, rather than fair.

<sup>5</sup> This specification of legitimacy closely mirrors Williams’ (2013, p. 70) whose formulation of the notion that, I believe, Cohen intends is marginally superior to Cohen’s own, which he recognises himself remains “*in need of further refinement*” and remarks that “*more works is needed here.*” (Cohen 2011, p. 129)

<sup>6</sup> Cohen notes that this view is *prima facie* consistent with both affirming and denying that the outcome is *unfair* (Cohen 2011, p. 134).

<sup>7</sup> Cohen repeatedly and consistently refers to the legitimacy and justice of *outcomes*. For the origin of the distinction between telic and deontic as it relates to equality see Parfit (2002).

<sup>8</sup> For a dissenting view see Anderson 2010, p. 10.

<sup>9</sup> Although, as I explain in the foregoing, Cohen’s argument is firstly about the fairness of outcome, only secondarily about the reasons thereby issued.

<sup>10</sup> He further comments in a note that “[A]bsent an initial just situation, unanimity might merely reflect unjustly differential bargaining power: the highwayman and I are unanimous that I will hand over the money.” (Cohen 201, p. 133 fn. 20)

<sup>11</sup> Indeed, Williams (2013: 78) clearly accepts that considerations of fairness pertain to the initial, pre-choice, distribution when he refers to individuals being “*fairly situated*” under such conditions.

<sup>12</sup> Strictly it implies that the initial distribution is *not unfair* (as opposed to ‘fair’) because equal.

<sup>13</sup> For support for this reading of Raz see Hirose and Olson (2015, pp. 192 – 193)

<sup>14</sup> I leave it open whether Raz himself uses the terminology of cancellation as a broader category under which reasons can be cancelled in ways other than because the grounds for the reason have been removed.

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<sup>15</sup> It's worth noting that Raz is explicit that cancellation does not involve a *conflict between reasons*, (Raz 1999, p. 27) and that "*the cancelling circumstance is not itself... a reason for any other action.*" (Raz 1999, p. 187) This again suggests he understands cancellation differently from the way Williams deploys it.

<sup>16</sup> In fairness Williams (2013, p. 80) does also at one point refer to the fairness of outcomes.

<sup>17</sup> Reasons which remain uncanceled not only because the trainees lack the same responsibility of instruction that the drill instructor has, but also because there might be camaraderie/group co-operation reasons in favour of providing support to fellow trainees that would themselves count against their having cancelling reasons against helping with injuries.

<sup>18</sup> The fact that he discriminates between domains in which the reasons are cancelled lends further support to reading of cancellation as 'silencing' rather than in terms of grounds-removal.

<sup>19</sup> In this way, because, as I have suggested, the Williams-Dworkin approach seems primarily a deontic rather than telic one, Williams might reasonably claim that Cohen's 'Anti-Dworkin' argument is mislabelled, given that Dworkin himself need not affirm the telic view. I am grateful to an anonymous referee for pointing this out to me.

<sup>20</sup> One might add, in further defence of Cohen, that there are all kinds of contestable normative claims made at the level of the political and it's not clear why Cohen's claims about distributive fairness should fall into the domain of the politically excluded, even if one accepts that *some* contestable normative claims should.

<sup>21</sup> A move which, I think, further counts in favour of a reading of Williams' cancellation as 'silencing', rather than grounds-removal.

<sup>22</sup> It's worth noting, though, that Cohen's exploration of the practical implications of the Anti-Dworkin argument is tentative and speculative; indicating it is not the primary focus of the piece but a subsidiary note to placate those less than entirely sympathetic readers who might question 'Does It Matter?' (Cohen 2011, p. 140) in a way that makes a difference to what we do politically.

<sup>23</sup> Notably Cohen begins his remarks in these passages by emphasising that it matters purely theoretically to know what justice consists in.

<sup>24</sup> For this reason it's misleading to characterise a defence of Cohen that emphasises the evaluative character of his move as any kind of battlefield retreat.

<sup>25</sup> Cohen identifies a rule or principle of regulation as "*a certain type of social instrument, to be legislated and implemented, whether by government itself or within social consciousness and practice.*" (Cohen 2003, p. 241) Rules of regulation are, therefore rules "*we create, we adopt... to order our affairs... in the light of what we expect the effect of adopting them to be.*" (Cohen 2008: 276) As such they are to be understood in contrast to normative principles without such a regulative function that "*represent our convictions... (and) are not things that we **decide** to have and that we consequently work to install or instill and sustain.*" (Cohen 2008, p.277, his emphasis)

<sup>26</sup> I do not stake a claim here regarding to what extent the family should be regarded as part of the political but claim only that there might be some familial issues to which the value of fairness is relevant even when there is no political dimension at stake. How much pocket money siblings receive would be a straightforward such case.

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## Notes on contributor

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