

Choice, Value and the Perfection of Distributive Justice

Introduction

Luck egalitarianism's ascendance has focused sustained attention on the role that choice plays in distributive justice, for according to luck egalitarianism, choice is the sole criterion that determines just distributive shares: people must bear the distributive costs of their own clear-eyed and voluntary choices, but they are owed redress for any losses in distributive shares that they incur due to sheer bad luck, which is by definition not a matter of choice.¹ But while the authenticity, or formal fact, of people's choices is the *sine qua non* of luck egalitarian distributive justice, it is striking that the actual content of anyone's choice is strictly irrelevant according to the view. *Whether* and not *what* one chooses is all that matters under luck egalitarianism.

¹ Elizabeth Anderson coined the term "luck egalitarianism" in "What is the Point of Equality?" *Ethics* 109 (1999), pp. 287–337. Statements of various strains of luck egalitarianism include: Richard Arneson, "Equality and Equal Opportunity for Welfare," *Philosophical Studies* 56 (1989), pp. 77-93; G. A. Cohen, "On the Currency of Egalitarian Justice," *Ethics* 99 (1989), pp. 906-44; Ronald Dworkin, *Sovereign Virtue* (Cambridge, MA: Harvard University Press, 2000) (introducing *inter alia* the "brute luck"/"option luck" distinction); Marc Fleurbaey, "Equality of Resources Revisited," *Ethics* 113 (2002), pp. 82-105; Kasper Lippert-Rasmussen, "Egalitarianism, Option Luck, and Responsibility," *Ethics* 111 (2001), pp. 548-79; Thomas Nagel, *Equality and Partiality* (New York: Oxford University Press, 1991); Michael Otsuka, "Luck, Insurance, and Equality," *Ethics* 113 (2002), pp. 40-54; Eric Rakowski, *Equal Justice* (New York: Oxford University Press, 1991); John Roemer, *Theories of Distributive Justice* (Cambridge, MA: Harvard University Press, 1996); Peter Vallentyne, "Brute Luck, Option Luck and Equality of Initial Opportunities," *Ethics*, 112 (2003), pp. 529-557; and Robert van der Veen, "Equality of Talent Resources: Procedures or Outcomes?," *Ethics* 113 (2002), pp. 55-81. Dworkin, it should be noted, has balked at being characterized as a luck egalitarian, but his position has not changed since his early "Equality of What?" papers collected in *Sovereign Virtue*, and so I believe it remains fair to so characterize him. See Ronald Dworkin, "Equality, Luck and Hierarchy," *Philosophy and Public Affairs* 31 (2003), pp. 190-98. Nagel, also worth noting, has more forthrightly abandoned luck egalitarianism. See Thomas Nagel, "Justice and Nature," *Oxford Journal of Legal Studies* 17 (1997), pp. 303-21.

It has now been a decade since Elizabeth Anderson convincingly argued in “What is the Point of Equality?” that luck egalitarianism’s exclusive concern with formal choice is fatal to the theory. While it is time to leave luck egalitarianism behind, in my view, largely on the force at many of Anderson’s criticisms of it, it is not time to leave choice behind. For individuals’ choices may yet be of fundamental importance to distributive justice even if, as Anderson has argued, they lack such importance when conceived formally. It is my aim here to substantiate just this possibility and to argue, more specifically, that distributive justice must take seriously the *substance* or *content* of individuals’ choices.

Anderson might be thought to have already closed off this line of argument, albeit indirectly. For one of her chief complaints about luck egalitarianism is that it requires the state to make “moralizing judgments of individuals’ choices.”² According to the view that I begin to develop here, however, luck egalitarianism does not err in requiring the state to make such judgments. Far from it. The state *must* make “moralizing judgments of individuals’ choices” in order to effect distributive justice, as I conceive of it – it would be unjustifiable for the state *not* to do so. This is because, as I shall argue, distributive disadvantages that individuals suffer in pursuit of worthwhile activities ought to be remunerated. The question will be, in brief, Is the activity that a given citizen has chosen to pursue one that *merits* insuring? And if distributive justice must be sensitive to what activities people choose to pursue in this way, then the state must be in the business of assessing those choices.³ Such a role for the state, it is worth noting, is permissible

² Ibid., p. 310.

³ This might be questioned, as one rejoinder that luck egalitarians have advanced against Anderson is to distinguish what distributive justice demands as a matter of principle from

only if one accepts, as I do, a perfectionist account of political legitimacy, wherein the state plays a more direct role in promoting the well-being of its citizens than is tolerated by Anderson's anti-perfectionism.⁴ And what this highlights, in turn, is that an important aspect of Anderson's rejection of luck egalitarianism is driven not by commitments typically considered endogenous to distributive justice, but by apparently exogenous concerns of political legitimacy, and likewise, that my own perfectionism shapes my account of distributive justice.

Suffice it to say, then, that I am at odds with Anderson over the normative valence of her claim about the state's involvement in evaluating individuals' choices. Even this much should make clear, moreover, that while I follow Anderson in rejecting luck egalitarianism, my differences with her position are at least as deep. For this reason, Anderson's critique of luck egalitarianism serves as a fruitful foil and point of departure. It is this essay's aim to make the case for a perfectionist conception of distributive justice that turns not on the authenticity of people's choices but on the substantive content, and specifically the value, of their choices.⁵

I. Ensuring and Insuring Worthwhile Choices

what the state must in fact do. See, for example, G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008), and for discussion of Cohen's position on this, see T. M. Scanlon, "Justice, Responsibility, and the Demands of Equality," in Christine Sypnowich (ed.), *The Egalitarian Conscience* (New York: Oxford University Press, 2006), pp. 85-87.

⁴ Anderson's anti-perfectionism is on display when she states, "As Rawls has stressed, given the fact the [sic] people hold conflicting conceptions of the good, liberal states need some basis for judging claims of justice that does not rest on partisan views of the good." Anderson, "What is the Point of Equality?", *supra* note 1, p. 330.

⁵ I thus hope to disprove Arneson's claim that "[t]he short answer to the question, what perfectionism implies for politics, is 'not much.'" See Richard Arneson, "Perfectionism and Politics," *Ethics* 111 (2000), p. 39.

I maintain that a central consideration in distinguishing between the distributive disadvantages that should and should not be held in common is the *substantive value of the activity* leading to the disadvantage. Distributive disadvantages that individuals suffer in pursuit of worthwhile activities should be remunerated. Distributive justice, on this view, therefore turns on the importance or worth of certain activities. In short, the question will be, Is this an activity that *merits* insuring?

This is a perfectionist theory of distributive justice. To situate it within a wider perfectionism, it is worth briefly characterizing that theory in general terms. Joseph Raz, the leading exponent of contemporary political perfectionism, offers a crisp statement of the view: “The main purpose of government,” Raz holds, “is to assist people, primarily its subjects, to lead successful and fulfilling lives, or, to put the same point in other terms, to protect and promote the well-being of people.”⁶ Individual well-being thus occupies an important place in perfectionism, a place that it does not have in anti-perfectionist theories. On Raz’s view, moreover, people’s well-being is served by whole-heartedly and successfully pursuing valuable activities. More specifically, and underscoring the importance of autonomy to well-being,⁷ it is served by pursuing those valuable activities

⁶ Joseph Raz, “Liberty and Trust,” in Robert P. George (ed.), *Natural Law, Liberalism, and Morality* (New York: Oxford University Press, 1996), p. 113. The canonical statement of Raz’s perfectionism is in *The Morality of Freedom* (Oxford: Oxford University Press, 1986). Raz also characterizes perfectionism as “the view that whether or not a particular moral objective should be pursued by legal means is a question to be judged on the merit of each case, or class of cases, and not by a general exclusionary rule, as the co-called ‘neutralists’ would have it.” Joseph Raz, “Facing Up: A Reply,” *Southern California Law Review* 62 (1989), p. 1231.

⁷ Raz argues that “[a]utonomy is a constituent element of the good life.” Raz, *The Morality of Freedom*, *ibid.*, p. 408.

“largely chosen by the person involved.”⁸ The state is therefore required to facilitate individuals’ pursuit of autonomously-chosen worthwhile activities.

Now, perfectionism is often associated with coercion, but that link is entirely contingent – a perfectionist state need not be coercive.⁹ A perfectionist state can, in Joseph Chan’s words, simply “create a social environment which is more conducive to the promotion of goods and worthwhile ways of life. The state does this by noncoercive means, such as providing subsidies, tax exemptions, and education.”¹⁰ Focus on subsidization. Subsidizing individuals’ worthwhile activities will enhance their well-being both because the subsidies will draw people in so that people will more likely choose to engage in valuable pursuits, and also because the subsidies will sustain a greater number of valuable activities or options than would exist without the subsidies, thus making a given individual’s choice of pursuits more autonomous. As Seana Shiffrin has observed in a different context, “subsidizing others’ activities, in some domains, may be necessary to retain spheres of activity in which agents can act autonomously and reap the goods associated both with acting freely and with the feeling that one acts freely.”¹¹ Perfectionism holds that the state is duty-bound to subsidize valuable activities for just this reason. In this respect, perfectionism demands state subsidization of worthwhile activities in order to *ensure* their pursuit. My perfectionist account of distributive justice, in turn, supplements this aim and *insures* their pursuit. The perfectionist state’s primary

⁸ Raz, “Liberty and Trust,” supra note 22. The fullest statement of Raz’s conception of well-being is in *The Morality of Freedom*, supra note 22, ch. 12.

⁹ Or at least a perfectionist state *qua* perfectionist need not be coercive; its criminal law, for example, will of course be coercive.

¹⁰ Joseph Chan, “Legitimacy, Unanimity, and Perfectionism,” *Philosophy and Public Affairs* 29 (2000), p. 15. See also Raz, *The Morality of Freedom*, supra note 22, p. 161.

¹¹ Seana Valentine Shiffrin, “Paternalism, Unconscionability Doctrine, and Accommodation,” *Philosophy and Public Affairs* 29 (2000), p. 236.

aim in insuring or indemnifying valuable activities is not to facilitate their pursuit – that is effected most directly through the subsidy – although it does have this consequence: insuring valuable activities itself helps to ensure engagement with them by making them a “safe bet.” That is a happy consequence, but not the primary basis for insuring the activities. The perfectionist state’s primary purpose in insuring valuable activities is, rather, to guarantee that people will not suffer distributive disadvantage in virtue of engaging in them.

The perfectionist state would, at best, send mixed signals if it sought to ensure the pursuit of valuable activities but then failed to insure those activities against any distributive disadvantages that might befall the individuals pursuing them – it would amount to holding a sale on items of guaranteed quality while at the same time advising *caveat emptor*. And at worst, such a scheme would amount to a kind of distributive entrapment. In neither case would the perfectionist state keep its hands clean; it could not forswear all responsibility for the distributive disadvantages that resulted from its citizens’ pursuit of the activities it had subsidized. A state that seeks to support its citizens in their autonomous pursuit of worthwhile lives should follow all the way through on that aim, insuring and not just ensuring the pursuit of valuable activities.

Substantive value judgments about people’s activities are obviously central to this account of distributive justice. To know whether distributive disadvantages should be redressed, the value of the activities whose pursuit led to the disadvantages must be appraised. On this view, the state has duties of distributive justice to those who become disadvantaged in pursuit of worthwhile activities that it does not have to those who suffer

distributive setbacks in pursuit of activities that lack value.¹² This is of course a very general statement of the proper aim of distributive justice, and I hasten to add that I will not be providing anything like a general account of worthwhile activities or a decision procedure that generates systematic conclusions about which pursuits are worthwhile. But nor do I believe this omission to constitute a constraint on the adequacy of the theory. The perfectionist theory of distributive justice on offer here can stand independently of a general account of the activities that the theory would single out for distributive redress, much as the case for consequentialism does not necessarily turn on the particular theory of value that it incorporates. Still, even without a general account of worthwhile activities that warrant insuring, the theory has content. As Chan points out, “our inability to make *comprehensive* comparative judgments on ways of life does not imply that we are equally unable to make *local* comparative judgments.”¹³ So consider some local judgments.

No one on Anderson’s list of people in high-risk occupations – police officers, firefighters, members of the armed forces, farmers, fishers, and miners – nor those who forgo market reward to devote their lives to taking care of their children, for example, should have to pay for at least many of the costs of their choices. The lot of each of these classes of individuals should attract the concern of any plausible regime of distributive justice. Anderson is right about this, but the reason is that each of their respective

¹² This is not to deny that the state has *some* duties of distributive justice to those who suffer disadvantage in pursuit of worthless activities or for other reasons, just that the duties are not the same. The duties that the state owes to those who suffer distributive disadvantage as a consequence of pursuing worthwhile activities are more stringent. I discuss this wrinkle in Section V.

¹³ Chan, “Legitimacy, Unanimity, and Perfectionism,” *supra* note 27. Emphasis in the original.

activities is worthwhile and has value. And one could easily multiply the activities that intuitively warrant the same treatment.

Think of the police officer. On the present account, where distributive measures are guided by the substantive value in some possibly disadvantaging activity, the police officer who is paralyzed while on the job would be entitled to a wheelchair despite the fact that he chose to become a police officer, *pace* luck egalitarianism. Policing is a worthwhile activity (at least in a sufficiently just state) and so people should be able to engage in it without holding everything out to chance. Injuries incurred while serving on the police force warrant redress by the state as a matter of distributive justice even though the violence and injuries that attend policing are foreseeable to police officers and those contemplating joining the profession.

Think also of the farmer. The farmer who has worked his whole life on land owned for generations by his family but is now faced with foreclosure cannot claim ignorance of the risks of crop failure or international market pressures. That fact would exclude such farmers from luck egalitarian distributive aid. Yet it seems to me that a family farmer who runs those risks and loses ought not to be ignored by a regime of distributive justice simply for having chosen a risky occupation. For farming is valuable. This is not to say that the looming foreclosure should be nullified. Rather, the farmer would be owed a job on the farm under its new owner, or job training in a new line of work, or at least welfare payments. It is not (merely) romanticism to suggest that farming is a worthwhile occupation, for it draws on a number of skills, involves a host of virtues,

and benefits others. As such, one who pursues farming should be indemnified in some way for that choice.¹⁴

Clearly, “moralizing judgments” that Anderson faults luck egalitarianism for requiring are required also by the perfectionist account of distributive justice that I am advancing. There is, though, a key difference in the “moralizing judgments” that the two theories must render. By focusing on responsibility-as-choice, luck egalitarianism inquires only into whether some distributive effect was the result of an authentic choice or not, it does not assess the merits of the chosen activity that generated the distributive disadvantage. In this way, luck egalitarianism focuses on the *nature* of people’s choices. My perfectionist alternative avoids that particular inquiry – a person’s role in their own distributive fate is not fundamental – but supplants it with a different inquiry. For my account attends to the *content* of people’s choices. Legitimizing these “moralizing judgments” is the next task.

II. “Grossly Intrusive, Moralizing Judgments of Individuals’ Choices”

Anderson does not rest content in criticizing luck egalitarianism for mistreating the victims of bad option luck, a criticism that turns on the role accorded to formal choice by luck egalitarianism. She attacks the theory for its treatment of the victims of bad brute

¹⁴ It is interesting that Raz contrasts farming with gambling, which is the favorite target of luck egalitarian scorn (see note 19): “A person who spends all his time gambling has, other things being equal, a less successful life, even if he is a successful gambler, than a live stock farmer busily minding his farm....The reason is that they engage in what they do because they believe it to be a valuable, worthwhile activity (perhaps but not necessarily because of its value to others). They care about what they do on that basis. To the extent that their valuation is mistaken it affects the success of their life.” Raz, *The Morality of Freedom*, supra note 22, pp. 298-99. The clear implication is that farming is worthwhile but that gambling is not.

luck as well, issuing a broad indictment based on the role that a luck egalitarian state must assume in righting distributive injustices. To redress involuntary disadvantage and only involuntary disadvantage, Anderson alleges, a luck egalitarian state

must make judgments of moral desert or responsibility in assigning outcomes to brute or option luck....[I]n order to lay a claim to some important benefit, people are forced to obey other people's judgments of what uses they should have made of their opportunities, rather than following their own judgments. Such a system requires the state to make grossly intrusive, moralizing judgments of individuals' choices.¹⁵

Anderson concludes on this basis that luck egalitarianism "interferes with citizens' privacy and liberty" and is "disrespectful."¹⁶

Characterizing the nature of this criticism is difficult. Obviously it is a criticism of luck egalitarian distributive justice. But insofar as it bears on the proper scope, limits, or reach of distributive justice, the criticism is not based upon considerations of distributive justice itself.¹⁷ Factors extrinsic to distributive justice help to resolve the

¹⁵ Anderson, "What is the Point of Equality?", *supra* note 1, p. 310.

¹⁶ *Ibid.* (Italics removed.)

¹⁷ Anderson's is first and foremost a discussion of equality, not of distributive justice. Luck egalitarian theories of distributive justice are flawed, in her view, to the extent that they aspire to egalitarianism because they miss the point of equality. On this point, consider Jonathan Wolff's claim that respect is as relevant to equality as is fairness, but that luck egalitarianism only accounts for fairness. Wolff's line blocks the luck egalitarian rejoinder that concedes that there are many other values that the state must take into account besides equality, but which goes on to hold both that equality remains among the most important values and that luck egalitarianism is the best account of what equality demands. For on Wolff's view, equality itself also incorporates respect. See Jonathan Wolff, "Fairness, Respect, and the Egalitarian Ethos," *Philosophy and Public Affairs* 27 (1998), pp. 97-122. Unlike Anderson or Wolff, teasing out what equality requires is not my goal. My aim, rather, is to determine what distributive justice requires. The best account of distributive justice may be egalitarian – I remain agnostic – but even

reach of a theory of distributive justice, and at least one of those factors is the theory of political legitimacy that it incorporates or is based upon.¹⁸ It is this component of the overall luck egalitarian theory that draws Anderson's fire on this point. More specifically, what motivates Anderson's criticism of luck egalitarianism here is her commitment to an anti-perfectionist conception of political legitimacy. In this way, then, her criticism is not merely a criticism of luck egalitarianism, it is a criticism of any conception of distributive justice that requires the state to scrutinize and evaluate its individuals' choices.

Anderson's criticism of luck egalitarianism on this score thus implicates the perfectionist theory of distributive justice that I have just outlined, for it unabashedly requires the state to scrutinize and evaluate individuals' choices. I believe that my account survives Anderson's criticisms on this front, and that it thus offers a novel position distinct from luck egalitarianism and Anderson's own anti-perfectionist theory of democratic equality (which I do not canvass here).

I have provided no argument for the wider perfectionism on which my perfectionist theory of distributive justice rests. Instead, I have emphasized the theory's first-order intrinsic plausibility, in effect allowing the theory to do its own talking, hoping that it also does its own convincing. But Anderson's most expansive criticism of luck

if it is, egalitarianism and distributive justice are not the same concepts, and so there may be considerations of distributive justice that are not considerations of equality.

¹⁸ I cannot here query the relationship between the theories of political legitimacy and distributive justice to determine whether one is prior to the other or whether they must proceed in tandem. Jean Hampton appears to adopt a kind of hybrid view when she maintains, "[t]o answer the anarchists properly, we must acknowledge that some states...are still not morally justifiable in view of the kinds of laws they generate and the goals they pursue. And this requires us to specify what goals and laws characterize a decent or *just* state." Jean Hampton, *Political Philosophy* (Boulder, CO: Westview Press, 1997), p. 121.

egalitarianism applies *mutatis mutandis* to the theory I have outlined as well, and it must be addressed. In broad brush and re-targeted, to repeat, the criticism is that perfectionist distributive justice is both intrusive and disrespectful.

Anderson finds it “grossly intrusive” that on a view like mine, “in order to lay a claim to some important benefit, people are forced to obey other people’s judgments of what uses they should have made of their opportunities, rather than following their own judgments.”¹⁹ As Anderson has luck egalitarianism in her cross-hairs here, her reference to how people should have used their opportunities refers in particular to whether someone in fact lacked some opportunity to avoid distributive disadvantage – it refers to the authenticity of their choice. It can be re-interpreted, though, to refer to the opportunity an individual had to pursue some worthwhile activity instead of a worthless one. Before assessing whether being “forced to obey other people’s judgment” about valuable activities is objectionable, however, consider the threshold question of whether anyone on a perfectionist theory of distributive justice must be “forced to obey other people’s judgment.” It is not clear that anyone must be so forced in any relevant sense.

First, and preliminarily, no perfectionist account will require obedience to another’s judgment *qua* judgment or belief. The state’s assessment of valuable activities has no authority just in virtue of its being the state’s assessment. Raz is very clear about this: “The fact that the state *considers* anything to be valuable or valueless is no reason for anything. Only its being valuable or valueless is a reason. If it is likely that the government will not judge such matters correctly then it has no authority to judge them at

¹⁹ Anderson, “What is the Point of Equality?”, *supra* note 1, p. 310.

all.’²⁰ This, in turn, underscores an ambiguity in Anderson’s charge. She may be objecting to any arrangement in which distributive redress is contingent upon having to abide by the state’s judgment of what is valuable because it is *the state’s judgment*. Or she may be objecting instead to any arrangement in which distributive redress is contingent upon abiding by a judgment of what is valuable that is *not the claimant’s*. The first variant, which is the one Raz explicitly rejects, is indeed objectionable; the second, if it is objectionable at all, certainly is much less so. It is surely morally relevant whether the state’s assessment of the value of certain activities is or promises to be valid, even if that assessment is not one’s own. So long as it is acknowledged that my perfectionist theory of distributive justice only demands obedience to the state’s (probably) *valid* judgments of value, Anderson’s worry about people being forced to obey the judgments of others is largely misplaced.

Perhaps Anderson would remain unmoved, rejecting this rebuttal on the grounds that even if the state were more likely than its citizens to get its judgments of value right, those judgments remain the citizens’ to make. This line of response, however, would fail to recognize that a perfectionist state can incorporate a morally relevant form of self-rule, thus allowing the judgments that people must obey to be, in the standard democratic sense, their own. Self-rule could be conceived of and implemented in a number of ways within perfectionist parameters. Which activities are worthwhile could, for example, be the subject of general democratic deliberation.²¹ Or one could confer administrative agencies, which are indirectly accountable to the electorate, with the authority to make

²⁰ Raz, *The Morality of Freedom*, supra note 22, p. 412.

²¹ I owe Samuel Freeman for this suggestion.

these judgments – as indeed we already do in a vast array of areas.²² Or again, following a suggestion by Chan, perfectionist policies might be made not by state officials at all but by “legally sanctioned and state financed committees composed of individual citizens or representatives of groups who have more experience or knowledge about a certain issue....[who could] *deliberate* together to arrive at the *best informed decision* they can on the relative importance and prioritization of specific goods and practices.”²³ The judgments of value that resulted from any of these methods would have a democratic pedigree (albeit not identical ones) that would shield the state from the charge that it was just dictating its judgments to an unwilling public in a kind of Government House perfectionism.²⁴

If Anderson were to reject this line of argument as well, she would have to reject any democratic theory’s claim of providing for self-rule, as there is nothing distinctively anti-democratic about perfectionism. Assuming for the sake of argument that she would take that stance, answering the threshold question by maintaining that a perfectionist theory of distributive justice just does force people to obey others’ judgments of value, the question would then become, But is that objectionable? And it is simply not obvious that it is, for two reasons.

²² The topic of the democratic basis of administrative agency decisions is searchingly treated in Henry Richardson, *Democratic Autonomy* (New York: Oxford University Press, 2003).

²³ Chan, “Legitimacy, Unanimity, and Perfectionism,” *supra* note 27, p. 33.

²⁴ Bernard Williams coins and discusses “Government House *utilitarianism*” in *Ethics and the Limits of Philosophy* (Cambridge, MA: Harvard University Press, 1985), pp. 108-110. As my theory’s compatibility with open democratic deliberation should make clear, there is nothing esoteric in perfectionism itself, as opposed to Williams’ conception of utilitarianism, that jeopardizes transparency.

First, no one living under perfectionist rule is forced to *obey* anyone else's *judgments*; rather, one's *conduct* must *conform* to the state's laws and regulations, including those that specify the conditions of state aid. There is both a broader and a narrower point that needs to be made here. Rawls makes the broader point well: "while the citizen submits in his conduct to the judgment of democratic authority, he does not submit his judgment to it."²⁵ No citizen need regard the law as just to conform to it, and regarding the law as unjust is not itself sufficient reason not to conform to it. The narrower point is that no one's liberty of conscience is at all threatened simply in virtue of having to satisfy certain conditions in order to receive state aid. A government policy that pays down one's university debts in exchange for performing public service, for example, does not force one to obey the state's judgment either of the value of a university education or of the value of public service. No one is "forced to obey other people's judgments of what uses they should have made of their opportunities."²⁶ They remain free to follow their own judgments.

But second, Anderson can only get to this point by rejecting the self-rule *bona fides* of democratic government, since there is nothing in perfectionism that prevents it from also being democratic, and yet she is no anarchist – government, she believes, can be justified. That is, it is possible for government to be justified even assuming, again *arguendo*, that all state action involves forcing people to abide by the judgment of another, namely, the state. It follows that coercion cannot be a sufficient basis for rejecting the perfectionist state as illegitimate.

²⁵ John Rawls, "The Justification of Civil Disobedience," in *Collected Papers* (Samuel Freeman, editor)(Cambridge, MA: Harvard University Press, 1999), p. 181.

²⁶ Anderson, "What is the Point of Equality?," *supra* note 1, p. 310.

So perhaps it is respect that is really doing the work here; Anderson claims that being forced to obey another's judgments of value constitutes a form of disrespect. Even if *arguendo* democratic deliberation about which activities are worthwhile does not constitute self-rule, however, surely democratic deliberation pays respect in various ways even to those people whose personal judgments of value do not carry the vote.²⁷ Simply taking everyone's judgments of value into account in the process of determining which activities are valuable is respectful to everyone – something, again, that a perfectionist state can do.²⁸ Is this respectful enough? It must be, for there is no plausible form of government that could reasonably aspire to more.²⁹

What of Anderson's criticism, then, that a state that evaluates individuals' choices to determine whether distributive redress is due is "grossly intrusive?" Anderson has a strong point against luck egalitarianism on this score. Under luck egalitarianism, distributive entitlement tracks formal choice, so to determine whether any redress is warranted as a matter of distributive justice, the state is in principle required to determine whether a given person had it in him or her to choose something other than the activity whose risks ripened into distributive disadvantages. Anderson is right: such an inquiry

²⁷ See Chan, *supra* note 27, p. 33.

²⁸ Of course no perfectionist state can take satisfaction merely from the democratic pedigree of its evaluative judgments. Those judgments may require a democratic pedigree, but they must also be substantively sound. There is reason, however, to think that democratic procedures can serve perfectionism's main purpose, which is to get it right and thus to help its citizens actually lead flourishing lives, not merely lead lives which a majority believe to be flourishing. For an interesting argument along these lines, see David Estlund, *Democratic Authority* (Princeton, NJ: Princeton University Press, 2007).

²⁹ It is worth noting Raz's one-time view of respect, which he argued supported perfectionism, that "[o]ne would be showing disrespect to another if one ignored moral considerations in treating him." Raz, *The Morality of Freedom*, *supra* note 22, p. 157. Raz now rejects what he calls this "by-product" view of respect. See Joseph Raz, *Value, Respect, and Attachment* (Cambridge, UK: Cambridge University Press, 2001), p. 126.

would be “grossly intrusive” if anything is. The perfectionist theory of distributive justice that I am advancing is not, however, analogously vulnerable. For the theory does not assess anyone’s psychological dispositions or genetic make-up in the service of doing distributive justice, it instead assesses the value of activities. Those values are *external*, in the relevant sense, to the people whose activities are scrutinized, unlike the facts that are relevant to luck egalitarianism, which are (at least in large part) *internal*. In other words, only luck egalitarianism is intrusive because only luck egalitarianism assesses *people*. Perfectionist distributive justice is at least not intrusive in the way that luck egalitarianism is. Even if my perfectionist state must deny compensation to people on the fairly damning grounds that the disadvantaging pursuits to which they have devoted their lives lack value, that assessment remains an assessment of what they have done, not an intrusive assessment of the people themselves.³⁰

Samuel Scheffler attacks luck egalitarianism similarly, maintaining, “the aim of neutralizing the distributive effects of brute luck requires intrusive and conceptually problematic judgments about the inner sources of people’s disadvantages,” but he adds a remark about what he takes to be a contrasting and more plausible distributive goal, holding, “the aim of adjudicating fairly among the claims of free and equal citizens requires judgments that rest on a practicable and public basis.”³¹ Scheffler is describing and paying homage to (the later) Rawls’ “liberal principle of legitimacy” here, wherein “our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common

³⁰ I owe Gerardo Vildostegui for raising this concern.

³¹ Scheffler, “What is Egalitarianism,” *supra* note 3, p. 28.

human reason.”³² There is a great deal to be said in favor of this principle, at least when its more general contractualist account of fairness, requiring political principles to be justifiable to each person individually, is emphasized over (and, by my lights anyway, to the exclusion of) its more specific supposed dependence on “public reason.”³³ For it seems correct that the final legitimacy of our criterion of distributive justice should turn on what measures the state can fairly expect anyone to support. “Support” is, moreover, the right word for it – the basic mechanism of distributive justice is taxation, after all.

Rawls famously holds that the liberal principle of legitimacy rules out perfectionism.³⁴ A comprehensive rebuttal of this claim mercifully falls beyond this discussion’s purview, but it seems to me that the response must begin with something like Shiffrin’s observation, made in an altogether different context, that “[t]he community may reasonably balk at lending its efforts to facilitate activity it regards as seriously immoral.”³⁵ I would extend Shiffrin’s thought and maintain that the community also may reasonably balk at facilitating, and *a fortiori* at rewarding, worthless activities or at least activities that lack significant value. Granting that the guiding principle of distributive justice must be capable of providing a basis for the adjudication of competing claims that

³² John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 137.

³³ The principle’s contractualism does not entail Rawlsian political liberalism, with its commitment to political justification in terms of public reason. Rawls introduces the idea of public reason in *Political Liberalism*, *ibid.*, p. 217. Samuel Freeman clarifies the concept thusly: public reason “involves a set of shared considerations which count as good reasons in public deliberation and argument about laws and their interpretation, among reasonable and rational democratic citizens who endorse different fundamental values.” Freeman, “Public Reason and Political Justification,” in *Justice and the Social Contract*, *supra* note 3, p. 219.

³⁴ Rawls, *Political Liberalism*, *ibid.*, pp. 190-95.

³⁵ Shiffrin, “Paternalism, Unconscionability Doctrine, and Accommodation,” *supra* note 27, p. 236. Shiffrin’s discussion is of contract law.

all can recognize as fair, then, I would argue that it would be unfair to require people to subsidize and indemnify worthless activities, but not unfair to require them to subsidize and indemnify worthwhile ones, at least where the cost of doing so was justified by the value of the activity. In fact, I would make the stronger claim that it would be positively unfair to impose a blanket rule of not compensating those whose option luck turns sour in the pursuit of worthwhile activities.