

# Justice *or* Equality?\*

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*The paper has two aims. First, I discuss the most important arguments in the 'Why-Equality' debate with respect to the egalitarian and prioritarian point of views on the relation between justice and equality. This entails: the by-product objection of equality, the objection of inhumanity, the objection of complexity and the argument of the presumption of equality. Second, I give on the basis of the analysis of the main arguments a short outline of an own account on the relation between justice and equality. It follows that justice and equality are closely connected and that a sound egalitarianism has to pay more attention to the objections of the prioritarians, although a sophisticated version of pluralistic egalitarianism seems to be superior to prioritarianism.*

*Keywords: Egalitarianism, Prioritarianism, Justice, Equality*

## Introduction

The two most important classical analyses in the history of philosophy on the nature of justice are due to Aristotle (*Nichomachean Ethics*, V.) and Mill (*Utilitarianism*, V.). Both philosophers, and this should be no surprise, clearly state, that 'justice' and 'equality' are closely connected. In the last decades, the prioritarians, instead, dispute the close relation between justice and equality in their criticism on the egalitarian view in the 'Why-Equality?' debate. The very question is, if equality is the most *or* one of the most important part(s) of justice or if it has no *or* nearly no importance for the nature of justice at all. The aim of this paper is to review the main arguments on both sides to end the trench combats and, maybe, to mediate between the two groups, successfully. So, in the first part, I will make some short remarks on the 'Why-Equality' debate and give a description of the egalitarian and prioritarian view. In the second part I will discuss the most important arguments in the debate and I will present, in the third part, a short outline of an own account on the relation between justice and equality on the basis of the analysis made in the second part. The last part ends with some closing remarks

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## 1.

Some interesting and illuminating articles had been published concerning the ‘Why-Equality?’ debate in the last years. But, the main question, if egalitarianism or prioritarianism has the most plausible conception of the relation between ‘justice’ and ‘equality,’ has not been successfully answered, yet. Unfortunately, there had been attacks from both sides, which show that they did not attack the strongest but a (very) weak version of the opponents’ view. Gosepath, a German ‘*constitutive* egalitarian,’ is totally right in saying, that:

“Die dem Egalitarismus oft unterstellten Kriterien strikter Ergebnisgleichheit bei der Verteilung materieller Güter oder strikter Gleichheit des Wohlergehens werden kaum von einem Egalitaristen vertreten. Zu offensichtlich sind deren moralische Unzulänglichkeiten” (Gosepath 2003: 276).

Of course, it should be clear, methodologically, that one has to face the strongest view, not a travesty. A second mistake within the ‘Why-Equality?’ debate, in my view, is the fact that the notions justice and equality are also discussed – to a great extent – under the heading of questions of distributions, although this had been the main point of the ‘Equality-of-What’ debate, e.g. ‘equality of resources’ (Rawls 1971, 1993; Dworkin 1981; Rakowski 1991; van Parijs 1995), ‘equality of opportunity for welfare’ (Arneson 1989; Cohen 1989; Roemer 1996, 1998), or ‘equality of capability to function’ (Sen 1992). And this is, of course, a very misleading focus, especially, if one wants to determine the relation between these two important notions with regard to the question of justification. Questions of distributions are just one part of the story. So, let us see how far the range really is. Thirdly, the two most extreme assumptions (i.) justice *is* equality and (ii.) justice has *nothing* to do with equality are far from being plain, since common sense can easily show, that these assumptions are just superfluous ones, so, they are out of sight right from the beginning. But, the interesting ones are situated right in-between and the following analysis has to show which sound relation between justice and equality exists. Equality should not be discussed in socio-economic circumstances, only, but also in the moral and political realm, therefore, egalitarians and prioritarians are not right in diminishing the discussion on the socio-economic realm. Maybe, it was the influences of Rawls’ famous book ‘A theory of Justice’ (1971), which determine the discussion in this direction in the last three decades.

But, what are *egalitarianism* and *prioritarianism*? Egalitarians, on the one hand, think, firstly, that unfair life prospects should be equalized. Secondly, that equality is the most *or* one of the most important irreducible *intrinsic* or *constitutive* worth(s) of justice. Thirdly, that welfare should be increased. Fourthly, that justice is comparative. Fifthly, that inequalities are just when otherwise advantages are destroyed in the name of justice (against Parfit’s so-called ‘levelling down objection,’ Parfit 1998: 10). Lastly, that there are certain absolute humanitarian principles like autonomy, freedom or human dignity. Prioritarians, on the other hand, think, firstly, that equality itself cannot be a foundation of justice and that it is no important irreducible aim of justice, it has no intrinsic moral worth (Frankfurt 1997) and it has no *or* at least no fundamental importance with regard to the justification of justice, it is rather a by-product although it has some importance as reducible worth (Raz 1986). Secondly, the fulfilment of absolute

standards like human dignity, respect, or citizenship are of utmost importance to give people the opportunity to live a human being-worthy life and not a life in miserable circumstances (Walzer 1983; Raz 1986; Frankfurt 1997; Parfit 1998; Anderson 1999). Thirdly, people should have access to food and shelter, medical basic supply, or should have private and political autonomy etc. Fourthly, equality has some importance i.) in being a by-product, ii.) or in being one part among other parts as a comparative factor, e.g., in equality before the law, concerning equal chances, or with regard to the prohibition of discrimination, iii.) or in being a precondition for the fulfillment of certain absolute standards like political autonomy, social affiliation, and liberty of exchange (Krebs 2000, 2003).

Of course, the description I have given is just a short overview and, certainly, not as sophisticated as the lengthy egalitarian and prioritarian accounts, but for our purpose the description is good enough to see the main points at once and to have a first impression.

## 2.

In this part, I will discuss the main objections against the egalitarians made by the prioritarians on the one hand and analyse one of the main arguments of the egalitarians on the other hand. The main objections are, firstly, the by-product objection of equality (Raz 1986; Frankfurt 1987, 1997; Parfit 1998), secondly, the objection of inhumanity (Anderson 1999) and, thirdly, the objection of complexity (Walzer 1983). One of the main arguments with regard to the egalitarian view is the presumption of equality argument (Berlin 1955/56; Tugendhat 1997; Gosepath 2001).

Firstly, the egalitarian view that equality is the central aim *or* one of the most important aims of justice and should not be seen as a mere by-product had been a mayor point of criticism on the prioritarian side (Raz 1986: 218-221, 227-229; Frankfurt 1987: 32-34 and 1997: 7 and 11; Parfit 1998: 13-15). They think that equality is a mere by-product and it is due to absolute standards like human dignity or respect etc., whereas egalitarian equality is due to relational standards. It is always good to give counterexamples, which show that there is something wrong with the other view and, certainly, the prioritarians are not getting weary to present them, but, the question is, if some of their main examples are not self-defeating in a way and show just the opposite or at least something else.

The first example, I would like to discuss, is also presented by many prioritarians who state, that in cases of people's hunger and illness or deficiency of goods they should be helped *because* hunger, illness, and deficiency of goods are terrible circumstances for every human being and not because other people are in a better condition. The hunger and illness of other people or the deficiency of goods directly put us in the situation to help these people without making any comparison between them and those people who are better off. Frankfurt, not unconvincingly, says that substantial – and not formal – definitions certainly have genuine moral importance and that it depends on human beings who live a good life and not on how their life is with regard to other human beings' lives (Frankfurt 1997: 6). But, what is to be said on these cases?

It seems to be that prioritarrians really think that egalitarians worship equality for the sake of equality only. But, of course, this is not the case and the whole idea of that conception would be, right from the beginning, far away from being a sound justification. In cases of illness, hunger and deficiency of goods the role of equality is not that simple as prioritarrians want to make other people believe. Their objection loses its power, totally, if one acknowledges that people in cases of illness, hunger or deficiency of goods should be treated equally as human beings if they get supply, that means there is no primarily discrimination ongoing. Equality has many faces and impartiality is one of it. Of course, there is room for proportional equality in cases of, for instance, deficiency of goods. This would be, certainly, no contradiction within the egalitarian view – proportional equality is part of equality. The idea that equality always means arithmetical equality is a travesty coming from the prioritarrians.

The second example is Parfit's 'levelling down objection' (Parfit 1998: chapter 4). Given, that inequalities as such are bad their disappearance would be, *in one respect*, a change to something, which is better. If, so Parfit, the better off people lose all their additional resources by a natural disaster and are in the same terrible situation than the other people, it would be, *in one respect*, something, which is to be welcome on the teleological egalitarianism view, although some people lost all of their additional resources and nobody else could profit, instead. Or, in the famous example given by Parfit:

“Similarly, it would be in one way an improvement if we destroyed the eyes of the sighted, not to benefit the blind, but only to make the sighted blind. These implications can be more plausibly regarded as monstrous, or absurd” (Parfit 1998: chapter 4).

But, of course, Parfit knows that this would be not enough to criticize the egalitarians by using this objection, ‘it is not enough to claim that it would be *wrong* to produce equality by levelling down.’ Therefore he states:

“Our objection must be that, if we achieve equality by levelling down, there is *nothing* good about what we have done. Similarly, if some natural disaster makes everyone equally badly off, that is not in any way good news” (Parfit 1998: chapter 4).

It seems to be that Parfit thinks of an opponent who does everything for his worshipping of equality – that means equality *for the sake* of equality. There is hardly any egalitarian who would agree on that. Therefore, plain egalitarians think that inequalities are justified, if the only means to remove inequality would be to ‘level down’ the better off people to the standard of the badly off people, without any improvement with regard to the badly off people. The destruction of advantages in the name of justice is also unacceptable on the egalitarian view. There is a lot of rhetoric in this kind of objection. But, one should keep in mind that Parfit makes a distinction between the teleological and the deontic egalitarianism in this passage. And, it is only the teleological egalitarianism, in Parfit's view, that is open for criticism. The deontic egalitarian, unlike the teleological egalitarian, has no problem with the view that inequality itself is not bad in a way. But, so Parfit, ‘we may find it harder to justify some of our beliefs’ when adopting the deontic view. Although distinctions may be fruitful they could also

obscure our mind and this would be my objection to Parfit's view because he attacks views no one would fighting for since nobody hold such kind of extreme views. I have pretty much sympathy with the teleological and deontic view but I guess no sound philosopher would argue for the extreme version of teleological egalitarianism, like nobody would argue for a true consequentialism. The truth is, as often, right in the middle. A sound egalitarianism should incorporate teleological and deontic aspects. Hence, the 'levelling down objection' lost its power.

The plain egalitarian – and not the simple-minded travesty of it – is not forced to believe that, although equality might be the *or* a central aim of justice, one should worship equality for the sake of equality, without keeping in mind, that cases of hunger, illness, deficiency of goods, or the 'levelling down objection' exist and need special treatment in the conception of egalitarianism. Of course, it should be clear now, that the by-product objection is a weak one since it addresses a travesty and not a strong version of pluralistic egalitarianism.

Secondly, the objection of inhumanity, which had been brought into the discussion by Anderson 1999, again, is one of the main arguments against egalitarianism. Anderson's version of the argument has three different parts, firstly, the 'fault is-up-to-them' objection (Anderson 1999: 295-302; also Barry 1991: 149 and MacLeod 1998: 75p.), secondly, the objection of stigmatizing (Anderson 1999: 302-307; also MacLeod 1998: 106-108), and thirdly, the tutelage objection (Anderson 1999: 310; also Hayek 1960: 85-102). The first part is an objection against the (supposed) egalitarian view that people who are responsible for their own terrible situation should be left alone with their problems, no matter what happens to them. The second part is an objection against the kind of reasons egalitarians have in order to help people who are in a terrible situation, which did not arise through their own fault. The third part is an objection against the decision-making of the state – in which category a misery should be placed – and the investigation of the citizens in order to get the relevant information for the state. This would be, in Anderson's view, a case of putting the citizens under the tutelage of the state and harming their private sphere. If the objection of inhumanity is or is not a serious threat to a sophisticated version of a pluralistic egalitarianism, should be analysed in the following part.<sup>1</sup>

It is always strange to criticise a hardliner view and not a sophisticated version of it. Maybe, this should have been part of Anderson's considerations with regard to the 'fault is-up-to-them' objection ('bad option luck'), but it seems that she forgot what she learned in her first term. Luck egalitarianism wants to equalize undeserved life-prospects, the people should be responsible for their decisions, that means, strictly speaking, they have no justified demands for supply, if they get into a miserable situation on their own fault. Of course, Anderson is right in her criticism of Rakowski's view (1991), who states that it would be all right to let a guilty car driver die in a hospital, who has no assurance and illegally made a turn over on the street which causes a serious accident. The guilty car driver, so Rakowski, has no legal demands to be kept on the artificial respiration apparatus, any longer. This is, of course, absurd and inhuman. Rakowski's whole egalitarian theory (equality of resources) is far from being

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<sup>1</sup> See also Arneson's illuminating discussion of Anderson's objections (Arneson 2000).

sound and Anderson is right to criticise him for that, but, instead of her lengthy criticism of a travesty, she should have discussed the more sophisticated accounts of e.g. van Parijs who argues for a minimum wage (1991, 1995), Arneson who argues for equal chances of opportunity for welfare (1989), or Cohen and Roemer – the two marxist theorists – who argue for equal access to advantages as a condition of equality (Cohen 1989) and for the equal participation of all households on the capital yields (Roemer 1992), in more detail.

However, there is no question about it, there is hardly any reasonable human being who would like to live in Rakowski's world. Society should help people no matter if they caused their own disaster or not, they are human beings and this is the best reason to give them a helping hand if they lost the right track.<sup>2</sup> Of course, people who lived a jet-set life should not have a (legal) demand to live such a life again, if they caused a disaster and lost everything and the only way to be better off again would be to let society pay for it. This would be ridiculous but they should live a human being-worthy life and society has to pay for it, no matter what the price is. And this account does not contradict with a sophisticated version of a pluralistic egalitarianism. On this point, Anderson cites Arneson who thinks that it might be unfair to make people responsible for their actions in all circumstances since responsible decisions are dependent on necessary capacities – foresight, steadfastness, ability to calculate, strong will, self-confidence – which are partly due to one's genes or the luck to have good parents. Therefore, those people have a demand on a special paternalistic protection by society with regard to their own bad decisions. Arneson thinks that this could be financed by an obligatory social contribution of the people to a pension scheme. Others, so Anderson, hold the view that a strict compensation of welfare should also be modified by paternalistic intervention. That means only paternalistic reasons could make social contributions obligatory and could justify the distribution of a monthly guaranteed income.

Anderson rightly disputes the fact that luck egalitarians show the necessary respect for citizens since they state that people, who had hard luck by virtue of their own fault, 'earn' it. But, she is on the wrong path when she criticises other egalitarians who want to help the badly off people by social assurances on paternalistic reasons. These paternalistic reasons – in order to justify obligatory social assurances – are, in her opinion, a sign of taking citizens to be silly and to be unable to organise their own lives. It is hard to see, so Anderson, how one can expect from citizens not to lose their self-esteem by accepting this kind of justification.

Amy Gutmann rightly criticises Anderson on two points, firstly, she states that even egalitarians should be able to argue that there are special cases – like the guilty car driver case – which are so badly that these people should be helped, even if they got

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<sup>2</sup> I hold this to be a milestone of the development in human history since people who dispute this assumption do not know what it means to be part of a "real" community. To ask oneself the question, seriously, why should society help those people, is to be as cold as ice towards helpless people. What about the idea of humanity and charity, the idea to show compassion with members of one's own community, or with the conception of beneficence? To be cold-heartedly on this matter is a bad condition for a community which is oriented to the idea of human flourishing – the basic concept of each (sound) community.

into the miserable situation on their own fault. Secondly, paternalism could be an honourable and compelling principle of legislation. Hence, it must not be humiliating for the state to make laws, for instance, on wearing safety belts, insofar the laws are due to a democratic process. Although Anderson shares the intention of these arguments, she states on the first point that the very idea to guarantee special kind of goods would contradict with the spirit of luck egalitarianism. Of course, it might be that this line of argument, Gutmann brought into the discussion, speaks against luck egalitarianism but not against a sophisticated version of a pluralistic egalitarianism. So, Anderson's objection to the first point is weak, without presenting any further argument. The safety belt case, so Anderson, is not a good example for restricting the citizen's liberty with regard to cases in which their liberty is restricted to a great amount, like in cases of coercive partaking of social assurances. The society's justification should be much stronger than the claim that society knows the citizen's interests better than they do. And again, Anderson missed Gutmann's point; there should be no problem for citizens to take part in a social assurance when it is reasonable for them. Under the 'veil of ignorance,' to take up Rawl's famous thought-experiment, everybody would agree on a social assurance if the advantages, for instance not to die in a hospital by virtue of having no assurance at all, rule out the disadvantage of coercive partaking. We – and, of course, also plain egalitarians – do not want to live in a society where people have to die, because they have not got a social assurance, for whatever reasons. And, if the price for it is to take part in a social assurance, even if it is a liability, you should not hesitate to do so. But, if you decided not to take part and you are the guilty car driver, you should be helped, no matter what the costs are.<sup>3</sup> This is due to human dignity and I see no sound counterargument why pluralistic egalitarians should not be able to integrate this idea in their conception without losing their track.

The objection of stigmatizing is an objection against the kind of reasons egalitarians have in order to help people who are in terrible situations, which did not arise through their own fault ('bad brute luck'), for instance, disabled people from birth, or people who became disabled by virtue of an illness or an accident, or people with (very) poor natural talents etc. Anderson thinks, firstly, that there is no care for all badly off people, if one looks at the rules, which lay down who belongs to the 'bad brute luck' people, and secondly, the reasons to help the 'bad brute luck' people are discriminating for them.

So, what is Anderson's argument for her hypotheses? The reasons offered to distribute extra resources to handicapped people, so Anderson on the egalitarian view, are wrong because '[p]eople lay claim to the resources of egalitarian redistribution in vir-

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<sup>3</sup> Of course, there is a practical necessity for every society not to pay for everyone; the social assurances of the state could only finance a limited number of people who do not have – for whatever reasons – a social assurance. Every reasonable human being is aware of this situation without considering any further argument. Hence, it should be in everybody's interest, in order to relieve society of high extra costs, to pay for one's own social assurance. Therefore, it is in society's interest – and this means in the end in the interest of everybody – to force the people by law to have their own social assurances. In this case, nothing speaks against being forced to one's own luck.

tue of their inferiority to others, not in virtue of their equality to others' (Anderson 1999: 306). The principles of distribution are based on pity, which is in her view incompatible with the respect for human dignity. Hence, the main question is in her opinion, if a theory of justice, which is based on contemptuous pity for the alleged beneficiaries, could serve egalitarian standards that equal respect of each human being is the basis of justice. She comes to the conclusion that luck egalitarianism disregards the basic requirements, which every sound egalitarian theory should have. Before I will dispute Anderson's main argument, I would like to say something more on her distinction between pity and compassion. One might argue that the concern of the 'equality of fortune'-theorists is based on humanitarian compassion and not on contemptuous pity, but even than, so Anderson, one has to keep the distinctions between the two notions in mind:

"Compassion is based on an awareness of suffering, an intrinsic condition of a person. Pity, by contrast, is aroused by a comparison of the observer's condition with the condition of the object of pity" (Anderson 1999: 306p.).

In Anderson's view, 'compassion' says that the person in question is badly off and 'pity' says that the person in question is worse off than oneself ('she is sadly inferior to me'). Both can move one to help others, who are in need, 'but only pity is condescending.' But, even for the sake of argument, to take 'humanitarian compassion' as a starting point, this would be no sound basis for egalitarian principles of distribution, because compassion aims at relieving suffering and not equalizing it. She states, according to Raz (1986: 242), that once people are relieved of their suffering and neediness, compassion could not generate a further need of an equality of condition. The equality of fortune does not express compassion, it is not about the absolute misery of the person in question, it is about the gap between the best off and the worse off people. Thus, the better off people – who are guided by the considerations of luck egalitarianism – have a certain kind of feeling of superiority towards people, who are in need and, vice versa, the badly off people are envious and seek for an equal distribution of resources. Their criterion is an envy-free distribution (Anderson 1999: 306p.).

Of course, there is something wrong with her argument. It might have some plausibility on the first sight, but a second glance shows that she mixed up two aspects, which should be sharply divided, the 'factum' of equality and the feeling of inferiority. In detail, her claim that pity is incompatible with human dignity is far from being plain and the only reason why this claim seems to be justified is that her notion of 'pity' is of a certain kind. Anderson's definition of pity rests on her dubious assumption that 'pity' is something that is due to a comparison between the conditions of the people involved and the feeling of those people, who help others who are in need, but, there is no necessity that those, who help others who are in need, have a certain kind of feeling, like, 'she is really inferior to me' (Anderson 1999). Of course, it might be that some people feel like that, but most people would refuse this kind of talk. They would say that one has to help others who are in need *because* they are human beings, equal to me, and they did not deserve it to be left alone with their handicap. If one were one of them – one might argue – one would not like to be left alone, either. It is right that Anderson's special definition is incompatible with human dignity, but there are other definitions, for instance, Schopenhauer's account of pity, which would be compatible



with human dignity.<sup>4</sup> But even, so Anderson, if one agrees on humanitarian compassion as starting point for an egalitarian distribution, it would not be enough, since ‘compassion’ aims to ‘relieve suffering’ and not to ‘equalize’ it. According to the compassion view there is no ‘moral judgment on those who suffer’ (Anderson 1999: 307) and there is no further distribution in sight if the suffering of the people has been relieved. But, this is no objection against the compassion view at all. Firstly, as I already stated, there is no necessity to have a certain kind of feeling, like, ‘she is really inferior to me,’ and secondly, if disabled people are cured, there is, of course, no further reason to give them extra resources. They are in a good healthy condition again. Anderson’s main point is that luck egalitarianism claim that disabled people get extra resources by virtue of their inferiority and not by virtue of their equality to other people. One has to differentiate between i.) the improper special feeling of certain kind of people, who help others who are in need (‘she is really inferior to me’), and their motivation to help the needy people and ii.) the ‘true’ reason why, for instance, disabled people should be treated equally and differently at the same time. Differently, because they get extra resources according to proportional equality, and equally, because they are human beings and should be treated morally equal, according to arithmetical equality. All versions of egalitarianism have one main aspect in common and I think that Anderson ‘ignores’ this important aspect in her talk about what the reasons are to help people who are in need. The notion of ‘human dignity’ is due to – at least – four different sources: the Stoa (e.g. Cicero), the biblical talk of ‘imago dei,’ Kant (GMS) and early Socialism. Human dignity is not a privilege few people have but something, which belongs to human beings by nature, although one should add that it could not be proved but acknowledged. The very first mention of the word ‘human’ is the Latin notion ‘humanus’ in an anonymous work called ‘Rhetorica ad Herennium’ (ca. 84/83 ante Chr.), later on, this word could also be found in Cicero’s works. The Latin word ‘humanitas,’ which is the ‘abstractum’ of the word ‘humanus,’ describes ‘humanity’ not in a neutral way but gives a definition, it states: the sum of intellectual norms and practical behaviour makes out of human beings ‘true’ human beings. According to this idea of human dignity, Samuel v. Pufendorf shows in his system of natural law (‘De iure naturae et gentium libri octo,’ 1672) that the idea of the equality of human beings is due to the conception of human dignity. This thought – mediated by John Wise – had also a strong influence on the conception of the American Declaration of Human Rights (1776) regarding the idea of equality.<sup>5</sup> This whole background from the ancient roots to modern times seems to be out of sight to Anderson’s view. There is no question about it, if egalitarians speak of equality in a fundamental way, they mean that, for instance, disabled people should get extra resources, not because they are inferior but because they have the same right to be treated with respect and fairness like other people, too. They should be helped because they are human beings, like other human beings, and they are, simply speaking, in need of help.

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<sup>4</sup> This example should not be understood as a proof that Schopenhauer’s account (Über die Grundlage der Moral) is more plausible than Anderson’s view but it shows that there are different interesting accounts, which could not reasonably claim to be the only valid description of the notion ‘pity’.

<sup>5</sup> See Honecker 1990: 192-196.

The tutelage objection is against the decision-making of the state – in which category a misery should be placed – and the investigation of the citizens in order to get the relevant information for the state’s decision. This would be, in Anderson’s view, a case of putting the citizens under the tutelage of the state and harming their private sphere (Anderson 1999: 310; also Hayek 1960: 85-102). ‘Equality of fortune,’ so Anderson, says ‘that no one should suffer from undeserved misfortune’ (Anderson 1999: 310). But, in order to determine which people are allowed to get special treatment (res. extra resources) the state must make judgments on the people’s moral responsibility concerning their situation to brute or option luck (see her example of the smoker<sup>6</sup>). In citing Hayek (1960: 95-97) who states that

“(…) 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” (Anderson 1999: 310).

Anderson concludes that such a system would require the state to make ‘grossly intrusive, moralizing judgments of individual’s choices’ (Anderson 1999: 310). Hence, equality of fortune contradicts with citizen’s privacy and liberty. This would be in Korsgaard’s view (1993: 61), on which Anderson is affirmatively referring to, a disrespectful behaviour of the state:

“But it is disrespectful for the state to pass judgment on how much people are responsible for their expensive tastes or their imprudent choices” (Anderson 1999: 310).

Of course, there is some plausibility in her objection against the function of the state to decide which people are morally responsible for their situation according to brute or option luck. But, let us assume – for the sake of argument – that everybody would agree on the point to help people, who suffer from undeserved misfortune. The very question is, then, how the state could organise a system, which treats everyone fairly and with respect. It is a practical necessity that *the state* decides which people get extra resources financed by the social community. And, it should be no problem, at all, to say that if the state is spending public money, someone has to prove the legitimacy of requests. Therefore, the state needs information and this has nothing to do with harming the people’s liberty or private sphere. It is a hard thing to decide how far this gathering of information by the state should go, of course, no one would like to live in a state where Big Brother is watching you all the time, but one must acknowledge the simple fact that the state has to take precautions not to be deceived by social cheaters. If you want public money, you better should have a sound reason, if not, you might be a cheater. It is not about ‘expensive tastes’ or ‘imprudent choices’ (Korsgaard 1993), rather it is about the question if one suffers from undeserved misfortune or not. Anderson is right in stating that there are cases, which could be very complex (see her

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<sup>6</sup> “To determine whether a smoker who picked up the habit while a soldier shall get state-funded medical treatment for lung cancer, other people must judge whether he should have shown stronger resolve against smoking, given the social pressures he faced from peers and advertisers while serving in the army, the anxiety-reducing benefits of smoking in the highly stressful situation of combat, the opportunities he was offered to overcome his habit after the war, and so forth” (Anderson 1999: 310).

‘smoker case’ example) and, for this reason, might ‘undermine’ the system of distribution, but it seems to be that Anderson’s ‘smoker case’ is too extreme to be a good example for normal cases. However, life is not simple and one has also to cope with those extreme cases. But this special problem always appears according to penumbra cases, the only way out is trying to make well-informed decisions. *Not* to distribute extra resources to people, who are in need by virtue of undeserved misfortune, might be the wrong decision. You have to ask yourself if you want to live in that kind of society.

Thirdly, the objection of complexity, which had been brought into the discussion by Lucas (1965, 1977) and Rescher (1966), could also be found in the first chapter of Walzer’s book ‘Spheres of Justice. A Defence of Pluralism and Equality’ (1983: 3-30). His criticism is powerful and illuminating. The main point against egalitarianism is his assumption that the ‘spheres of justice’ are much more complicated than egalitarians believe. Their assumption that equality is the only – or most important – aim (res. principle) of justice is a false monism. There are, according to the prioritarians, other principles of distribution like the principle of merit or desert, the principle of efficiency, or the principle of qualification etc. Nearly every sphere of conduct has special principles of distribution. Krebs short commentary on a complex example given by Feinberg 1963: 89-91, in which two candidates apply for the post as a Dean of a college at Cambridge University, shows that she attacks a weak version of egalitarianism:

“Unsere Gerechtigkeitskultur ist damit >>so kompliziert wie das Leben selbst<<. Der Glaube, man könne diese Kultur im Wesentlichen über ein oder zwei Prinzipien, das Gleichheitsprinzip in Kombination mit dem Prinzip der Wohlfahrtssteigerung, einfangen, zeugt von der Philosophenkrankheit der theorieverliebten Überheblichkeit gegenüber der Wirklichkeit. Die Egalitaristen sind zu sehr >>Freunde einfacher Verhältnisse<<, um der Komplexität unserer Gerechtigkeitskultur gerecht zu werden” (Krebs 2000: 27).

As I already stated, one should not hold the assumption that ‘all’ egalitarians pursue an improper account of egalitarianism, the least do. But, of course, a sophisticated account of pluralistic egalitarianism is much more harder to attack as a simple travesty. However, Walzer’s ‘relevant reasons approach’ (or theory of ‘complex equality’) is very suitable with regard to different spheres of justice because his account considers special circumstances of the subjects in question. The main difference between his account and luck egalitarianism is, according to the ‘relevant reasons approach,’ that equality is only a by-product of the fulfilment of complex standards of justice and not the aim of justice. The question, if egalitarianism is bound to the assumption that equality is *the* only aim of justice and not also a by-product, has to be discussed in the next part, but it seems to be that there is no strong argument that supports this extreme view, it just had been taken for granted since Feinberg’s famous paper ‘Non-comparative Justice’ (1974)<sup>7</sup>.

The objection of complexity tells us that there is no possibility for egalitarians to use different kind of principles of distribution without losing their egalitarian track (e.g.

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<sup>7</sup> See Kane 1996: 380pp. for a critical discussion on Feinberg’s account.

Krebs 2000: 28p.). I am inclined to think that this assumption is wrong. Firstly, pluralistic egalitarians are not bound to one principle, only; they could also integrate other principles like the principle of autonomy, the principle of liberty and so on without betraying themselves. Secondly, the idea of equality is not restricted to a simple version of result equality (Gosepath 2003: 276), rather to a sophisticated version of proportional equality, which covers different kind of principles. Hence, there seems to be a close connection to Walzer's theory of 'complex equality,' although one would rather say that his theory is a non-egalitarian account. However, I will discuss these points in the third part of this paper in more detail.

Before I will give my own short account on the relation between justice and equality in the next part, I would like to say something about the egalitarians' assumption of 'the presumption of equality.' Isaiah Berlin stated in his famous paper 'Equality as an Ideal' (1955/56) that equality does not need any justification, but only inequality does. He gives the following example to make his assumption plausible: If someone has a cake and there are 10 people to be taken into account, than, there is no need of justification, automatically, if every person is getting a tenth part. But, if the distributor is not acting according to the principle of equal distribution, he has to give some special reasons for his decision. Frankfurt is right in his criticism of Berlin's assumption (Frankfurt 1997: chapter 2). Even if common sense justifies Berlin's 'argument,' one has to take into account that the equal distribution – in the example given by Berlin – has no moral advantage with regard to the unequal distribution. Although Frankfurt hold the same view as Berlin does – that the cake should be divided into ten equal parts – he gives a different justification concerning this distribution. The important point is, so Frankfurt, that the distributor in this example has no special reasons to divide the cake in equal parts nor to divide the cake in unequal parts. In one word, he does not know if the people should be treated equally concerning a special respect, which could justify an equal distribution, or vice versa. The distributor has no relevant information at all.

Unfortunately, there are just few philosophers who give reasons why equality needs no justification, others – as Berlin does – take it for granted and/or call for common sense or intuitions. I will present an account given by the famous German philosopher, Ernst Tugendhat (1997), who tries to show by argument that only inequality needs special reasons. According to Tugendhat, egalitarianism in the strict sense is not about material equal distribution, but about the simple fact that all people have equal moral rights (5), albeit their empirical differences (10). Prioritarians think that there are good reasons to restrict equality (14). Egalitarianism and prioritarianism are not on the same level, since egalitarians – unlike prioritarians – claim for a special proposition. Prioritarians, so Tugendhat, are not bound to a special proposition; their accounts are unlimited concerning the variety of different 'Konfigurationen,'<sup>8</sup> and hence, prioritarianism claims not for a certain proposition (11). This is the background, according to Tugendhat, to have the justified believe that there is a certain presumption of equality with regard to inequality in the moral realm, albeit this presumption is very 'thin,' but

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<sup>8</sup> The notion 'Konfiguration' means the description of duties and rights of a certain moral community (see Tugendhat 1997: 5).

it doubtlessly exists (11). In more detail: Regarding an unequal distribution one gives always some reasons why the distribution should not be equal; one is not able to do so concerning an equal distribution (13).<sup>9</sup> See the following statement of Tugendhat:

“Die Wichtigkeit des Satzes, daß eine gleiche Verteilung gerecht ist, außer daß es gute, rechtfertigbare Gründe für das Gegenteil gibt, liegt darin, daß in Fragen der Gerechtigkeit Gleichheit und Ungleichheit nicht in einem symmetrischen Verhältnis stehen und daß, was als *onus probandi* bezeichnet wird – die Beweislast –, immer beim Inegalitarier liegt. Er ist es, der Gründe angeben muß, und diese Gründe sind Gründe für die Einschränkung der Gleichheit, und das einzige, was der Egalitarier tun muß, ist, gegen die Gründe für die Begrenzung der Gleichheit, die der Inegalitarier gibt, zu argumentieren; man kann aber von ihm nicht verlangen (und es hätte auch gar keinen Sinn), Gründe dafür anzuführen, daß die Gleichheit der Ausgangspunkt ist; sie ist ja der Ausgangspunkt genauso für seinen Gegner” (Tugendhat 1997: 14).

If one accepts Tugendhat’s assumption that the primacy of equality is, lastly, due to the structure of moral justification<sup>10</sup> and not due to a false understanding of an apriori or a dark notion of reason, one might come to the conclusion that his explication is sound. Of course, there are other accounts of philosophers, but I hold Tugendhat’s account by virtue of several reasons for very interesting and illuminating. Firstly, he rightly states that egalitarianism is about moral rights in the strict sense of the notion, secondly, he is right in arguing that egalitarianism and prioritarianism are not on the same level, and thirdly, he is right in his assumption that the primacy of equality is due to the structure of moral justification. Although I find his account plausible, I will give a different approach in the following part.

### 3.

The above criticism of different philosophers on the egalitarian approach of the relation between justice and equality is to a great extent correct if one accepts the picture they draw of their opponents. They attack a travesty, an extreme view of egalitarianism hardly no one argues for and not a sophisticated version of pluralistic egalitarianism. Of course, the extreme ‘egalitarian’ view that equality – in the special sense of comparative equality – is the *only* aim of justice is wrong, but the other extreme ‘priori-

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<sup>9</sup> Tugendhat 1997: 13: ‘Es ist auch nicht möglich, den Satz, daß die Verteilung gleich sein muß, wenn es keine guten Gründe fürs Gegenteil gibt, beiseite zu lassen und einfach die Gründe für Ungleichheit aufzuzählen; wir können das nicht, weil der Sinn dieser Gründe gerade darin besteht, daß sie Gründe für eine nicht-gleiche Verteilung sind. Die Gründe verweisen also notwendigerweise auf Gleichheit, da sie Gründe dafür sind, warum die gerechte Verteilung auch gleich sein kann. Das erklärt, warum, wenn es keine Gründe dagegen gibt, die Gleichverteilung zwingend ist’.

<sup>10</sup> According to Tugendhat (1997), ‘moral justification’ means that it is an *equal* justification with respect to *all* people. The only case of a legitimate justification of inequality is the case, which could be justified with regard to all people (18). Every just distribution has to be equal, unless one is able to justify the reasons concerning the unequal distribution to all people (19).

tarian' view that equality has *nothing* to do with justice is also wrong.<sup>11</sup> The truth is somewhere in-between and I would like to say something more about this penumbra.

It seems to be that the opposition between philosophers who are egalitarians and those who are prioritarians is, as Miller (1990) already stated, a false one, and better be 'understood as a debate about whether one particular kind of equality – economic equality, say – should be pursued or not' (Miller 1997: 222). And maybe, he is right in stating that 'there are two different kinds of valuable equality, one connected with justice, and the other standing independently' (Miller 1997: 224). He suggests a so-called third way:

“Equality of the first kind is distributive in nature. It specifies that benefits of a certain kind – rights, for instance – should be distributed equally, because justice requires this. The second kind of equality is not in this sense distributive. It does not specify directly any distribution of rights or resources. Instead it identifies a social ideal, the ideal of a society in which people regard and treat one another as equals, in other words a society that is not marked by status divisions such that one can place different people in hierarchically ranked categories, in different classes for instance. We can call this second kind of equality *equality of status*, or simply *social equality*” (Miller 1997: 224).

I think Miller is right in saying that the two different notions of equality are not closely enough separated in the debate. According to Nagel (1979: chapter 3-6) everybody thinks that moral equality – or *mutatis mutandis* 'social equality' in Miller's words – is something all people acknowledge, but the crux is that the interpretations diverge, for instance, with regard to utilitarians (chapter 4), the position of individual rights (chapter 5), and egalitarians (chapter 6). I am quite sympathetic with Nagel's proposal that one has not to decide oneself between these radical different accounts of moral equality, instead he suggests, that a plausible Social Ethics would be influenced by all three accounts (chapter 7). However, I disagree with Miller's assumption that social equality is something that is not part of justice. Tugendhat is right in stating that egalitarianism in the strict sense is about moral rights, hence, if I understood him rightly, social equality as such is one part of justice. If you restrict someone's moral rights, you better give sound reasons why you do not treat him equally according to others, if you are not able to give a plain justification, you treat him unjustly. And this has, normally, nothing to do with any kind of distributions, although Miller seems to hold the claim that moral rights could also be distributed, which I would deny by virtue of reasons I already gave.

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<sup>11</sup> There are, at least, four different aspects, which show that justice and equality are (closely) connected with each other: Firstly, according to prioritarians equality is important as a by-product for the fulfilment of absolute standards, for instance, human dignity. Secondly, relational (res. comparative) equality is one aspect of justice among others; one needs relational equality in order to yield e.g. legal equality, equality of chances, or antidiscrimination laws. Thirdly, equality as a starting point with regard to political autonomy, social membership, or liberty of exchange; since absolute standards presuppose that people's life prospects are more or less the same. Fourthly, equality is a result of political autonomy; there might be special cases – e.g. the Norwegian public oil reserves – according to which an equal distribution is rightly demanded.

Some egalitarians cite Aristotle's famous propositions that, firstly, it is just that equal people get equal shares and unequal people get unequal shares, and secondly, it is unjust that equal people get unequal shares and unequal people get equal shares (EN V, 6) to back up their main hypothesis that the presumption of equality follows directly from Aristotle's account of formal equality. But, they did not analyse the whole context of these propositions, which I will cite at length to show that one should better not ground the argument of 'the presumption of equality' on this passage. Instead, with respect to another point, the passage could be turned against the prioritarian view that egalitarians are bound to a form of result equality.

“καὶ ἡ αὐτὴ ἔσται ἰσότης, οἷς καὶ ἐν οἷς· ὡς γὰρ ἐκεῖνα ἔχει, τὰ ἐν οἷς, οὕτω κάκεῖνα ἔχει· εἰ γὰρ μὴ ἴσοι, οὐκ ἴσα ἔξουσιν, ἀλλ’ ἐντεῦθεν αἰ μάχαι καὶ τὰ ἐγκλήματα, ὅταν ἢ μὴ ἴσα ἴσοι ἢ μὴ ἴσοι ἴσα ἔχωσι καὶ νέμονται. ἔτι ἐκ τοῦ κατ’ ἀξίαν τοῦτο δῆλον· τὸ γὰρ δίκαιον ἐν ταῖς νομαῖς ὁμολογοῦσι πάντες κατ’ ἀξίαν τινὰ δεῖν εἶναι, τὴν μέντοι ἀξίαν οὐ τὴν αὐτὴν λέγουσι πάντες ὑπάρχειν, ἀλλ’ οἱ μὲν δημοκρατικοὶ ἐλευθερίαν, οἱ δ’ ὀλιγαρχικοὶ πλοῦτον, οἱ δ’ εὐγένειαν, οἱ δ’ ἀριστοκρατικοὶ ἀρετὴν. ἔστιν ἀρα τὸ δίκαιον ἀνάλογόν τι” (Aristoteles EN V, 6 1131a20-1131a29).<sup>12</sup>

Of course, Aristotle is right in saying that there is always trouble if unequals get equal shares, that means, if equals get unequal shares or unequals get equal shares (εἰ γὰρ μὴ ἴσοι, οὐκ ἴσα ἔξουσιν, ἀλλ’ ἐντεῦθεν αἰ μάχαι καὶ τὰ ἐγκλήματα, ὅταν ἢ μὴ ἴσα ἴσοι ἢ μὴ ἴσοι ἴσα ἔχωσι καὶ νέμονται). But, there is no claim in the cited passage, which says that all people should be treated equally (presumption of equality), rather all people should be treated equally *according* to a special ἀξία, namely the πολιτικὴ ἀρετή, but this is a different story (proportional equality). According to Aristotle's account of justice in Book V of the Nichomachean Ethics one has to acknowledge the fact that the proposition 'equals should get equal shares' is due to the principle of proportional equality (distributional justice), and should not be seen under the heading of justice 'τὸ ἐν τοῖς συναλλάγμασι διορθωτικόν' (Aristotle EN V, 5 1131a) – where the principle of arithmetical equality exists – which is about justice concerned with exchanges according to reciprocity (EN V, 8) and retributive justice (EN V, 7). To put it in a nutshell, the formal principle of equality – equals should get equal shares *or* in a different formula equal cases should be treated equally – is empty, and the prioritarians, on the one hand, are right in saying that egalitarians are wrong in their assumption that the presumption of equality is due to this formal principle. Aristotle's approach to fill it is his account of proportional equality. And there is, on the other hand, no sound argument in sight – with respect to the debate between egalitari-

<sup>12</sup> “And the same equality will exist between the persons and between the things concerned; for as the latter – the things concerned – are related, so are the former; if they are not equal, they will not have what is equal, but this is the origin of quarrels and complaints – when either equals have and are awarded unequal shares, or unequals equal shares. Further, this is plain from the fact that awards should be according to merit; for all men agree that what is just in distribution must be according to merit in some sense, though they do not all specify the same sort of merit, but democrats identify it with the status of freeman, supporters of oligarchy with wealth (or with noble birth), and supporters of aristocracy with excellence” (Barnes 1995).

ans and prioritarians – that would claim for the special proposition that egalitarians are bound to ‘result equality,’ only, and not also to ‘proportional equality’ within a sophisticated version of pluralistic egalitarianism (e.g. Gosepath 2004). Maybe, some prioritarians forget the simple point that there are two ways of taking other people’s condition into account, firstly, by proportional equality, and secondly, by stipulating absolute standards of justice.

Equality as *the* only aim of justice or as a *mere* by-product of justice is an unhappy distinction to follow. Justice cannot be reduced to equality alone and the importance of equality is too great to be a mere appendage. The prioritarians are right in their criticism that it would be absurd to strive for equality for its own sake; but they forgot that hardly any sophisticated version of egalitarianism is doing so (or would do so). Of course, it would be absurd if people hold the view that all human beings should be treated equally by virtue of the simple fact that the ideal of equality should be fulfilled for its own sake. Instead, the demand of treating people morally equal<sup>13</sup>, maybe, gives some hints for *equal* distributions in other spheres.<sup>14</sup> But, as Walzer nicely puts it, nearly each sphere needs its own standard, and therefore, it might be right not to choose between the egalitarian or prioritarian view but to combine both accounts. According to this, Gosepath 2001 rightly suggests that proportional equality could be a good basis for a sound discussion between egalitarian and prioritarian theories of justice.

There is a close connection between justice and equality, firstly, a conceptual connection, and secondly, a normative connection. First, equality is a necessary condition for justice, since one is not able to give a full explication on the notion of justice without taking formal and proportional equality into account (see Aristotle EN V). The stipulation of absolute standards of justice, for instance human dignity, is something, which should be incorporated. But it should be clear that the stipulation of absolute standards is not enough, one should also take the egalitarian model into account. Aristotle is certainly right in saying that justice is always *πρὸς ἕτερον*. To examine the right share one has to take, at least, two things into account: i.) What is the *ἀξία* of distribution (e.g. merit, desert, virtue etc.)? and ii.) The people must be compared with respect to each other’s portion of *ἀξία*. Second, in his famous example of a ruler who fries his subjects in oil and, afterwards, also fries himself Frankena (1962: 1 and 17) is rightly stating that the ruler acts immorally but not against ideal of equality. This is the reason why formal and proportional justices form a necessary but not a sufficient condition. The normative connection between justice and equality tries to solve this problem by using ‘moral equality’ – which is the main aspect of this connection – as a shield against such and alike cases Frankena describes. In this paper I am not defending the claim of treating people as equals, I presupposed the rightness of the claim for

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<sup>13</sup> According to Gosepath 2004: 184 one could say the following on ‘moral equality’: ‘Moralische Gleichheit beinhaltet vor allem: einen Anspruch auf gleiche Anerkennung und Sicherung der individuellen Autonomie; einen Anspruch auf gleiche Würde, auch wenn das substantiell kein neuer oder konkreter Gesichtspunkt ist; und ein Verbot primärer Diskriminierung, worunter eine Ungleichbehandlung unter der Annahme gegebener Wertunterschiede zwischen Menschen zu verstehen ist, die angeblich unterschiedliche (oft proportionale) Ansprüche rechtfertigen’.

<sup>14</sup> On this topic see Gosepath 2001.



the sake of argument here, but it is certainly right that this is a hard problem to cope with.<sup>15</sup> However, Gosepath (2001, 2004) is making an interesting proposal to derive ‘the presumption of equality’ and his principle of ‘a liberal-egalitarian distributional justice’ from ‘moral equality.’ Both parts, in his view, are additional components according to the normative connection between justice and equality.<sup>16</sup>

What remains is that we are still in the beginning of giving a sound approach both sides – egalitarians and prioritarrians – can live with, but the journey has not yet begun. The aim of this paper was to clear the ground for this ‘new’ and fairer discussion.

#### 4.

Justice is not only about treating people morally equal or to give everybody his due, but it entails – according to Aristotelian thought – a way of living a good life. Of course, nobody really wants to live in a society that treats people morally unequal or distributes resources not according to everybody’s due. This is not the world we would like to live in. Therefore, it should be no problem to help people, no matter if they got into trouble on their own. They are human beings and they have human dignity, hence, we must help them if some of them struggle or need help. And no theoretical discussion could prove vice versa, there is no sound argument in sight that could convince ‘a good man’ (φρόνιμος) not to help a human being who is in need, no matter if it is his fault or it is up to the circumstances etc. It is time for the discussion to come down on earth again. Of course, it is not only about looking at other people and comparing their condition with one’s own; there is no sound reason for people to be envious or to feel superior with respect to other people. We are all human beings with different talents and with a great variety of life prospects, which is due – to a great extent – to the circumstances we are living in. And again, it is human dignity that says we are all morally equal and it is our duty as human beings to care for people, who are worst off or badly off wherever they are. Resources – to help all of them – are limited, and therefore, the priority principle is a good way to cope with this problem, without saying that this is the *only* way; it is a good start, but has to be accompanied by other egalitarian considerations. The truth is that this debate had been long enough in the ivory tower of philosophy. It is time for a change.

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<sup>15</sup> On this very interesting issue see Cupit 2000, although I did not share his view that individualism is the basis for treating people as equals: ‘And further, I want to suggest that we should understand the claim that we are to be treated as equals as following from the claim that we are to be treated as incomparable’ (120).

<sup>16</sup> By virtue of pragmatic reasons I am not able to discuss his account in this paper. The reader is kindly asked to make himself familiar with Gosepath’s approach.

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