

GLOBAL JUSTICE AND THE MORAL ARBITRARINESS OF BIRTH

Many believe that we ought to neutralize (or at least mitigate¹) inequalities in socioeconomic prospects that are the result of unchosen features of our circumstances. According to this view, it is unfair if, for example, some children in the U.S. are born with lower prospects than other U.S. children solely because of, say, their gender, or race, or the social class of their parents. How could it be right for some U.S. children, through no fault or choice of their own, to do systematically and predictably worse than others over the course of their lives? Rectifying this morally arbitrary source of unfairness in the distribution of social benefits and burdens is seen as one of the central demands of any plausible theory of socioeconomic justice. Call such views *left-liberal*. It is important to note that left-liberal egalitarians are not committed to what has been called *luck-egalitarianism*. Luck-egalitarians assert *not only* that we ought to neutralize or mitigate inequalities in socioeconomic prospects that are the result of unchosen factors *but also* that we should *not* aim to rectify inequalities that are the result of choices taken against a fair background of opportunities. Left-liberals need not affirm that further aim.² So left-liberal egalitarianism is a much broader church.

The question I want to address in this paper is whether the endorsement of left-liberal egalitarianism commits one to *global* egalitarianism, namely the thesis that the egalitarian demand to neutralize or mitigate unchosen inequalities in prospects extends across all persons.³ Many have thought it obviously does.⁴ It is, after all, to no one's credit, or choice, or effort, that they were born in the United States rather than in Mali, and yet country of birth has a much larger effect on prospects, on average, than either class of origin, gender, or race. So if we have a *pro tanto* reason to rectify differences in prospects at a *domestic* level solely due to factors such as social class of origin, gender, or race—precisely because they are

unchosen aspects of our circumstances—then we must have the very same reasons to rectify differences in prospects due to country of birth at a *global* level. Call this the ‘argument from the moral arbitrariness of birth’. According to Simon Caney, ‘this reasoning is, I believe, either explicitly or implicitly present in almost all defenses of cosmopolitanism’.⁵

The argument is elegant in its simplicity. From a few widely shared premises a radical and far-reaching conclusion is derived. Indeed, it seems to sweep away, in a single blow, not only the idea that left-liberal egalitarianism might have narrower than global scope but also the thought that the degree, extent, or depth of social interaction is at all relevant in the basic formulation and justification of principles of justice. This last implication is worth emphasizing since it touches on one of the most basic questions regarding egalitarian justice, namely the question whether such obligations are only triggered in the presence of relevant forms of social interaction.⁶ Does egalitarian justice generate demands only among those who, for example, wield direct and comprehensive coercive political power over one another? Or, on the contrary, does egalitarian justice hold among persons regardless of whether they are engaged in any kind of social interaction? Does the demand for equality apply to persons *as such* or only to persons *who stand in some social relationship*?⁷ (I shall call views that defend the dependence of egalitarian justice on facts about social interaction *relational*⁸ and those that deny this dependence, *nonrelational*.⁹) If the argument from the arbitrariness of birth goes through, then that would be a direct route from left-liberalism to the conclusion that egalitarian obligations apply to persons as such, and hence that nonrelationalism is true (if left-liberalism is true). It is, after all, just as much an unchosen aspect of our circumstances to be born in this or that country, or, indeed, this or that *scheme of social interaction*—whether characterized in terms of coercion, mutual exchange, or any other type of social interaction—as it is to be born in this or that *family*. Simon Caney draws just this implication of the argument from the moral arbitrariness of birth:

If we accept [the argument from the moral arbitrariness of birth] (and it is a powerful line of reasoning), it causes problems for a [relational] perspective. Can someone not equally persuasively argue that “one’s life prospects of one’s access to opportunities” should not depend on “morally arbitrary” considerations such as which [relational] scheme one is born into? . . . [I]f it is arbitrary for some to face worse options because they come from a particu-

lar nation, is it not equally arbitrary to penalize someone for coming from a particular institutional scheme? The logic of the intuition underpinning cosmopolitanism thus subverts a [relational] perspective.¹⁰

So powerful is the argument usually taken to be that the burden of proof has been thought to lie squarely on the side of any left-liberal who wants to defend a relational and/or nonglobalist conception of distributive justice.¹¹

The argument from the arbitrariness of birth is, however, flawed. I will demonstrate that, on one reading, the argument is question-begging; on another, it is invalid. In the conclusion, I will then draw some implications for the global justice debates.

1. Comparative

Let us first write down the most straightforward elaboration of the argument from the arbitrariness of birth, which I shall refer to as *Comparative*:

- (1) We ought to neutralize (or mitigate) differences in prospects due to unchosen circumstances.
- (2) Country of birth is an unchosen aspect of our circumstances.
- (3) Therefore, we ought to neutralize differences in prospects that are due to country of birth.
- (4) Therefore, we ought to aim for global equality in prospects.

A few remarks regarding each of the premises are in order. (1) is neutral with respect to what counts as both a ‘prospect’ and an ‘unchosen circumstance’. A ‘prospect’ is construed here as a term of art standing in for any candidate currency of justice. The unequal prospects which we should aim to neutralize might, that is, be specified in terms of resources, welfare, capabilities, opportunities or some combination of the four. It makes no difference to the argument. Similarly, what counts as an ‘unchosen circumstance’ is, of course, a matter of dispute among left-liberals. The important point for the argument is that on any (plausible) interpretation of that distinction, (2) will always come out true: country of birth would not count, on any (plausible) view, as something which we have chosen or merit in any relevant sense. This is good news for *Comparative*, since it

means it is compatible with the full range of left-liberal theories of distributive justice, and hence quite general.

The problem with this argument is that the conclusion at (4) follows from the premises only if we clear up an ambiguity in (1), but doing so renders the argument trivial. (1) says that we ought to neutralize *differences in prospects* due to unchosen circumstances. ‘Differences in prospects’, however, just means *inequalities in prospects*. Put another way *Comparative* says that departures from equality are *pro tanto* (or at the very least *prima facie*) unjustified if they are the result of people’s unchosen circumstances. But this reformulation makes it very clear that equality is here *assumed* as a baseline rather than *derived* as a conclusion.¹² The argument therefore only goes through if, as I said, we first resolve an ambiguity regarding the *scope* of equality. Are the relevant ‘differences’ in (1) global or narrower than global? To make the argument valid, we must supply the missing modifier ‘global’ before ‘differences’; otherwise, it straightforwardly fails. (1), that is, should read, ‘We ought to neutralize [global] differences in prospects due to unchosen circumstances’ which would make (3), ‘Therefore, we ought to neutralize [global] differences in prospects that are due to country of birth’. But if we do that, the argument becomes trivial. We might as well write:

- (a) We ought to neutralize global differences in prospects.
- (b) Therefore, we ought to aim for global equality.

Are we moving too quickly? What if we modify ‘differences’ in (1) with ‘domestic’ and ‘differences’ in (3) with ‘global’? The argument would no longer be trivial; indeed, it seems to be exactly what is required:

- (1’) We ought to neutralize [domestic] differences in prospects due to unchosen circumstances.
- (2) Country of birth is due to unchosen circumstances.
- (3’) Therefore, we ought to neutralize [global] differences in prospects that are due to country of birth.
- (4) Therefore, we ought to aim for global equality in prospects.

The problem with this patch is that (3'), and therefore (4), does not follow. To see why, consider what would be the case if the argument were valid. If the desired transformation of 'domestic differences' in (1') to 'global differences' in (3') were successful then one could not validly replace the 'global' in (3') with 'domestic', since (3') would be compelled by the argument. But consider just such a replacement:

- (1') We ought to neutralize [domestic] differences in prospects due to unchosen circumstances.
- (2) Country of birth is due to unchosen circumstances.
- (3'') Therefore, we ought to neutralize [domestic] differences in prospects that are due to country of birth.
- (4') Therefore, we ought to aim for [domestic] equality in prospects.

This argument strikes me as valid. The key here is whether we can construe (3'') in a plausible way. But there seems to be no problem doing so. (3'') says that we should add country of origin to the list of unchosen circumstances that do not justify unequal treatment at a domestic level (alongside, for example, race, class, gender). It says, for example, that we *pro tanto* ought not, in arranging our domestic institutions, to discriminate against people solely because of their country of origin; country of origin is a factor 'arbitrary from a moral point of view' and therefore cannot justify differential treatment at the bar of justice.¹³ The validity of this argument shows conclusively that (2) does nothing to transform 'domestic' into 'global' as was hoped.

The failure of *Comparative* has little to do with the underlying pattern, namely equality. Indeed, because the distinction between factors due to unchosen circumstances and those due to choice or merit does nothing to establish any one particular pattern, *Comparative* can be generalized (and so, therefore, can its failure). Take *General*:

- (5) We ought to neutralize departures from [domestic/global] baseline pattern *y* that are due to unchosen circumstances.
- (6) Country of birth is due to unchosen circumstances.

- (7) Therefore, we ought to neutralize departures from [domestic/global] baseline pattern y that are due to country of birth.
- (8) Therefore, we ought to aim for a [domestic/global] baseline pattern y .

General can take any value for y . The baseline pattern y could, for example, be specified by prioritarian, sufficientarian, or utilitarian standards. In all these cases, the argument would still be unsuccessful.

Is there a more general explanation of this failure? There is. The key point is that the distinction between unchosen circumstances and choice (or merit) serves what Susan Hurley calls a *filtering* role, operating only on the currency of justice but not on its pattern.¹⁴ In other words, the distinction tells us which aspects of a person's prospects are a matter of concern for us but it does not tell us how to structure prospects with that information.¹⁵ To illustrate: Set prospects among a group of persons to your favored default baseline distribution (e.g., equality, priority, etc.). Then allow some to better their situation through a series of good choices; allow others to do better as a result of unchosen circumstances. Now assume, to simplify, equality as a baseline and resources as a currency, person x_1 goes from 10 to 20 by making good choices; person x_2 goes from 10 to 20 as a result of unchosen circumstances. The choice-circumstance filter tells us that while the 20 x_1 ends up with is not (necessarily) up for further distribution, the extra 10 x_2 has acquired are not legitimately his, and can be used for other purposes (e.g., to equalize prospects among all other persons in the domain of the pattern). The distinction does nothing to set the baseline, or distributive pattern, just as the arguments above demonstrated. In particular, it does not state anything about the set of persons that are included in the pattern's domain: x_2 's extra 10 units could be legitimately used, for all we know, to equalize, prioritize, maximize, etc., the prospects of the set of persons $\{x_1, \dots, x_n\}$ for any value of n . If this is correct, it helps us to see why one cannot go from 'domestic' in (1') to 'global' in (3'): if the choice-circumstance distinction only tells us which aspects of a person's prospects are legitimately his, and it does not tell us anything about the pattern (including the scope) that ought to be realized with the resources that are not properly his, then the argument cannot succeed. We would need some independent argument for extending the scope of justice. This explains, and further confirms, why *Comparative* cannot ground global or nonrelational egalitarianism.

2. *Counterfactual*

Is there a way of recasting the schema in a way that avoids including the conclusion in the premises? A candidate might be a schema that *derives* the globally egalitarian pattern from the aim to neutralize the effects of unchosen circumstances. This is *Counterfactual*:

- (9) We ought to neutralize (or mitigate) the effects of unchosen circumstances on prospects.
- (10) Country of birth is an unchosen circumstance.
- (11) Therefore, we ought to neutralize the effects of country of birth on prospects.
- (12) Therefore, we ought to aim for global equality in prospects.

Once again, the use of ‘prospects due to unchosen circumstances’ in (9) is meant to be neutral with respect to both the variety of views on the distinction between unchosen circumstances and choice or merit and the way ‘prospects’ are specified. (10) is, as before, uncontroversial. (11) follows from (9) and (10). The argument to (12) is, however, invalid: (12) doesn’t follow from (9)–(11).

Notice, first, that we can neutralize the effects of unchosen circumstances on prospects, as (9) requires, without making a comparative judgment. For example, we can ask what it would take to neutralize the effects of unchosen circumstances on Robinson Crusoe’s prospects. RC has a choice: he can either collect three coconuts careening towards the water, or he can climb a tall tree and collect a further ten, risking the chance of falling and breaking his leg. Assume he knows the probability of the unwelcome outcome. He climbs the tree, falls, and breaks a leg. We say that the outcome was not a result of an unchosen circumstance in the relevant sense, since it was both reasonably avoidable and foreseeable. We need not be under any obligation, in this case, to seek ways to neutralize the results of RC’s choice. But say his hut was blown down in a hurricane. Here we would say that the unfortunate outcome is surely the product of unchosen circumstances, since he could neither foresee nor avoid the hurricane. Neutralizing its effects, in this case, would require helping him to rebuild, or otherwise compensating his loss. All that is

required in each case, and other similar ones, is to determine the counterfactual baseline—viz., what the profile of RC's prospects would have looked like had those prospects not been influenced by unchosen circumstance—and then aim to restore him to it (or at least move him closer to it).

Leave aside for the moment the difficulties involved in specifying the baseline. Let us assume the baseline is easily determined across the full range of prospects that are the result of unchosen circumstances not only for RC but for each and every actually existing person. Suppose that we have gone ahead and neutralized the effect of unchosen circumstances on prospects in the same way we did for RC, including the prospects that flow from country of birth. What guarantee do we have that the resulting distribution will be *equal*? Why must the counterfactual result of people's choices in a possible world cleansed of unchosen circumstances necessarily (or even probably) result in egalitarian prospects? Given the tremendous variety of influences that determine any one person's prospects, it would be nothing short of miraculous if neutralizing unchosen circumstances in this way left everyone with egalitarian prospects. (12) doesn't follow from (9)–(11).

But no matter. So far we have assumed that we could, at least in principle, leave aside difficulties in specifying the baseline (i.e., what our prospects would have been had they not been the result of unchosen circumstances). But is this plausible? If it is not, then *Counterfactual* never really gets off the ground in the first place. The specification of such a baseline is, however, intractable: the aim to neutralize the effects of unchosen circumstances *tout court* generates no determinate baseline, even in RC's case.¹⁶ Consider that RC's having ended up on a coconut-rich island is itself an unchosen circumstance. He could have ended up on not only a deserted island but a desert island. According to (9), does that mean we ought to sequester all his coconuts when he ends up on a coconut-rich island? Or does it rather mean that, were he to end up on the desert island, we should give him all the coconuts he would have collected on a coconut-rich island? But how many coconuts would that be? Would it be the most coconut-rich island in the actual world or in all possible worlds? An average coconut-rich island? These problems are compounded when we consider less straightforward cases. Suppose a talented juggler lives a comfortable and pleasant life plying his trade. His considerable talents, let us assume, are all traceable to mere genetic luck (and

hence are aspects of his unchosen circumstances). What would neutralizing the effects of unchosen circumstance require in his case? We need to specify what the relevant prospects would have been had he not been born with his juggling-related talents. But how can we possibly know what he would have achieved without them? How can we even know what his ambitions would have been? He might have been an author making millions, or a surfer. Should we give him the millions or leave him with the surfer's meager income? The same problem plagues any attempt to determine what an individual person's prospects would have been had the effects of their country of birth been neutralized. Indeed, it seems as if being born *anywhere* is, itself, an unchosen circumstance. But if that's true, then what meaning can it have to neutralize it? The problem is not only an epistemic one. It is not simply that we cannot know what such a counterfactual world would have been like; rather, the specification of such a world is itself indeterminate.¹⁷ This is particularly clear if we consider that what some person x 's prospects would have been in a possible world w depends not only on what he or she would have desired in w but also on what the desires, prospects, plans, etc., of everyone else in w would have been. Presumably the correct specification of w requires us to ask what x 's luck-neutralized baseline would have been had everyone else received what their luck-neutralized baseline requires. This is a system of simultaneous equations with as many variables as there are persons, but with only one equation—a system, that is, with an infinite number of solutions.

3. *Moral Equality*

One might object that the argument from the moral arbitrariness of birth need not make any appeal to the distinction between choice or merit and unchosen circumstance. One might argue, for example, that the distinction between choice or merit and unchosen circumstance as it operates in left-liberalism is much too strong and controversial; but that is no problem, since one can use, instead, a much weaker¹⁸ and less controversial basis for judgments of 'arbitrariness'. Take, for example, Rawls's notion of 'formal justice': 'institutions are just when no arbitrary distinctions are made between persons in the assigning of basic rights and duties and when the rules determine a proper balance between the competing claims to the advantages of social life'.¹⁹ Were a set of principles assigning basic

rights and duties to privilege certain classes of persons on arbitrary grounds, those principles should be rejected. Mere country of birth is an arbitrary distinction between persons, so one should reject any argument that admits country of birth as an entitlement-generating property.

The argument is straightforwardly fallacious as an argument against relational or nonglobalist views.²⁰ It is certainly true that, *were* relational or nonglobalist views to affirm mere country of birth (or, what amounts to the same thing, simply being born in some relational scheme) as itself sufficient reason to endorse relationism, then the argument would be faulty and arbitrary. But no plausible relational or nonglobalist view believes that country of birth *as such* is a relevant reason. Rather, relational and nonglobalist views point to what they conceive to be morally *relevant* features of social interaction—such as mutual exchange, coercion, framing, etc.—as reasons for affirming their views. But those features only *contingently* track where people happen to be born. Relational and nonglobalist views, after all, do not doubt that all persons are owed reasons they cannot reasonably reject for accepting a scheme, including a global scheme. They just believe that aspects of social interaction relevantly alter the moral relations in which we stand, and hence the principles that are appropriate for governing them. This is a justification that provides, they hold, relevant *nonarbitrary* reasons for taking a relational or nonglobalist position. To be plausible, the objector must apply to some more substantive reason for rejecting relational or nonglobalist views; the thought that in our world the relational scheme we happen to have the opportunity to participate in it is (in most cases) an unchosen circumstance, and *for this reason* relational and nonglobalist views should be rejected, is one such candidate, which is why I have discussed it at greater length above.²¹

4. Conclusion

Nothing I have said here supports the conclusion that nonrelationism or global egalitarianism is demonstrably false. Forms of nonrelational or global egalitarianism that do not depend on the argument from the moral arbitrariness of birth might well, for all I have said, be true. But the argument presented in this paper does suggest that those who believe that distributive egalitarianism applies to persons as such, and who ground their case in the moral arbitrariness of birth, still owe us an explanation why. If this

is right, nonrelational or global equality cannot be simply used as a moral default or baseline from which to assess the current international system.²²

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NOTES

1. I say 'neutralize (or at least mitigate)' because some egalitarians, such as Ronald Dworkin, only aim to *mitigate* but not to *neutralize* the effects of unchosen circumstances. See Dworkin (2003, 191). This nuance does not affect the structure of the argument presented here, so I mostly leave it aside in what follows.

2. John Rawls, for example, is in this sense a left-liberal but not a luck egalitarian.

3. By 'all persons', I mean all actually existing persons. I leave aside the question whether the argument from the moral arbitrariness of birth, if successful, should also lead one to accept the conclusion that egalitarianism should also apply to all persons, past and future.

4. See, e.g., Caney (2005, 123), (2008, 505–56); Tan (2006, 319), (2004, 56); Richards (1982, 290); Beitz (1983, 593); Pogge (1989, 247; 1994, 198); Moellendorf (2002, 55); Barry (1989, 239; 1991, 226).

5. Caney (2001, 115).

6. My use of 'egalitarian justice' and its cognates is meant to be fairly ecumenical, including both the set of principles that evince some concern with narrowing the gap between better and worse off individuals over an entire life (leximin, strict equality, equality of opportunity, etc.), and the set of prioritarian principles that, though not comparative, would produce, in normal circumstances, distributions with a strongly egalitarian character (i.e., where the weights attached to the well being of worst off individuals over an entire life are significant).

7. In saying 'persons as such', I mean to restrict the domain of equality to actually existing persons. I leave aside the important question whether nonrelationists are bound to affirm an even more unrestricted form of egalitarianism (one, for example, that also includes, e.g., nonhuman species or all generations that have ever lived or will ever live).

8. Sometimes the term 'associativism' is used to denote what I have called relationism; see, e.g., Moellendorf (2002). One reason why I do not use this term is that it is often used slightly differently, namely in the context of obligations generated by psychological ties of fellow-feeling; cf. critiques of 'associative obligations' in Simmons (1996); Wellman (2000). Relational views include associativist views of this kind, but are not limited to them.

9. More precisely: for all actually existing persons x and y , one has (*pro tanto*) obligation to φ so as to realize a distribution D that meets criteria C if and only if xRy , where R is some relevant relation, and where φ can be some action either aimed or not aimed at reforming or establishing a social or political institution. The *content* of the principle is given by C (e.g., pick the distribution D out of the set of feasible distributions such that C = the worse off individual is as well off as possible), the *grounds* by the relevant relation R , and the *site* of distributive justice by φ . The *scope* refers to the range of persons who stand in the relation R . Nonrelational views say that the relevant relation R tying together

x and y is humanity; relational views say that the relevant relation R tying together x and y is some social interaction. D could be a matrix representing each person's holdings, welfare, capabilities, etc. (in which case C would be 'patterned' in Nozick's sense), or it could be a matrix defining each person's negative rights, in which case C is not patterned. In this paper, we are concerned with relationism about *egalitarian justice*, namely values for C that require us to narrow the gap between better and worse off who stand in relation R across entire lives.

10. Caney (2005, 111–12).

11. Consider that arguments in favor of statism, internationalism, and nationalism in the literature often, at some point, grapple with the argument. See, e.g., Blake (2001, 257); Nagel (2005, 16); Sangiovanni (2007, 24–5); Miller (2007, 31–33).

12. Cf. Hurley (2003, 66–67, 156).

13. Cf. the U.S. Supreme Court's application of a strict equal protection analysis in cases involving non-citizens, such as *Graham v. Richardson* 403 U.S. 365 (1971), in which several State laws providing welfare benefits only to U.S. citizens (or those who had been resident for at least 15 years) were struck down. The Court claimed that 'the Arizona and Pennsylvania statutes in question create two classes of needy persons, indistinguishable except with respect to whether they are or are not citizens of this country' at 371. Also see Article 9 of the South African Constitution: 'The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth'.

14. Hurley (2003, 150ff).

15. This should come as no surprise, given the way concerns with responsibility have developed as responses to the 'Equality of What?' debates. See, e.g., Cohen (1989).

16. For this point, see Hurley (2003, 162ff).

17. In the text, I provide a reason for thinking that the indeterminacy problem is not merely epistemic. For an argument that it wouldn't matter either way, see Hurley (2003, 167).

18. Weaker because it is entailed by left-liberalism, but not the reverse.

19. Rawls (1999, 5).

20. I.e., an instance of an *ignoratio elenchi*. David Miller makes a similar point in Miller (2007, 31–33); see also Abizadeh and Gilabert (2008, 364).

21. The same goes for appealing to the idea of moral equality, the idea that all persons are owed equal, ultimate, and general moral concern and respect. There is no reason to think that moral equality entails, by itself, any kind of *distributive* equality. For this point, see Blake (2001). At most, the idea of moral equality provides further grounds for a principle of formal nondiscrimination, a principle that says that any principle should be justifiable to all concerned parties in terms they could not reasonably reject, where the notion of reasonable rejection is taken in a formal way (rather than the more substantive way proposed by Scanlon in *What We Owe To Each Other*).

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