

Values for Foxes? A Comment on Kyle Johannsen's *A Conceptual Investigation of Justice*¹

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“The fox knows many things, but the hedgehog knows one big thing. Value is one big thing.”²

ABSTRACT: This paper provides a critical rejoinder to some themes in Kyle Johannsen's *A Conceptual Investigation of Justice*. The discussion focuses on Johannsen's analysis of fundamental value pluralism and identifies a number of challenges to the form of value pluralism defended by Johannsen. I suggest that Johannsen's analysis fails to explain how conflicts between fundamental values can be resolved, and that there is greater harmony between fundamental values than Johannsen recognizes.

RÉSUMÉ : Cet article propose une réponse critique à quelques thèmes du livre de Kyle Johannsen, *A Conceptual Investigation of Justice*. La discussion se penche sur l'analyse du pluralisme fondamental de la valeur proposée par Johannsen et met en cause cette même analyse. Je soutiens que l'analyse proposée par Johannsen ne parvient pas à expliquer comment des conflits entre des valeurs fondamentales peuvent être résolus et qu'il y a davantage de convergence entre des valeurs fondamentales que ne le reconnaît Johannsen.

Keywords: justice, value pluralism, luck egalitarianism, John Rawls, G.A. Cohen

¹ Kyle Johannsen. 2018. *A Conceptual Investigation of Justice*. (New York, NY: Routledge). Page numbers unless otherwise attributed are from this book.

² Dworkin, *Justice for Hedgehogs*, p. 1.

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Introduction

In his fine book, Kyle Johannsen sides with the fox. He embraces a strong form of value pluralism in which fundamental values pertinent to assessing social and political arrangements conflict. Justice, in particular, is just one value and does not, on its own, provide an authoritative normative standard for evaluating basic political structures and the distribution of benefits and burdens they effect. In this commentary, I hope to push Johannsen gently toward the hedgehog. That is, I shall suggest some ways in which justice and other normative considerations are more harmonious and integrated than Johannsen allows. But let me begin by commending Johannsen on writing this stimulating, insightful and intellectually provocative book. Although I will devote most of my remarks to raising some puzzles and questions about Johannsen's arguments, the book is a welcome addition to contemporary theorizing about justice and it provides an illuminating perspective on debates between those sympathetic to a Rawlsian understanding of justice and those who are drawn to so-called luck egalitarianism of the sort championed by G.A. Cohen.³ Indeed, Johannsen offers an interesting and original diagnosis of recent disputes in political philosophy about the nature of justice and the proper domain of judgements of justice. On Johannsen's view, Rawlsians are typically concerned to articulate a conception of justice that is suitable for assessing the overall moral adequacy of basic institutional arrangements. Rawlsians seek a theory of justice that will guide the design of institutions. By contrast, theorists such as Cohen espouse a variety of value pluralism in which justice, though normatively important, is just one of a variety of fundamental but defeasible values. On this view, final judgements about what institutions are appropriate given different factual circumstances require attention to a plurality of fundamental values such as efficiency, compassion and liberty. On the pluralist view, appropriate institutional design in particular circumstances may require trade-offs between values. For instance, fairness may need to be tempered by compassion; equality may need to be balanced against efficiency. But pluralists, on this view, insist upon a kind of purity of value, especially with respect to the value of justice: justice is a single value with particular normative requirements; it is not to be confused with an integrated set of normative considerations that provides complete guidance for institutional design.

As the title of the book suggests, Johannsen intends his diagnosis of recent debates about justice to be conceptual and he hopes to show that conflicts between luck egalitarians and Rawlsians reflect failures to adequately appreciate relevant conceptual distinctions. This claim is tied to the overarching aim of the book to rehabilitate the general role of conceptual analysis to theorizing about justice of a sort that Johannsen thinks has fallen out of fashion in recent political philosophy. Along the way, Johannsen defends a luck egalitarian

³ See Cohen, *Rescuing Justice and Equality*.

conception of justice but argues that suitable attention to conceptual distinctions between values allows us to avoid the mistake of thinking that luck egalitarianism on its own provides a suitable standard for designing institutions and social policies. He also offers some astute observations about the manner in which considerations of justice are pertinent to the regulation of individual conduct and he identifies ways in which Cohen's famous treatment of that topic is equivocal. Johannsen holds that conceptual clarification of justice also blunts the force of influential critiques of luck egalitarianism. It provides a way around Elizabeth Anderson's⁴ charge that luck egalitarianism is too harsh. It softens Jonathan Wolff's⁵ complaint that luck egalitarianism threatens dignity by requiring individuals to make shameful revelations. And it provides a response to Samuel Scheffler's⁶ concern that luck egalitarianism rests on a problematic conception of free will. On Johannsen's view, these critics mistakenly focus their criticisms on the putative institutional implications of luck egalitarianism. Johannsen contends that criticism of the putatively problematic institutional implications of luck egalitarianism is, in effect, conceptually misguided because luck egalitarianism *qua* a conception of justice should not be treated as furnishing an authoritative standard for institutional design. Instead, luck egalitarianism represents one pertinent value to be considered in making such judgements. No final institutional implications can be derived directly from the egalitarian conception of justice. These and other topics are addressed by Johannsen with great ingenuity and I will not make any effort to reconstruct or analyze the details of the many different arguments in his book. But I am happy to recommend that those interested the Rawls-Cohen debate study Johannsen's arguments carefully. In what follows, I will describe some challenges that Johannsen's objective of vindicating a distinctive variety of value pluralism face.

Johannsen on Value Pluralism

To set this stage for my comments, it will be helpful to identify four pertinent elements of Johannsen's understanding of value pluralism. First, Johannsen adopts what he calls a 'narrow' and 'simple' depiction of justice. For Johannsen, justice simply is the account of fairness given by luck egalitarianism. Johannsen's characterization of luck egalitarianism is roughly that "inequalities traceable to choice are just, while those traceable to luck are not" (p. 27). (I note that this cannot be a complete characterization of luck egalitarianism, since questions arise within luck egalitarianism about how choice is to be understood, what inequalities (e.g., resources, welfare, or functionings) matter, and how the distinction between brute and option luck should understood.) A complex view of

⁴ Anderson, "What Is the Point of Equality?"

⁵ Wolff, "Fairness, Respect, and the Egalitarian Ethos."

⁶ Scheffler, "What Is Egalitarianism?"

justice, by contrast, sees justice as comprised of a wider variety of normative considerations that are integrated in some coherent (and presumably principled) fashion. Here's a simple illustration. For Johannsen, a state of affairs in which a person suffers a dramatic loss of welfare compared to others due to a minor choice is just even if the suffering of the person can be readily alleviated via small transfers to the person from others. By contrast, a complex view of justice that incorporated considerations (e.g., concern for the maintenance of individual dignity and compassion for suffering) beyond luck egalitarian fairness might view the state of affairs as unjust.

Second, following Cohen, Johannsen makes a sharp distinction between justice as a fundamental value and regulatory principles. Regulatory principles help us decide what, given the circumstances we face and the different values at stake, institutional arrangements and actions are justified. We may think, for instance, that, although justice, as a fundamental value, requires that we not provide assistance to a person who suffers a dramatic loss of welfare due to an imprudent choice, compassion supports provision of assistance and that, in the particular circumstances we face, the value of justice should be tempered by the value of compassion. Regulatory principles guide the judgements we seek to make about appropriate trade-offs between different and sometimes conflicting fundamental values.

Third, Johannsen holds that justice, though a fundamental value, is a defeasible value that may conflict with other fundamental defeasible values. It is not entirely clear which specific values are included within Johannsen's conception of value pluralism or what features make a value fundamental. But for our purposes it is sufficient to note that justice, efficiency, and compassion are viewed by Johannsen to be fundamental yet defeasible values that are pertinent to assessing social and political arrangements.

Fourth, despite his endorsement of fundamental value pluralism, Johannsen contends that there is a sense in which we can endorse the Rawlsian view that 'justice is the first virtue of institutions' and that justice enjoys a kind of normative primacy. However, the primacy of justice for Johannsen has an importantly different character than it does for Rawls, at least on one ordinary reading of Rawls. For instance, Rawls says: "Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust."⁷ Here, Rawls indicates that, to the degree that justice and efficiency conflict, justice trumps efficiency. Since Johannsen allows that justice and efficiency are fundamental values that may conflict and that the appropriate resolution of the conflict need not always have justice prevail over efficiency, he represents the primacy of justice in a very different way. Johannsen treats

⁷ Rawls, *A Theory of Justice*, p. 3.

justice as a normative standard for adjudicating conflicts between potentially conflicting fundamental values. Given fundamental value pluralism, some method is needed to determine how to balance values in a non-arbitrary fashion. Johannsen thinks a device such as Rawls's original position can be deployed to determine what trade-offs between fundamental values are appropriate. Here's how Johannsen describes the crucial claim: "On my understanding, justice is unique among the values institutional regulatory principles reflect because it enters a theory of regulatory justice at ... both the procedural and value trade-off levels. Unlike the other values that must be traded off against each other (e.g., efficiency, compassion, etc.), justice plays a key role in determining the shape of the hypothetical contract situation. As such, it also plays a key role in solving the arbitrariness problem and thus in ensuring the legitimacy of coercively enforcing the institutional regulatory principles selected. There is thus a very real sense in which justice is of primary significance in the institutional context" (p. 112).

Conceptual Analysis and the Identification of Fundamental Values

Johannsen's proposals are novel and interesting but I am not persuaded that his account of value pluralism is as tidy or theoretically appealing as he contends. Let me make a brief comment on his strategy for identifying the content of fundamental values. Johannsen devotes most of his attention to characterizing the value of justice. In doing so, he rejects reflective equilibrium as a method for illuminating justice and instead claims that we can achieve conceptual clarity about the content of justice by focusing our attention specifically on considered judgements that are 'internal' to the value of justice. In adopting this view, Johannsen seems committed to the idea that there is a clear conceptual delineation of the character and content of different values. However, I think it is much less clear than he supposes just how the boundaries of specific values are to be understood and thus to which considered judgements we can appeal in trying to illuminate the value. Consider the case of judgements of fairness related to the idea of choice-sensitivity in contexts of distributive justice. Many liberal egalitarians hold that the resources to which people should have access are appropriately influenced by the choices they make and for which they are reasonably held responsible. Johannsen thinks that it is clear that requiring individuals to bear the full costs of their choices is a demand of fairness that is vindicated by "its coherence with certain core intuitive judgments"—e.g., that "it is fair for those who choose leisure over work to have less than others" (p. 26). Yet it is unclear what differentiates a core intuitive judgement internal to justice from a core intuitive judgement external to justice. We may grant that justice requires some kind of choice-sensitivity but that is a far cry from thinking that fairness requires individuals to bear any and all costs of their choices. While the charge that luck egalitarianism can be unduly harsh to people who make poor or regrettable choices can be represented as an appeal to a value such as compassion that is external to justice, one

can also plausibly hold that requiring individuals to bear all the potential costs of their choices is unfair in ways that conflicts with our considered judgements of justice. I, for one, do not think distributive fairness requires individuals to absorb all the potential costs of their choices (or, for that matter, to enjoy all the possible benefits of good option luck). This is partly because the relation between fairness and choice is much more complicated than some advocates of luck egalitarianism recognize. Many luck egalitarians think that there is some relatively simple way of gauging the costs and benefits of individual choice. But tracking the relation between choices, consequences, and fairness is, in many settings, very complex. In trying to motivate the kind of account of choice-sensitivity favoured by Johanssen, there is a tendency to focus on cases in which imprudent and risky choices lead to bad consequences for people. But it's worth observing that prudent choices can work out badly for people as well. When that happens, it's not obvious that *fairness* requires that prudent people bear all the costs of their choices. Similarly, there are settings in which the relation between choices and potential benefits and burdens are grossly disproportionate. Considerations of justice seem relevant to determining just what the appropriate relation between choices and consequences should be. These considerations may display sensitivity to the impact on people's welfare of their choices. My point here is not to defend a particular view about how distributive fairness and individual choice should be related. Rather, I want to suggest that it is plausible to interpret objections to certain varieties of luck egalitarianism as fairness objections to a particular depiction of choice-sensitivity rather than a rejection or limitation of considerations of fairness. For instance, the so-called harshness objection to luck egalitarianism developed by Anderson can be seen as a justice-based objection rather than an appeal to compassion of a sort that is distinct from justice. One can hold that an account of choice-sensitivity that requires an uninsured motorist to forgo life-saving medical treatment is unduly burdensome in a manner that is unfair. Similarly, one can hold that some considerations of compassion lie within the boundaries of justice. This suggests that Johanssen's characterization of judgements internal to justice and those external to justice is more contentious than he acknowledges. Even if justice is just one of a plurality of fundamental defeasible values, it is interpretatively more complex than Johanssen allows.

Negotiating Trade-Offs Between Fundamental Values

Let me now turn to Johanssen's claim that justice (on a strict luck egalitarian interpretation) can play a dual role as a fundamental defeasible value and as a normative standard that has primacy in addressing trade-offs between fundamental values. A traditional problem that besets deep value pluralism is that it seems impossible to provide a non-arbitrary method for adjudicating conflicts between fundamental values. If, for instance, justice is both different from efficiency and is every bit as fundamental as a value, then how are we to evaluate the overall desirability of states of affairs in which the values conflict? Imagine three states.

State A is perfectly just but extremely inefficient. State B is highly efficient but extremely unjust. State C is unjust and inefficient but less unjust than B and less inefficient than state C. From the perspective of justice, state B looks dreadful but from the perspective of efficiency state A looks dreadful. And if all we have is a set of fundamental but incommensurable values, then we lack any basis to determine whether state C provides an acceptable trade-off between justice and efficiency. Deep value pluralism cannot, it seems, provide a ranking of the overall desirability of these different states. Is there a way around this conundrum?

Johannsen suggests that there is. He thinks that a suitable response to this problem is to develop a procedure for fairly adjudicating between different fundamental values. Invocation of some version of Rawls's original position device is the procedure that Johannsen has in mind. Here we interpret the deliberations of hypothetical contractors behind a veil of ignorance as providing a principled strategy for determining what trade-offs between competing fundamental values are justified. (It's important to emphasize that this is a departure from Rawls's understanding of the original position as a device for illuminating and justifying a conception of justice, namely justice as fairness.) Now a crucial dimension of a contract argument of this sort concerns specification of the informational and motivational conditions under which deliberation of hypothetical contractors will take place. We need, in effect, a criterion to determine a fair contracting situation. And it is here that Johannsen's luck egalitarian conception of justice can be pressed into service: it provides a suitable criterion for specification of a fair contracting situation.

There are some difficulties with this proposal. First, it's puzzling how a luck egalitarian conception of justice, qua a principle of distributive fairness, can determine what information is available to contracting parties and what motivations should be attributed to the contracting parties. Luck egalitarian justice is, as Johannsen presents it, a standard for the distribution of benefits and burdens. Determination of the constitutive elements of the original position is not itself a matter of distributive justice and luck egalitarianism is not itself a procedure for the selection of principles. So, in some sense, luck egalitarianism (as Johannsen depicts it) lacks the right logical form to define the contract situation. Other putatively fundamental values also seem to lack the relevant form. Consider efficiency or compassion or liberty as values. They might provide, under some interpretation, standards for the distribution of resources, etc., but they do not say anything directly about what a fair contract situation would be. What would an efficient or compassionate or free initial bargaining position look like?

Johannsen might concede that the manner in which a luck egalitarian conception of justice can be relied upon to specify the contract situation does not involve direct application of distributive norms to specification of an original position. Instead, perhaps we extrapolate norms suitable for framing the original position from the luck egalitarian impulse that seeks to nullify the ill effects of brute luck. In this vein, Johannsen says: "Luck egalitarianism can straightforwardly justify concealing knowledge of social position and natural talents.

Though reasonableness is indeterminate between placing such knowledge behind the veil of ignorance and constraining the manner in which that knowledge is used, luck equality is not. One's talents and social position are largely traceable to brute luck, after all" (p. 107).

Note, by the way, an awkward and significant wrinkle here. On Rawls's view, the contractors do not know their talents at all. Johannsen says here that talents are '*largely*' traceable to brute luck. If that's the case, *luck equality* only favours partial ignorance of one's talents. In principle, one should have access to information about those facets of talents that are unattributable to brute luck. However, if one can extrapolate criteria for specifying the contract situation from justice, why can't different criteria be extrapolated from other fundamental values? One might think, for instance, that compassion provides a basis for specifying a contracting situation that is much closer to the device of the impartial benevolent spectator favoured by traditional utilitarians. Perhaps appeal to efficiency can motivate giving parties with more information about their bargaining power than Rawls allows. And so on. My point here is not to work out the possible justificatory basis of different ways of specifying the details of the original position. I only want to observe that, given value pluralism, it is possible to appeal to values besides Johannsen's specific conception of justice to do so. If that is the case, then the problem of adjudicating between different fundamental values is not uniquely resolved by appeal to the contract device because, given the plurality of fundamental values, there is a plurality of seemingly equally good ways of specifying the initial contract situation. Johannsen must show that luck equality and no other fundamental value or account of fairness is uniquely equipped to define the contract situation. This is a daunting challenge that I do not think Johannsen has yet met.

It's also worth observing that Johannsen's attempt to harness a Rawlsian contractarian device to weigh competing fundamental values involves significant departure from Rawls's understanding of the contract device. Johannsen suggests that the plurality of fundamental values are inputs to the original position and that parties in the original position arrive at regulatory principles that determine what trade-offs between these defeasible values are appropriate. But that is not how deliberation in the original position is typically understood. In Rawls's theory, parties are supposed to be concerned with securing access to primary goods. They endorse principles for the distribution of primary goods that, given the veil of ignorance, are rational. They do not directly weigh the relative weight of compassion, efficiency, justice, and so on. Indeed, it is unclear to me how the original position actually permits any direct weighing of defeasible fundamental values. That is not to say, of course, that the outcome of the contract does not have implications for the degree to which different values are realized. After all, Rawls famously holds that parties in the original position would endorse his two principles of justice and that they would reject utilitarianism. But the route to these conclusions is not through deliberation about how luck egalitarianism should be tempered by efficiency or the degree to which liberty should be limited by considerations of compassion.

The final point I will raise concerns Johannsen's assumption that suitable adjudication of conflicts between fundamental values requires recourse to some form of procedural justice. Of course, Rawls famously characterizes the original position as embodying pure procedural justice and the very name of Rawls's theory—justice as fairness—owes something to the idea that the substantive principles of justice endorsed by Rawls are those that emerge from the procedurally fair hypothetical contract. Here, I should note that I have always found Rawls's invocation of *pure* procedural fairness in relation to the contract argument for principles of justice unhelpful and misleading.⁸ To begin with, there is only a very rarified sense in which the contract argument embodies a procedure. There's no actual agreement reached between parties and even speaking of parties in the plural is misleading since the real issue is what principles a single rational agent would endorse given the veil of ignorance, etc. More importantly, Rawls characterizes *pure* procedural justice as obtaining when there is "no independent criterion for the right result."⁹ A fair lottery is frequently used to illustrate pure procedural justice. Absent the selection of a winner via a fair process—e.g., a random drawing of a ticket—there is no correct winner of the lottery. But, if we think about the substantive principles Rawls defends, it is clearly wrong to say that there is no criterion for the right result independent of the original position argument. After all, Rawls (and other Rawlsians) think other arguments favour the principles of justice.¹⁰ The difference principle, for instance, can be defended by appeal to reflective

⁸ *Ibid.*, pp. 83–87. Rawls distinguishes pure procedural justice from perfect procedural justice and imperfect procedural justice. With perfect procedural justice, there is a just outcome that can be identified independently of a procedure for arriving at it but there is a procedure that can be relied upon to arrive at the just outcome. For example, if we know that a just distribution of a cake is to give each person an equal-sized piece, we can arrive at this just outcome but insisting that the person cutting the cake take the last piece. With imperfect procedural justice, there is a just outcome that can be identified independently of a procedure but the procedure we must rely upon to generate an outcome will not always yield the just outcome. The operation of a criminal trial is supposed to illustrate imperfect procedural justice. We know, independently of the procedure of a trial, that justice requires finding only those who have committed crimes guilty. But a criminal trial will only imperfectly arrive at this just outcome. Sometimes those guilty of crimes will not be convicted and sometimes those not guilty of crimes will be convicted.

⁹ *Ibid.*, p. 86.

¹⁰ See, for instance, Lyons, "The Nature and Soundness of the Contract and Coherence Arguments" for a discussion of the difference between the 'contract argument' and the 'coherence' argument. Kymlicka similarly distinguishes between the 'contract argument' and the 'intuitive argument.' See Kymlicka, *Contemporary Political Philosophy*, pp. 69–75.

equilibrium without invocation of the contract device. More generally, if some outcome of the original position argument diverged dramatically from our considered judgements of justice, then we would have reason to doubt the soundness of the output of the contract argument. Nothing like that makes sense in the case of a lottery. There is no reason whatsoever to think that ticket #569 is the 'right' ticket over the ticket actually drawn, #112. The general point here is that we can identify reasons that are pertinent to resolving, in a non-arbitrary fashion, various kinds of normative conflicts. For instance, to the degree that we think justice and compassion conflict, we can arrive at some resolution of that conflict without supposing that the only method available is a procedural one. If there really were no procedure independent reasons to favour some value trade-offs over others, then selecting randomly between different value trade-offs would be procedurally fair. But I assume that no one thinks that such a strategy is generally appropriate.

The foregoing is relevant to Johannsen's project in two ways. First, it challenges his supposition that non-arbitrary resolution of value conflict requires recourse to procedural fairness. Instead of inventing elaborate, hypothetical, and controversial devices, we can think directly about the reasons that favour different trade-offs in different settings. But in the context of Johannsen's value pluralism this puts pressure on the idea that justice has any special primacy *per se*. Second, there is a sense in which the availability of reasons that favour some value trade-offs over others challenges the very idea of fundamental value pluralism. If we can figure out what balance of different types of considerations is correct, then there is a sense in which there is an overall, principled normative ordering. That, of course, suggests a more unified and perhaps complex vision of fundamental values than Johannsen allows.

Hence, we arrive back at the contrast between the hedgehog and the fox. Johannsen's insistence that there is, as a conceptual matter, a plurality of fundamental values puts him initially in the camp of the fox. However, once he accepts that there is a principled basis on which to adjudicate trade-offs between values, he seems committed to a more integrated conception of value in which reasons themselves—and not an elaborate and artificial selection procedure—can determine what balance of values is justified. If reasons provide a common normative currency between seemingly competing values, then the putative purity of fundamental values is diminished. This leaves open the viability of an integrated set of values that together provide an overarching conception of justice of the sort that Johannsen purports to reject. Now, Johannsen might contend that we should not call such a normative framework 'justice' and that we should insist that justice is only a component ingredient in such a framework. Perhaps, although I see no advantage, conceptual or otherwise, in that kind of terminological stipulation. But it is the harmony of value that the hedgehog champions. So, if Johannsen allows that reason can guide us in constructing a coherent and unified normative ordering, then the hedgehog will be happy.

References

- Anderson, Elizabeth
1999 "What Is the Point of Equality?" *Ethics* 109 (2): 287–337.
- Cohen, G.A.
2008 *Rescuing Justice and Equality*. Cambridge, MA: Harvard University Press.
- Dworkin, Ronald
2011 *Justice for Hedgehogs*. Cambridge, MA: Belknap Press of Harvard University Press.
- Kymlicka, Will
2002 *Contemporary Political Philosophy: An Introduction* (2nd Edition). Oxford: Oxford University Press.
- Lyons, David
1980 "The Nature and Soundness of the Contract and Coherence Arguments," in *Reading Rawls*, edited by Daniels Norman. Stanford CA: Stanford University Press, pp. 141–168.
- Rawls, John
1971 *A Theory of Justice*. Cambridge, MA: Belknap Press of Harvard University Press.
- Scheffler, Samuel
2003 "What Is Egalitarianism?" *Philosophy and Public Affairs* 31 (1): 5–39.
- Wolff, Jonathan
1998 "Fairness, Respect, and the Egalitarian Ethos." *Philosophy and Public Affairs* 27 (2): 97–122.