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'Going Evaluative' To Save Justice From Feasibility — A Pyrrhic Victory

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Abstract. I discuss Gheaus's argument against the claim that the requirements of justice are not constrained by feasibility concerns. I show that the general strategy exemplified by this argument is not only dialectically puzzling, but also imposes a heavy cost on theories of justice — puzzling because it simply sidesteps a presupposition of any plausible formulation of the so-called 'feasibility requirement'; costly because it it deprives justice of its normative implications for action. I also show that Gheaus's attempt to recover this normative force presupposes an epistemic dimension to the feasibility requirement that most proponents of that requirement would reject.

Are the requirements of justice subject to feasibility constraints? Although the details of this so-called 'feasibility requirement' remain a matter of dispute, a good number of political philosophers accept that feasibility concerns are, on some interpretation, a restriction on the requirements of justice. Yet there is an emerging chorus of dissidents, who claim that justice is untouched by feasibility concerns.[1] One tempting strategy to support this dissenting view is to 'go evaluative' about justice, a strategy Anca Gheaus has clearly exemplified in these pages.[2] 'Going evaluative' involves three moves: first, distinguishing between two notions of justice — one evaluative, the other pertaining to action (I will call this latter notion 'deontic'; others have called it 'prescriptive' or 'practical') (449, 457); second, asserting that justice is primarily an evaluative concept (448, 454); and third, noting that evaluative concepts in general are not subject to any feasibility requirement (458). Hence, justice in the evaluative sense — *e-justice* — is not

1. See, e.g., G.A. Cohen, "Facts and Principles," *Philosophy & Public Affairs* 31, no. 3 (2003): 211–245; David Estlund, "Human Nature and the Limits (If Any) of Political Philosophy," *Philosophy & Public Affairs* 39, no. 3 (2011): 207–237.

2. Anca Gheaus, "The Feasibility Constraint on the Concept of Justice," *The Philosophical Quarterly* 63, no. 252 (2013): 445–464; all page references in the text are to this article. Cf. Cohen, "Facts and Principles"; Pablo Gilabert, "Feasibility and Socialism," *The Journal of Political Philosophy* 19, no. 1 (2011): 52–63; Alan Hamlin and Zofia Stemplowska, "Theory, Ideal Theory and the Theory of Ideals," *Political Studies Review* 10 (2012): 48–62; Adam Swift, "The Value of Philosophy in Nonideal Circumstances," *Social Theory and Practice* 34, no. 3 (2008): 363–387.

subject to any feasibility requirement. Careful inspection of Gheaus's argument reveals the deep problems faced by this general strategy.

I grant that distinguishing between evaluative and deontic claims is quite useful; indeed, this distinction will do important work for me later in this paper. Yet the strategy of 'going evaluative' is dialectically puzzling on its face — do any proponents of the feasibility requirement think that it applies to e-justice? As Gheaus rightly notes (458), the 'ought' in 'ought implies can' is not an evaluative 'ought' but a deontic 'ought' — 'ϕ is good' does not imply 'can ϕ'. Thus, insofar as it is a variation of 'ought implies can' (457), the feasibility requirement presupposes that we are talking about the demands justice makes upon action — it is meant to restrict what justice can require people to *do*, or *d-justice*. Noting that a state of affairs 'is desirable independently of whether anybody can ever achieve it' neglects this crucial presupposition and, hence, leaves the feasibility requirement untouched (458). The question remains whether d-justice can require people to act to realise desirable states of affairs even if they are infeasible. So the strategy of 'going evaluative' misunderstands the place at which the feasibility requirement is supposed to do its work — that is, in restricting deontic rather than evaluative claims.

But 'going evaluative' about justice to avoid the feasibility requirement is more than dialectically puzzling — it also imposes a heavy cost on theories of justice. Here's Gheaus:

> But 'justice requires…' is, of course, only a metaphor we use to express the joint belief that:
>
> (a) in order to be just, a state of affairs has to fulfil this and that criteria [given by one's preferred principles of justice]… and
>
> (b) someone ought to bring justice [as specified in (a)] about[.]
>
> The two claims are logically independent and hence it is possible for the first to be true in a situation in which the second is not. (a) refers to what Cohen calls the fundamental principles of justice… [and] Gilabert identifies as the evaluative element in claims of justice taking the form of 'justice requires that…'. Therefore, fundamental principles of justice can be true even in cases when (b) is false. (457)

I take it that (a) is meant as a claim about what e-justice requires, while (b) is meant as a claim about what d-justice requires, assuming (controversially) that d-justice requires us to realise e-justice. Given this, we see that the 'requirements' of e-justice are simply the (analytically) necessary conditions for a state of affairs to fall under the concept

(e-)justice. For example, if luck egalitarianism is the right conception of e-justice, then e-justice 'requires' that individuals' distributive shares not be determined by 'brute luck' (as opposed to 'option luck'). But this is just to make a conceptual claim: that a state of affairs, *S*, falls within the class *e-just* only if individuals' distributive shares are not determined by brute luck in *S*. No doubt such conceptual claims are interesting; for instance, they can ground evaluative claims about our ranking of possible states of affairs according to some standard of moral desirability. So if it is a necessary condition of e-justice that distributive shares not track brute luck (among other things), then (as an evaluative matter) we might rank states of affairs in which shares do not track brute luck above those in which shares do track brute luck.

But showing that some state of affairs is more desirable than another is not sufficient to show that some agent is *duty-bound* to realise the former. Claims about the content of e-justice *bear no normative (deontic) force* until we connect the concept of e-justice to claims about how people are to act or political institutions are to be designed (as type (b) claims do in Gheaus's scheme). Gheaus puts the point starkly: claims about e-justice are 'logically independent' of claims about d-justice; that is, claims about e-justice do not entail claims about d-justice. (If this entailment relation held, then e-justice would no longer be a strictly evaluative concept and Gheaus could no longer pry apart type (a) claims and type (b) claims, as she must for her argument to go through.) Thus, we see that 'going evaluative' about the concept of justice yields a Pyrrhic victory — it permits justice to avoid the feasibility requirement, but only at the steep price of depriving it of the normative force it is meant to bear with respect to human conduct or the design of political institutions.

We can put the point as a dilemma: either 'justice' refers to e-justice, in which case the requirements of justice circumvent the feasibility requirement but are void of normative force; or 'justice' refers to d-justice, in which case the requirements of justice bear normative force but are subject to a feasibility requirement. Since justice claims are typically thought to have normative implications for human conduct and institutional design, I suspect that many political philosophers would avoid the first horn if forced to choose.[3]

Yet we need not choose. Instead, we can follow Gheaus (and others) in distinguishing between evaluative claims and deontic claims, acknowledge that d-justice is subject to a feasibility requirement while e-justice is not, and then make clear which claims are about e-justice and which are about d-justice. In fact, taking this route defuses one of Gheaus's motivating puzzles — namely, how to fully capture the deeply regrettable

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3. Perhaps not Cohen: '[T]he question for political philosophy is not what we should do but what we should think, even when what we should think makes no practical difference' ('Facts and Principles', 243).

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nature of states of affairs that we cannot change (454). Gheaus appeals to the example of an unavoidable natural disaster that brings about great harm (a remedy for which is, presumably, infeasible). If justice is subject to a feasibility requirement, then we will not be able to capture the fact that this unavoidable harm is regrettable because some people are disadvantaged through no fault of their own and, so, the situation is *unjust* on a luck egalitarian conception (ibid.). So Gheaus claims. But this claim is deeply mistaken. A proponent of the feasibility requirement can agree with a luck egalitarian that there is an important sense in which this situation is unfair and, as a result, deeply regrettable as an evaluative matter. What a proponent cannot concede is that some agent thereby bears a duty to remedy the situation if doing so is, in fact, infeasible. Simply put, there's no inconsistency in acknowledging that the irremediable deprivation wrought by the unavoidable disaster is deeply e-unjust while maintaining that d-justice does not require any agent to remedy the situation. Since Gheaus agrees on this point (449), it seems odd that cases like this should force us to abandon the feasibility requirement (455). Nothing is gained here by reserving the term 'justice' for the concept *e-justice*, while doing so deprives 'justice' of its normative force. Meanwhile, whatever term we use to pick out *d-justice*, it remains the case that the demands justice makes upon action are subject to a feasibility requirement.

There may yet be other reasons to deny that d-justice is subject to a feasibility requirement. Gheaus offers two. First, she claims that the feasibility requirement has the 'counterintuitive' implication that we must determine which states of affairs are feasible before we determine which ones are just (452). Second, the feasibility requirement seems to rule out duties to explore and expand the limits of the feasible set (455f). I deal with these in turn.

Gheaus's first objection turns on an equivocation. Let's grant that it 'seems counterintuitive' (452) to say that we must settle the bounds of the feasible set before we can determine the requirements of *e-justice*, that is, before we can rank possible states of affairs according to their moral desirability. Yet proponents of the feasibility requirement only claim that we cannot determine with any confidence the requirements of *d-justice*—that is, whether justice demands that some agent take action to realise a particular state of affairs—until we can demonstrate a reasonable expectation that the target state is not likely to be infeasible.[4] I doubt that more than a few people would find this latter claim counterintuitive, especially once we underscore that 'determine' be

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4. Gheaus substitutes 'know' for 'reasonably confident' throughout the text, but the latter is more accurate (450, n. 14). I stick with 'reasonable confidence' to avoid confusion. Also notice that 'not likely to be infeasible' is a much less demanding standard than 'likely to be feasible'.

understood here in an epistemic sense. Hence, the feasibility requirement proponent's claim is consistent with the further claim that, if the target state is in fact feasible, then some agent has a fact-relative (as opposed to an information-relative) duty to realize it even if we cannot (yet) be reasonably confident that the target state is feasible.[5]

Turning to the second counterargument, Gheaus claims that 'justice can provide a duty to expand the limits of feasibility' (459). Yet there seems to be no way to make sense of such a duty if we accept the feasibility requirement, since the latter rules out obligations to pursue infeasible states of affairs. We can, however, make sense of such a duty if we interpret a conception of e-justice as presenting us with an 'aspirational ideal' (448). To facilitate such an interpretation, Gheaus replaces condition (b) in her initial analysis of the phrase 'justice requires' with

> (b′) someone ought to try to make it possible that others (or our future
> selves) bring justice [as specified in (a)] about. (459)

Thus, even if we bear 'no duty to remedy what [we] cannot remedy', justice can still demand agents to pursue states of affairs that are infeasible yet not strictly impossible to realise given efforts to probe the limits of the feasible set (ibid.).

This is all fair enough; but it does not justify denial of a feasibility requirement. The duty specified in (b′) leaves d-justice subject to a feasibility requirement in at least two ways. The first is straightforward. If we interpret 'ought implies can' as Gheaus does — 'if A cannot do X, then A is under no duty to do X' (458) — then we ought to try to make it possible to realise e-justice *only if we can try* to make it possible to realise e-justice. I'm not sure what, precisely, 'trying' involves here; if defined broadly enough, maybe it is trivial that we can always try to realise e-justice. No matter. All that's required for this duty to be subject to a feasibility requirement is that we are not duty-bound to try to realise e-justice if we cannot try to do so. Gheaus offers us no reason to deny this point.

The second way in which (b′) leaves d-justice subject to a feasibility requirement is more subtle. On Gheaus's view, feasibility has an important epistemic dimension: a state of affairs *S* is *feasible* if and only if we can be reasonably confident that we could realise *S* 'if we were to summon sufficient practical will and direct our (individual or collective) efforts in the right direction' (450). The feasible set includes states of affairs that we can realise here and now, as well as states that we are reasonably confident can be realised sometime in the future. Importantly, this analysis permits some states of affairs to be

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5. On the distinction between fact-relative and information-relative duties (or objective and subjective oughts), see, among others, Frank Jackson and Robert Pargetter, "Oughts, Options, and Actualism," *Philosophical Review* 95 (1986): 233–255.

infeasible yet 'possible to achieve in principle' given efforts to probe the limits of the feasible set (451). Hence, (b′) might require us to pursue e-just states of affairs that are infeasible (because we are not, at present, reasonably confident that we can realise them) yet possible to realise in the future through concerted effort. Thus, the demands of justice upon action are not subject to a feasibility requirement.

Gheaus acknowledges that her denial of the feasibility requirement at this point turns on the epistemic dimension of feasibility (460). (b′) is plainly subject to a requirement that the target states of affairs be (in some appropriate sense) possible to realise — if e-justice requires states of affairs that are impossible to ever realise, then (b′) is unreasonable (cf. 459). Thus, (b′) only circumvents the feasibility requirement because the feasible set excludes states of affairs that are possible to realise yet we currently lack sufficient epistemic confidence that they are in fact realisable. Gheaus is surely correct to note that we cannot realise a state of affairs if we cannot be reasonably confident about how to realise it (450). But a proponent of the feasibility requirement need not grant that realising some state of affairs is infeasible if we are not *currently* reasonably confident about how to realise it. A proponent might instead say that realising the target state is infeasible if we cannot ever be reasonably confident about how to realise it; that is, reasonable confidence about how to realise it is beyond human epistemic limitations.[6] Interpreting the feasibility requirement accordingly, our obligations do not depend on what we *now* think we can do — 'ought' does not imply 'reasonably confident at present that we can ϕ'. Rather, our obligations depend on what we can do in fact.

Let me put the preceding point differently. Gheaus's denial of the feasibility requirement stipulates an epistemic dimension that a proponent of the feasibility requirement need not (indeed, likely does not) accept. She does this to handle uncertainty about the bounds of practical possibility. But uncertainty about the limits of practical possibility does not justify confident assertions of a duty to work toward the realisation of any state of affairs simply because it is desirable from the standpoint of e-justice (461). Moreover, there is a better way to handle this uncertainty that is consistent with accepting the feasibility requirement. If we are unsure whether a state of affairs can (in the relevant sense) be realised, then we acknowledge that we cannot deny an obligation to realise the target state on the basis of some feasibility requirement. That is, we should acknowledge uncertainty about the demands of d-justice and then seek to resolve this uncertainty (as far as possible) by allocating some resources to exploring the bounds of the feasible set

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6. Which states of affairs would qualify as feasible on this understanding no doubt turns on how we analyse 'cannot' here, but we can safely leave this aside. The point is that the feasibility requirement need not index feasibility to our current epistemic states.

and, in turn, the limits of d-justice. (What proportion of our resources should we invest in this exploratory project versus redressing readily treated injustices? That's a difficult portfolio problem that need not be resolved here. I simply point out that accepting a feasibility requirement does not prevent us from 'mak[ing] full sense of the difficulty of this choice' [456].) Thus, we can endorse a duty to probe the limits of practical possibility without denying that d-justice is, in the end, subject to a feasibility requirement.

My criticisms of Gheaus's recent argument apply more generally to the strategy of 'going evaluative' about justice to deny that the demands of justice upon action are constrained by feasibility considerations. In sum, this strategy is not only dialectically puzzling but theoretically costly — puzzling because any plausible formulation of the feasibility requirement presupposes that we are talking about requirements for action and not simply moral evaluative criteria; costly because avoiding the feasibility requirement by insisting that 'justice' be reserved for *e-justice* deprives justice of its normative implications for action. One might be tempted (as Gheaus is) to recover the normative force of e-justice by appeal to some notion of a 'dynamic duty' or 'transitional duty'.[7] But this move faces a dilemma: either transitional duties are themselves subject to a feasibility requirement or, if they are not, they avoid it only if we build a questionable epistemic dimension into the feasibility requirement, a move that most proponents of that requirement would reject.

7. Cf. Pablo Gilabert, "The Feasibility of Basic Socioeconomic Human Rights: A Conceptual Exploration," *Philosophical Quarterly* 59 (2008): 659–681.