

Justice and the fair innings argument

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Outline

1. What is the fair innings argument?
2. Can it be defended against its critics?
3. What are the implications of this argument, if any, in practice?

Context

- Our available resources are limited, and as a result we cannot help all those who need help
 - More specifically, we cannot give life prolonging treatment to all those who would benefit from it because we lack sufficient resources to do so
 - So we need to make decisions about who to help using our resources
- We want these decisions (about who gets, and who does not get, treatment) to be fair

Using age to make this decision

- A widely shared intuition (at least in countries like the UK and US) is that it is more unjust for an adult to die young than to die old, and that hence fairness requires that we use age as one factor when making decisions about who should have priority for scarce resources
 - That is, if we can only treat an 80 year old or a 30 year old, we should treat the 30 year old
- Is this intuition correct?
- The fair innings argument says it is

The fair innings argument

- A person who has had a fair innings has had the chance to live through life's various stages:
 - E.g. they have grown up, had a chance to have an education, to develop a career, experience love, marry, have children, retire, play with their grandchildren
- Having a life that has all these parts (having had a 'fair innings') has value
 - Those who are over the relevant age have thus received something of value that those who have not yet reached that age have not.

- Interventions that extend the life of those who have not yet had a fair innings enables them (or gives them the chance) to receive this valuable thing
- In contrast, interventions that extend the life of those who have already had a fair innings does not
- For this reason if we have to choose between extending the life of a person who has not yet had a fair innings and extending the life of someone who has already had a fair innings, we should extend the life of the person who has not yet had it.

- Furthermore, if we have to choose which of two people, neither of whom have already had a fair innings, to give life extending treatment to we should choose the younger (assuming both are adults)
- The older person has had more of a fair innings – a bigger part of the thing that is valuable – and giving more to the one who has already received a larger proportion of what is valuable would be unfair.

Four points about this argument:

1. It is not an argument that says you should always give priority to the younger person – though it is sometimes characterized in this way.
2. It says there is something special about a certain age (the age at which one has had a fair innings)

3. It is an account of justice. Accounts of justice can concern different things – e.g. how we treat each other, or what the systems and rules in society say
 - I will be treating the fair innings argument as an account of what justice requires society to do in allocating its resources
4. However, it cannot be in itself a complete account of what justice requires

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Four objections to the fair innings argument

1. It fails to treat everyone's life as equally valuable
2. It is ageist – it discriminates on the basis of age and age is a morally irrelevant criteria
3. It would mean we should give treatment to young people who may receive very little benefit rather than older people who may receive a lot of benefit
4. It may not actually solve the allocation problem we start with because denying life prolonging treatments may mean we end up paying more in support services for those who are denied that treatment

Objection: It doesn't work

- The fact that we don't give someone life prolonging treatment may not save resources
 - We will still have to provide support and that may be more expensive than providing the treatment in the first place
- There is a sense in which this is right
 - It shows there are some situations in which the fair innings argument would not help us distribute our resources fairly
 - But this does not mean it will never work

Objection – it uses resources ineffectively and in a way that is immoral

- This is only an objection if the fair innings argument is treated as providing a complete account of how our scarce resources should be allocated
- Typically advocates of that argument do not think this
 - For example, they think it should be part of a package that includes things like prognosis if treated, or the cost effectiveness of treatment

Objections – the argument does not treat people equally and is ageist

- It is useful to treat these two points together
- Both rely on the idea that age is not morally relevant, so to respond to them what is needed is an argument to show that it is morally relevant
- This requires us to look at whether the fair innings argument is supported by a more general theory of justice
 - There are two ways we might do that

Option 1: Norman Daniels' whole life account

- Those who are old now were once young, and those who are young now will at some point be old
 - We thus do not unfairly discriminate between the 30 year old and the 80 year old if we prioritize the latter
- Rather than seeing this as an allocation between individuals we should see it as allocation across a single person's life span
 - At age 30 that person will have a higher priority for the treatment than she will have when she is 80

Daniels argues that this is how a rational person would choose to allocate her own resources to ensure that treatment is available at different parts of her life if she could not afford to buy the same level of protection for all stages of our life

Some problems with this as an explanation of the fair innings argument

- It does not explain why a particular age (such as 70) has the particular significance I claim that it has in the fair innings argument
- Daniels takes it that this is the allocation system rational people would agree to behind a veil of ignorance, but this can be challenged
- There are problems if we are thinking about introducing age based rationing for some resource

Option 2 – luck egalitarianism

- Luck egalitarianism is a general theory of justice
- It comes in many different variants but as Kaspar Lippert-Rasmussen argues its core claim is that:
 - It is unjust if some people are worse off than other through their bad luck

- Many, but not all, luck egalitarians also draw a distinction between two kinds of luck:
 - Brute luck (it is bad brute luck to lose out as a result of the natural or social lottery)
 - Option luck (it is bad option luck to lose out as a result of freely chosen actions or choices)
- They may also (but again need not) go on to argue that while it is unjust for someone to lose out as a result of bad brute luck, it is not unjust for them to lose out as the result of bad option luck

How does this relate to the fair innings argument?

- Consider someone who will die at 30 because of a genetic anomaly unless she gets treated
 - such a person will lose out in the natural lottery if she is not given life prolonging treatment. Her dying would be bad brute luck
- Poverty is a factor that can lead to early death
 - So someone who would die young because he was born and grew up in poverty is someone who has lost out in the social lottery. His death would be a case of bad brute luck
- For a luck egalitarian justice requires that we take steps to keep these people alive (where we can do so)

- But now consider someone who will die at 100 unless she receives life-prolonging treatment.
- Is she a loser in this lottery?
- No, she is already a winner.

Four advantages of this luck egalitarian account:

- It explains why when we are concerned about justice there is a cut-off at a certain age, and why that age is not sharply defined
 - This is the age at which we shift from it being the case that to die is to lose out in the natural or social lottery, and that at which it is not
- It also tells us what the relevant age is, and why this may change both over time and from place to place.

- It enables us to see why age is a relevant factor when it comes to justice and life prolonging treatments, but may not be relevant in relation to other kinds of intervention
- It enables us to see why the fair innings argument does not fail to treat people as equally valuable

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There are two problems when it comes to thinking about how a theory like the fair innings argument relates to real world challenges:

- The argument says that justice requires that the young are prioritized over the old, but that isn't much use in practice – what does this mean we should actually do?
- The theory defends an account of what justice is, but I have not shown that this actually helps us to deal with the problem with which we stated

- I think that we can turn our high level moral theories of things like justice into more practical and concrete policies. But to do so we need to take account of the context we are operating in, and this requires data.
- Philosophers don't have that data, and may not be the right people to get it or figure out what it shows. So they can at most do part of what is needed
- To illustrate this I will use some simple (simplistic) examples

What data do we need to turn the fair innings argument into usable and concrete rules?

At a minimum we will need to know:

1. How many resources we have,
2. How many people we can expect to need those resources, and
3. How many (or what proportion) of those who need those resources will already have had a fair innings

Example 1

- We anticipate having enough resources to provide the life prolonging treatment to 1000 people each year.
 - This is based on our current budget (past experience), and while it may change year on year it is unlikely to change much from year to year
- Given past experience and what we project looking forward, we can expect 1500 people to need this intervention each year
- Of those let us suppose that experience suggests that 300 have already had a fair innings

Example 2

- Our resources are the same as in example 1 (enough to treat 1000 people)
- The total number of people who need and would benefit is the same as in example 1 (1500 people)
- But in this example the number of those who have had a fair innings already is higher – 700 people

Interim conclusion

- Our theory of justice isn't sufficient to solve our problem, so we need to take account of some other factor.
- One option is prognosis – how much benefit the person will receive from the intervention.
- So suppose we say that it is not cost effective to give the intervention to those whose prognosis is that they will receive fewer than five additional years of life from it.

- If we do that then we also need more data in order to work out our concrete rules
 - We would need to know number (or proportion) of those who need the treatment who have a prognosis of more than five years additional life for each of two groups: those who have already had a fair innings, and those who have not
- We also need to know how we should combine these two types of criteria.
 - Do we have a formula to unite them, or does one have lexical priority over the other.

Example 3

- Suppose we can treat 1000 people and 1500 need and would get some benefit from the treatment
- 700 of those have already had a fair innings. Of these, we can estimate from past experience that 500 will have a prognosis of more than five years
- 800 of those who need the treatment have not yet had a fair innings, and we estimate that 700 of these will have a prognosis of more than five years

How we combine the rules on age and those on prognosis matters here, so there are at least two options

- Option 1: We take the rules to have a lexical ordering – prognosis first and then age
- Option 2: We take the rules to have a lexical ordering – age first and then prognosis

Example 3 – Option 1

- This produces two concrete rules:
 - Do not give the treatment to anyone who has a prognosis of less than five years
 - If someone who has (a) not yet reached the age at which they have had a fair innings and (b) has a prognosis of more than 5 years, always treat them
- It will still not provide a complete account of what we need

Example 3 – Option 2

- This also produces two concrete rules, but those rules are different:
 - Everyone who has not yet reached the age when they have had a fair innings should get treated
 - Anyone who both (a) has reached the age at which they have had a fair innings, and (b) has a prognosis of fewer than 5 years should not be treated
- As before this does not completely resolve our resource allocation problem

What can we conclude from all this (1)

- The fair innings argument will not in most cases solve our resource allocation problems – though it should be a part of the solution
- We can turn principles of justice into concrete usable rules if we have the appropriate data
 - Philosophers do not have this data
 - In some cases no-one does – and in those cases the theory of justice is of little use in practice (though it may help us to identify what data we need to gather)

What can we conclude from all this (2)

- Philosophers can at most provide part of the solution. To figure out what justice requires in practice they need to engage with others – including those who have (or can get) the relevant data and know how to analyze it
- Although the fair innings principle is put in terms of ‘prioritise the young’ the relevant concrete rule might be more blunt (e.g. ‘no one over the age of 80 should be given this treatment’) – we should not shy away from this kind of implication.

Thank you