

Version 1.2 // July 2016

Rejoinder to Estlund

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This short note is a rejoinder to Estlund's reply to my "Motivational Limitations on the Demands of Justice" (both in *European Journal of Political Theory*, vol. 15, no. 3). I use this opportunity to make several clarificatory remarks.

On the success conditional analysis of ability. In his reply, Estlund claims that "the broad conditional approach to ability is assumed by the view [he] criticize[s]" (p. 354), that is, the view that motivational incapacities can block abilities (and, in turn, moral requirements, given "ought implies can"). According to Estlund, his target's view is that inability consists in failing to ϕ despite trying to ϕ . This idea is captured by Estlund's proposed analysis:

A person is able to (can) do something if and only if, *were she to try and not give up, she would tend to succeed.* (2011, p. 212, emphasis added)

This implies that failing to ϕ even if one tries to ϕ is sufficient for inability. Thus, Estlund claims, he can safely assume his proposed analysis because that's the analysis presupposed by the target of his critical arguments.

But this is mistaken — Estlund's target need not assume his proposed analysis. Estlund proposes the italicized condition as not only necessary for ability *but also sufficient*. Estlund's target can accept the italicized condition as necessary — thus, that failing to ϕ despite trying to ϕ is sufficient for inability — without accepting that it is sufficient for ability. It might also be necessary for ability that (e.g.) one have the motivational resources required to try. If that's the case, then we have an analysis that implies that "can't will" implies "can't do", *pace* Estlund. (It's beyond the scope — and beside the point — of this short note to defend such an analysis.)

Estlund's argument requires that the italicized condition be sufficient for ability, a claim his target need not endorse, his claim to the contrary notwithstanding. Thus, he can't simply assume his "working account" (2011, p. 212) of ability on the ground that his target must endorse this account too. Since it is open to his target to adopt an analysis that undermines the key premise that "can't will" does not imply "can't do", Estlund must do something he has yet to do: provide an argument in favor of his proposed analysis of ability. (More on this below.)

On the alleged counterintuitive implications of my proposed refinement. At the core of my challenge to Estlund is a proposed refinement of his analysis (which I grant for the sake of argument):

A person is able to (can) ϕ if and only if, were she to repeatedly make good faith attempts to... ϕ , she would tend to ϕ .

I then argue that we should favor my proposed refinement to Estlund's original analysis because the former, but not the latter, explains pairs of intuitive judgments such as the following: (1) Danny might be able to write a book; (2) Claudia is unable to write a book.¹ (See pp. 340–41 of my original article for the relevant details of these cases.)

Estlund diagnoses my challenge to him as follows: why isn't my proposed refinement of his analysis of ability at least as plausible as his original analysis? This seems fair. To answer the challenge, Estlund presents the cases of Tal and Janna as a means to show that my proposed refinement has counterintuitive implications that his analysis does not share. Here I suggest that these cases do not strike the blow that Estlund thinks.

Regarding the Tal case: I think it's notable that Tal quits in his endeavor to write a book *because he prefers to be a lawyer*. As Estlund sets out the case, Tal's choice to quit is a response to a cost-benefit calculation: upon experiencing the costs and benefits of both practicing law and writing a book, Tal weighs up the various considerations and decides to practice law rather than write a book. In contrast, as I had envisioned the case, Claudia does not quit writing a book because she has decided that she'd rather do something else with her life. To sharpen the case, suppose, in a cool moment unclouded by her emotions, Claudia conducts a cost-benefit analysis of her options and decides (on the basis of her experience in trying to write a book) that the best thing to do with her life is write a book. Even still, in the face of eventual obstacles, she can't bring herself to continue writing, as specified in the original case. (A case like this shouldn't be difficult to imagine if one buys

¹ Estlund claims that I do not offer any argument to favor my proposed refinement over his analysis nor any criticism of his analysis. This seems odd to me. Here's the criticism: Estlund's analysis is inadequate insofar as it fails to explain the aforementioned pair of judgments (or a similar pair of judgments for some other case). Here's the argument: We have reason to favor my proposed refinement insofar as it can explain the aforementioned pair of intuitive judgments while Estlund's analysis fails to do so. I acknowledge that the argument and criticism are far from decisive — one might deny that there is a difference to explain. But Estlund can't object to my resort to intuitive judgments at this point. Support for his analysis of ability rests on similarly intuitive ground (see the discussion below about the selfish Bill case). To the extent that one concedes these intuitive judgments (or a similar pair of judgments for some other case), that's a point in favor of my proposed refinement.

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that people can be weak-willed.²) Unlike Tal, Claudia doesn't prefer to do something other than write a book; she lacks the motivational resources required to muster the will to do that which she prefers. I trust the reader can work out an amendment to my proposed refinement that allows us to say that Claudia, but not necessarily Tal, is unable to write a book. (Working out the details of that amendment is beyond the scope of this rejoinder.)

Regarding the Janna case: My proposed refinement is said to imply that Janna is unable to continue divesting from South African companies. This, in turn, has the allegedly counterintuitive implication that Janna is not morally required to continue divesting from South African companies. In reply: Estlund and I both grant that "ought implies can", where "can" is taken to mean "has the requisite ability". Given this, one can assess the Janna case in one of two ways: (1) hold fixed a judgment about Janna's obligation (or lack thereof) to divest and, on that basis, form a judgment about Janna's (in)ability to divest; (2) hold fixed a judgment about Janna's (in)ability to divest and, on that basis, judge that Janna is (not) required to do so. Estlund clearly adopts the first strategy: we're meant to find my proposed refinement counterintuitive because it implies that Janna is not required to divest.

In general, this seems like a shaky strategy for interrogating the plausibility of an analysis of ability. With "ought implies can" operating in the background, the introduction of moral intuitions requires one to simultaneously balance two interdependent sets of judgments in assessing cases like Janna's: judgments about requirements and judgments about ability. But we can't actually allow both sets of judgments to vary simultaneously in our assessment of any case. Doing so leaves the assessment indeterminate. To get any grip on the case, we must hold one set of judgments fixed. Estlund opts to fix our judgment about what Janna is required to do and use this and "ought implies can" to settle our judgment about Janna's ability. But we might just as easily fix our judgment that Janna is unable (if we buy that as an implication of some favored analysis of ability) and settle our judgment about Janna's obligation using that fixed point and "ought implies can". Estlund has offered no reason to think that we should favor an assessment of the case that starts by fixing the moral judgment over an assessment that starts by fixing the ability judgment.

Moreover, I doubt that the intuition that Janna is required to divest is sufficiently independent from intuitions about her abilities to use it as a fixed point in our assessment of the case. Put differently, with "ought implies can" lurking in the background, intuitions

² One might suggest here that Claudia's decision to quit reveals her "true preference" to do something other than write a book. But this is plausible only if one accepts the axiom of revealed preference, which has been challenged by Sen (among others) from numerous angles (see the essays in Sen, 1997, 2002).

about Janna's obligations are bound to be influenced by intuitions about her abilities. I suspect that those who insist that Janna is required to divest start with an intuition that she is able to divest (which is then consolidated by the conjunction of the requirement and "ought implies can"). Note that this need not cause trouble for my proposed refinement. Perhaps one finds it difficult to imagine that Janna could really be as torn about the situation as Estlund suggests (given preconceptions about financiers' motivations); or perhaps one finds it difficult to believe that Janna's failure to divest could be based on anything other than a coolly-conducted cost-benefit analysis of continued divestment (perhaps she's reached the point where she's sustained the maximum losses she's willing to incur). Importantly, these point to possibilities for explaining the intuition that Janna is really able to continue to divest (and, thus, subject to an obligation to do so) that are consistent with my proposed refinement — namely, ways of interpreting the case such that Janna does not really give a good faith effort to continue divesting (even if she, successfully, gave a good faith effort to divest in the past).

Of course, Estlund could just stipulate that she really does give a good faith effort, however such effort is to be understood ("fill in the details required to make the case vivid"). But then it no longer seems obvious that Janna is required to continue divesting, in large part because it no longer seems clear that Janna is able to continue divesting (or so it seems to me). But then the implications of my proposed refinement for Janna don't seem so counterintuitive. "If Janna really is unable to divest," one might object, "then perhaps she's not required to divest after all."

I don't wish to settle the Janna case here; I don't think I can, nor do I think I need to. I think it's enough to cast doubt on Estlund's assessment of the case by noting that it derives an ability to divest by holding fixed a requirement to do so. If, instead, we provisionally set aside the issue of requirement to investigate the issue of Janna's ability directly and find that she satisfies the conditions for inability, then I doubt we'd find the lack of a requirement in this case so counterintuitive (given "ought implies can", of course).

On the structure of Estlund's original argument. In broad outline, Estlund's (2011) central argument goes as follows.

- (1) Ought implies can (do)
- (2) Can (do) does not imply can will
- (3) Therefore, ought does not imply can will.

Since Estlund concedes (1) for the sake of argument, the key task is to vindicate (2). How does Estlund do this? So far as I can tell, (2) is meant to follow from his proposed

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analysis of ability.³ So the key premise of the argument rests entirely on Estlund's "working account" of ability. Of course, Estlund's rejection of the human nature constraint will not be very compelling if he simply assumes his proposed analysis. So what's the argument?⁴

In fact, Estlund never directly argues for his proposed analysis of ability. Instead, he uses the case of selfish Bill to support the intuition that "can't will" is not requirement-blocking, from which one might draw indirect support for his analysis (Estlund, 2011, p. 220).

- (1) Plausibly, Bill is required to take his trash to the community bin.
- (2) But Bill can't be motivated ("can't will") to take his trash to the bin.
- (3) Therefore, Bill's lack of motivation to take his trash to the bin does not block the requirement to take his trash to the bin.

It's easy to let Estlund's conclusion here pass through because he never directly considers whether Bill's lack of motivation undermines his ability to comply with the assumed requirement. Moreover, it's easy to go along with this assessment because it's difficult to imagine Bill as anything other than an asshole⁵ (if not subject to motivational pathologies). With Estlund's analysis of ability in the background, it's natural to grant that Bill is able to take his trash to the bin: given that he's simply being an asshole, if he tried to bring his trash to the bin and didn't give up, he would tend to succeed. So it seems that Bill's lack of motivation does not undermine his ability. Thus, "can't will" does not imply "can't do".

I submit that this is shaky ground on which to rest an analysis of ability, especially when one's argument crucially depends on it. As I indicated in my original challenge, one common response to Bill is to concede that, if we specify the case such that Bill is neither pathological nor simply being an anti-social jerk, then perhaps we should treat him as *unable* to do so.⁶ But that's just to express the judgment, *pace* Estlund, that motivational incapacities can sometimes undermine abilities and, in turn, block requirements. Estlund has given little reason to think that, once the details of Bill's psychology are specified more precisely, we should not regard him as unable to comply. Indeed, perhaps if we specify

3 As Estlund notes in his reply: "I merely pointed out that this is one familiar conception of ability according to which 'can't will' need not, if suitably specified, be seen as entailing 'can't do' ". Cf. Estlund (2011, p. 213).

4 Recall that I've already shown that he can't assume his proposed analysis on the basis that a proponent of the human nature constraint must accept it.

5 In the strict sense, of course (James, 2012).

6 I've heard this thought expressed during discussions with numerous people about the case.

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the case such that Bill persistently makes good faith efforts to comply and yet fails to do so, it might be difficult to resist the conclusion that he is unable. At least, that is the thrust of my original challenge.

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