

180166: Egalitarianism

CAN LUCK EGALITARIANISM BE 'SAVED'?

*ANALYSING THE UNEASY BALANCE BETWEEN EQUALITY AND RESPONSIBILITY IN
AN INITIALLY INTUITIVE BUT DECEPTIVELY COMPLEX THEORY*

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1. Introduction

This paper will focus upon one of the most maligned recent theories of equality; so called “Luck Egalitarianism” (LE).¹ The constituent elements will be explored and analysed and its intuitive appeal (partly due to the initially attractive balance of equality and responsibility) noted. It is argued that LE’s initial and apparent simplicities, belie a host of dilemmas, complexities, and potential circularities; including an assumption of equality as a baseline, foundational principle, or even, as a legitimately valuable goal in and of itself. This is not to say that equality should be declared ‘no such thing’, but that some formulations of LE seem to take this for granted without sufficient justification. At some point of course, assumptions must be made, on the basis of some bias or intuition. But merely assuming such things with equality at the centre seems to lead to illogical consequences.² All the while, equality cannot be dismissed and ignored. Indeed it would be naïve to do so. It remains an enigmatic concept which will often require contextualisation.

The idea of responsibility, necessarily balanced within the LE position, is often considered to explain part of the appeal of the theory. It is interpreted as attracting the ‘left-leaning’ egalitarian as well as the centre-right and beyond, who may place value in the idea of people taking responsibility for their own actions.³ Further problems arise when one considers the notion of responsibility as linked with equality, however. One such issue arises in the form of ‘chosen’ versus ‘unchosen’ circumstances and the distinction between so-called ‘option luck’ and ‘brute luck’, within which the debate of choices and talents arises. Even without the temptation to argue a lack of free will, the distinction between ‘unchosen’ and ‘chosen’ entities, as related to responsibility, may at best, blur, and at worst, collapse.

In both the “equality” and the “responsibility” principles, greater nuances and subtleties appear to be necessary to avoid charges of indeterminacy. When further distinctions are drawn, there is a tendency to submit to the idea that simple, monist egalitarian ideals, even balanced with other concepts, must fail, and the term *Complex Equality* comes to mind, with some form of plurality being necessary.⁴ There are certainly cases in which combined values of equality and

¹ ‘Luck Egalitarianism’ and the interchangeable expression ‘Equality of Fortune’ were coined by Elizabeth Anderson in her famous critique, Anderson, 1999.

² Many of which have been noted in the literature and will be examined in greater detail in the sections that follow.

³ Nicholas Barry has noted the political appeal of individual responsibility in, Barry, 2008, p. 136; For a useful contextualisation and explanation of the ‘attack on liberalism’ during the 1980s and the rise of responsibility through that decade, c.f. Scheffler, 1992, pp. 299-323.

⁴ Complex Equality was argued for by Michael Walzer in Walzer, 1983.

responsibility seem to pull together to produce intuitive and philosophically neat results. But there are also cases where it is not clear that we ought to be concerned with equality at all, and those in which equality and responsibility may pull in opposite directions.

As well as problems within the conceptions of equality and responsibility which operate within LE, there appear to be problems with the overall functioning of the theory as a whole, many of which have been noted by Elizabeth Anderson in her famous critique, ‘What is the Point of Equality?’⁵

It is argued here then, that a cogent theory, based on the LE intuition would become extremely complex and convoluted and necessitates making concessions and drawing further distinctions. At present that theory does not appear cogent and is arguably ‘fatally indeterminate’.⁶ Whilst it might be possible to save LE from such a fatality, it is argued here that it would be done so at the cost of complexity and excessive distinctions. Ultimately, it is argued that one LE is becoming less appealing because of its being undermined, and its increasing complexity. Inspired in part by Anderson’s “Democratic Equality”, I propose a way to try and save the *intuitions* of LE, but perhaps not LE itself, by appealing to an *equal opportunity to live a dignified life of one’s own choosing*. In that this does away with the problematic and misleading vocabulary of “luck”, it does not seem apt to call it a form of LE. But whilst many would instinctively view this as a departure from the LE position entirely, it is argued that it is sensitive to the criticism raised, and could, to some extent, be reconciled with the ideas of equality and responsibility that, at first glance, make the LE intuition so appealing.

1.1. Luck Egalitarianism (LE)

The phrase “luck egalitarianism” has caught on, despite being potentially misleading and coined by a critic. The canonical version of the intuition, or that most often cited is that of Temkin which reads as follows: “it is bad – unjust and unfair – for some to be worse off than others through no fault or choice of their own”.⁷

This combines then, the (lack of) responsibility element’ of the formulation; arising through the occurrence of an event beyond a person’s control, and the (in)’equality element’ arising quite simply through someone’s becoming worse off than another. Why is it not enough to say

⁵ Anderson, 1999.

⁶ Molly Grace, ‘Luck egalitarianism is fatally indeterminate’ <http://www.sjol.co.uk/issue-5/luck-egalitarianism-is-fatally-indeterminate>.

⁷ Temkin, 1993, p.13. and footnote 21.

that “it is unjust...for some to be *badly off*, through no fault of choice of their own”? They may seem for all intents and purposes to be the same, but in fact, the difference is important. The latter is concerned with an absolute disadvantage, whereas, the LE position is concerned with relative disadvantage. We will return to this later.

2. *The Problem of Responsibility*

2.1. *Option Luck v. Brute Luck*

Ronald Dworkin, in the second of his two seminal articles on what has come to be known as luck egalitarianism, laid out the distinction at the heart of the LE position between so-called “option luck” and “brute luck”.

Option luck is a matter of how deliberate and calculated gambles turn out – whether someone gains or loses through accepting an isolated risk he or she should have anticipated and might have declined. Brute luck is a matter of how risks fall out that are not in that sense deliberate gambles. If I buy a stock on the exchange that rises, then my option luck is good. If I am hit by a falling meteorite whose course could not have been predicted, then my bad luck is brute.⁸

Speaking on this distinction, Gerald Cohen has held that “a large part of the fundamental egalitarian aim is to extinguish the influence of brute luck on distribution...Brute luck is the enemy of just equality.”⁹ Cohen thus praises Dworkin, stating that he has, “in effect, performed for egalitarianism the considerable service of incorporating within it the most powerful idea in the arsenal of the anti-egalitarian right: the idea of choice and responsibility.”¹⁰

Inequalities that are caused by brute luck then, are seen to be particularly offensive to the idea of equality. Formed in another way, this view is pointing at the idea that it is wrong for someone to be in a position of disadvantage, through no fault of their own, and one way of avoiding this is to aim for equality of opportunity. As Elford states, “[t]he thought that equal opportunities are what fairness requires underpins the luck egalitarian commitments that inequalities in individuals’ circumstances are unfair or unjust, whereas inequalities traceable to individuals’ own responsible choices are fair or just.”¹¹ But what if equality of opportunity seems present, and people still suffer subsequent brute luck inequalities? Imagine that you and I both wish to apply for a lucrative job and any brute luck inequalities are neutralised ensuring background equality of opportunity and allowing us both to compete on an “even playing field”

⁸ Dworkin, 1981 (Part 2).

⁹ Cohen, 1989. p. 931.

¹⁰ *ibidem* p. 933.

¹¹ Elford, 2013, p. 140.

If I subsequently fall ill through no fault of my own, and cannot attend the interview, then initial equality of opportunity has been compromised by an intervening brute luck event, preventing me from seizing the opportunity. Would we just let the loss lie here? Surely I would not have a claim to your earnings when you get the job and I don't, in order to compensate me for my brute luck inequality? Or was it enough that we started from a position of equality? We may need to explore some different conceptions of luck and responsibility, in order find the answer.

Nagel claims:

If A gains a benefit for which he is responsible, becoming better off than B, who is not responsible for the change, the resulting inequality is still acceptable, since the [egalitarian] principle does not object to *inequalities* for which the parties are not responsible, but only to the parties' being unequal in goods or evils for the *possession of which* they are not responsible – where merely having less than someone else is not in itself counted as an evil. So if A and B are each responsible for how much of a particular good he has, the non-responsibility condition fails and inequality is unobjectionable. It is perfectly alright if A has more of the good, even though B is not responsible for the inequality, since he is not responsible for how much A has.¹²

So, it is clearly one's responsibility for one's own holdings that should be the focus. As long as I am responsible for my own possession of goods, it is irrelevant if A becomes better off in respect of me, through no fault of my own, because I am responsible for my current position, and he is responsible for his, despite my not being responsible for the overall distribution between us. This clearly tries to avoid the unintuitive position whereby I have a claim to redistribution where, "through no fault of my own" I become worse off than him, due to his success.

On the face of it, this formulation and Temkin's seem to pull in different directions. The difference bears in an important way upon what we think of equality. Temkin's formulation, as focused on the "sufferer", claims a problem with my being worse off through no fault of my own, and seems to imply a problem with involuntary (from my point of view) inequality per se. Clearly Nagel asserts that the inequality per se is not objectionable, which seems perfectly reasonable, but his view arguably has the effect of holding me responsible for, perhaps through no fault of my own, not having become as successful as A.

¹² Nagel, 1991, pp. 71-72.

Lake notes that this view raises a tension in the sense that responsibility becomes irrelevant where the parties have equal holdings, and states that “[a] concern with the absence of responsibility on the part of the disadvantaged agent must be reconciled with a concern for the presence of responsibility on the part of the advantaged agent if the commitment to responsibility as a determinant of the distributive reward is to have any credibility at all.”¹³

Let us compare these views with those of Dworkin who uses the idea of an auction to conduct a thought experiment, whereby people on a desert island, bid for bundles of resources in a method intended to satisfy what Dworkin calls the “envy test”,¹⁴ which aims to ensure that, (when envy is absent) an equal distribution is present, given that if anyone prefers someone else’s bundle, they could have bid for it. I am therefore responsible for my holdings and any possible interpersonal inequalities, given that, on Dworkin’s view, I had the possibility to be as well off as them, had I so elected, and had this possibility because the initial circumstances were fair and equal. Does this mean then that if initial equality of opportunity is present, then we are responsible for any subsequent choice that we make? It seems so on Dworkin’s view; in fact it seems a necessary but not sufficient component of responsibility, which justifies inequality.

Earlier, Dworkin defined option luck as “a...deliberate and calculated gambles turn out [which I] should have anticipated and might have declined”. But it also seems important to Dworkin that in order to qualify as inequality-justifying option luck, the assumption that “everyone has, in principle, the same gambles available to him.”¹⁵ Lake comments:

If my gamble is indeed ‘genuine and calculated’; then I will want to say that the outcome of that gamble is a matter of genuine choice on my part. But this is not enough for Dworkin’s purposes. He wants to claim that a genuine choice on my part is relevant if and only if the same genuine choice was “in principle” open to you. If it was not open to you, then any inequality between us is impermissible.¹⁶

So, on this view, a genuine and calculated choice, seemingly a matter of option luck, will turn to a matter of brute luck, if, despite my being aware of deliberately choosing this path, the same choice was not “in principle” open to you; the justification being that the envy test would not

¹³ Lake, 2001, p. 92.

¹⁴ Dworkin, 1981 (Part 2), p. 285.

¹⁵ *ibidem.* p. 296.

¹⁶ Lake, 2001, p. 96.

be satisfied, because someone else may still want for the possibility that I have genuinely chosen. This does seem to complicate the distinction of option luck and brute luck.

A genuine choice then “[i]n and of itself...decides nothing. Instead, what makes such inequalities legitimate is that my greater holdings are the result of no choice available to me that was not *also* available to you”.¹⁷ These choices, on Dworkin’s account at least, seem to be the only legitimate products of option luck, and thus may give rise to legitimate inequalities.

Nicholas Barry has disputed the use of the option luck and brute luck distinction, and claims that the divide, as conceived by Dworkin, may be insensitive to background inequalities, and that it may lead to some instances of option luck that are unjust.¹⁸ The latter is a point similar to one made by Anderson, as one of the most powerful arguments against LE, that, by placing too much weight on the luck distinction, it may abandon those people who were the victims of terrible option luck, and that this is unnecessarily harsh.¹⁹ Christiano’s noteworthy example of the motorcyclist who is paralysed, is an example of a terrible case of bad option luck, which, on a strict interpretation of the distinction, is noncompensable, and shows how letting such losses lie may seem incredibly unjust.²⁰

Barry asks the question as to why and how the noncompensable nature of option luck is justified, offering the simple example of two gamblers, one who wins and one who loses, dismissing the counter-intuitive idea that option luck is deserved, stating, “[b]oth individuals knowingly took a risk, but why does this mean we should ignore the role of luck in generating the inequality between them? Just because a person has chosen to bring luck into play is no reason for her to be entitled to all its fruits...It seems a strange position for egalitarians to take if they aim to prevent morally arbitrary differences in well-being.”²¹ Another option considered is to focus on the autonomous choice that the gambler has made.²² But, as Barry notes, “if individuals end up with different outcomes from the same gamble, they pay different costs for the same choice...and this seems unfair from a luck egalitarian point of view.”

The justification for this, in my view, is closer to the choice element in the sense that we should be faithful to the concept of allowing people to live life on their own terms. If we were to neutralise gambles for gamble’s sake, then it would remove the possibility of enjoyment to

¹⁷ *ibidem.* p. 104.

¹⁸ Barry, 2008, p. 139.

¹⁹ Anderson, 1999, p. 296.

²⁰ Christiano., 1999.

²¹ Barry, 2008, p. 138.

²² *ibidem.*

those who enjoy the inherent risk taking and the possibility to “win big”. As Dworkin states, “[i]f winners were made to share their winnings with losers, then no one would gamble, as individuals, and the kind of life preferred by both those who in the end win and those who lose would be unavailable.”²³

We could of course, distinguish the cases of the motorcyclist and the gamblers by claiming that whilst the latter involves a case of legitimate option luck, the former is in fact the case of intervening brute luck, fundamentally changing the circumstances of an initial option luck decision. But this seems flawed, in the sense that, however slim the chance and however terrible to consequence, the motorcyclist must have in mind the low possibility of such an occurrence. A better way to distinguish the cases then, without claiming that the motorcyclist’s case is simply an analogous example of high loss to a gamble for which responsibility should be borned, is by stating that, allowing people to enjoy a life of their own choosing necessitates allowing the gambler to make gambles, but remaining faithful to the idea that the motorcyclists chooses a life of motorcycling, but does not choose a life of paralysis. The gambler, one might, say, does not choose the loss either. But he has chosen the life of a gambler, and the inherent ups and downs that such a life involves.

One of Barry’s criticisms of Dworkin’s approach, is that his “auction” thought experiment, leads him to assume background equality in the functioning of the luck distinction. He states that, “Dworkin applies the distinction to a world where a number of egalitarian conditions are already in place. One of the most important is that all individuals have an equal share of social resources – Dworkin is using the option-brute distinction to analyse the inequalities that emerge in a world where everybody starts from an initial position of material equality. This is different from the real world where individuals start from very unequal positions.”²⁴ Barry rightly notes that “if people start from very unequal positions, then there is a risk that the decisions they make and the lifestyles they lead will perpetuate this inequality”.²⁵ He therefore argues that some sort of “equal footing proviso” is needed to address this issue.

As we saw earlier, Dworkin specified the conditions that a choice must be a deliberate and calculated gamble where in principles the same gambles were available to others. But this cannot feasibly have any bearing on the effects that may be exerted by differences in certain background circumstances. The point seems at its strongest when we consider, as Barry does,

²³ Dworkin, 2000, p. 75.

²⁴ Barry, 2008, p. 139.

²⁵ *ibidem*.

how inequalities in social circumstances may affect individual choice.²⁶ He draws an example of two equally talented students, whose differences in family backgrounds and their respective attitudes towards further education influence their choices, and thus their future education, jobs and earnings. Barry takes this to mean that:

Dworkin must extend the equal footing proviso [which ensures that brute luck egalitarianism uses notions of choice and individual responsibility in a way that is consistent with egalitarian notions of fairness] to nonmaterial inequalities, otherwise, his reliance on individual choice risks perpetuating existing social inequalities relating to class, gender and society.²⁷

This position would bring to bear on another very important part of Dworkin's thesis; the "expensive tastes objection"²⁸ which is a problem Dworkin sees as arising initially when discussing an equality of welfare approach. Dworkin's claim is that it is counter-intuitive that those who develop expensive tastes, should receive more resources in order to satisfy such tastes.²⁹ Furthermore, Dworkin seems to hold something particularly objectionable about the deliberate cultivation of expensive or "champagne" tastes. This is avoided on Dworkin's equality of resources view, as such a taste is a clear form of option luck that does not require compensation.

Viewing "expensive tastes" as conscious choices may not always be appropriate however. In Dworkin's example of Louis, the deliberate cultivation of the expensive taste, seems to be a more clear cut and extreme example, but given that even such a deliberate choice may be influenced by a person's unchosen abilities, or perhaps unchosen circumstances (If A finds out that he has a hundred days to live and deliberately sets about trying to get as much from life as possible), the distinction will never be clear-cut.

Barry states that "[a] person who has an intense hatred of work (in effect, an expensive distaste) may have been raised in a household here working hard was regarded with contempt. Dworkin would want to hold this person responsible for this taste, making him pay the costs of his life of leisure."³⁰

Barry claims that if Dworkin's theory were to take note of background (particularly social) inequalities, and to extend the "equal footing proviso" to these inequalities "such as parental attitudes", "he could no longer classify this man's taste or leisure as option luck, because it

²⁶ Barry, 2008, p. 140.

²⁷ *ibidem*.

²⁸ Dworkin, 1981, pp. 228-240.

²⁹ *ibidem*, p. 228.

³⁰ Barry, 2008, p. 141.

largely reflects his upbringing, and Dworkin would be left with the kind of egalitarianism he wishes to avoid.”³¹ Barry finds Cohen’s view of responsibility superior, as it is based on “genuine choice”, which Cohen explains thus:

We are not looking for an absolute distinction between presence and absence of genuine choice. The amount of genuineness that there is in a choice is a matter of degree, and egalitarian redress is indicated to the *extent* that a disadvantage does not reflect genuine choice. That extent is a function of several things, and there is no aspect of a person’s situation which is wholly due to genuine choice.³²

Barry sees this view as more nuanced and sensitive to unchosen background circumstances which may shape choices, but not without issues.³³ Barry’s own view is that, “instead of the option luck-brute luck distinction, luck egalitarians should focus on the extent to which people can be considered to have chosen their current level of well-being.”

2.2. Abilities v. Choices

The expensive tastes objection seems to be the starting point for the idea that the distinction between abilities (including talents) and choices, is not as strong as it may seem. Of course, talents must be, to some extent maintained, cultivated and trained. An ability is not wholly unchosen, manna falling from the sky, which is a physical object having no association with you until it hits you, fully formed. It a metaphysical trait that is complexly intertwined with your person. However, this ignores the fact that interest in, and capacity for certain talents are much more unchosen. Whilst Pavarotti’s talent for singing was of course trained, cultivated and to some extent a product of choice, his natural capacity to sing, love of music, physical capability and background circumstances influencing the development of this talent would seem to be much more unchosen.

George Sher has noted the immense difficulty in sustaining this distinction, citing the arguments that “(1) our choices are causally influenced, if not altogether determined by physical or psychological stats or events that in their turn are beyond our control [and] (2) we typically make our choices in light of what we believe about the constellation of (unchosen) talents upon which we will have to draw in order to implement them.”³⁴

As Sher holds, the argument of talents as enduring abilities and choices as one-time events, so reconstructed, is “vulnerable to the objection that choosing, too, is an exercise of an ability –

³¹ *ibidem*.

³² Cohen 1989, p. 934.

³³ Barry, 2008, p. 143.

³⁴ Sher, 2012, p. 400.

the ability to choose.”³⁵ Therefore “it follows that if our lack of control over our talents is what disqualifies their exercise from being a source of just inequalities, then our lack of control over our choice-making ability will also disqualify *its* exercise from being a source of just inequalities.”³⁶ Sher mitigates this point however, by claiming that the ability to choose can be distinguished by its widespread and equal distribution among all people, while specific abilities are not. This point should not be overstated however, for the ability to choose *well* and to choose *prudently and responsibly* is certainly not distributed equally among all people. Indeed Sher arrives at a similar point, stating:

Doubts arise when we remind ourselves that an agent can only choose to perform an action that he *recognises* as being among his options, and can only choose to perform an action on the basis of a particular good- or right-making feature if he *thinks it has* that feature. These facts threaten the distinction between talent and choice-making ability because the ways in which agents conceptualise their options are themselves influenced by their talents. Given the role that each person’s unchosen tendencies of thought play in determining how he thinks about his situation, there is a real danger that many of the differences in people’s talents will bleed over into their choice-making abilities.

It may be then, that this distinction is just too blurred to ever be practicable.

3. *The Problem of Equality*

As we have already seen. LE may have at its base a smuggled conception of inherently objectionable (and thus redistributable) inequality. To be clear, this is not to say that such a holding is wrong, but that insofar as it is sometimes denied or inasmuch as it is sometimes applied, it will cause confusion and inconsistency.

As Hurley has stated, “no justification is given for favouring or defaulting to equality.”...“the aim to neutralize bad luck in the interpersonal sense provides no independent reason to favour equality as pattern of distribution of whatever is a matter of luck. It begs the question of justification and just helps itself to the goal of equality.”³⁷ Redistributing inequalities due to luck “assumes that one starts from a position of equality and judges departures from that position to be due to luck. But then one does not have an argument that inequality results from luck: one has simply made this true by definition.”³⁸ On an abstract level, this is a circularity that is quite difficult to overcome.

³⁵ *ibidem.*, p. 402.

³⁶ *ibidem.*

³⁷ Hurley, 2003 p. 157.

³⁸ Gordon, 2003.

The “responsibility principle” (that it is objectionable for some to suffer harm or loss through no fault of their own), Lake states:

[A]ppears to supply us with the materials necessary to our understanding the relation between responsibility and inequality and thus to our understanding the nature of the egalitarian intuition itself. If as the responsibility principle claims – it is objectionable for some to suffer harm or loss through no fault of their own, then it follows – as the egalitarian intuition claims that it is objectionable for them to suffer an inequality through no fault of their own. Or rather it would follow provided we could show that the inequalities were indeed harms or losses of the relevant kind.³⁹

An assumption that inequalities are just such harms or losses, seems to be what the LE position relies upon. But Lake, similarly, appears to have found this position wanting.

In and of itself, inequality is neither a loss nor a harm and one would simply be confusing the unobjectionable bare face of inequality with the objectionable fact of its bad consequences in claiming that it was objectionable for someone to suffer an inequality through no fault of their own.⁴⁰

The problem with LE is that it *must* assume that equality is just such a harm (or that it has the potential to be in some cases), or the position becomes relatively meaningless. We may well hold it to be objectionable for someone to suffer *the consequences* of inequality through no fault of their own, but then that assumes that the consequences stemming from involuntary inequalities are a particularly bad kind of consequence, and quite simply, the presence of the inequality, seems to pale into relative insignificance. As Lake states “[w]e have no more reason to object to someone suffering, through no fault of their own, bad consequences induced by inequalities, than we do...bad consequences induced by equalities.”⁴¹

Consider the following view that “it is not inequality per se that Luck Egalitarians object to; it is inequalities that are involuntary.”⁴² If it is not inequality per se that is objectionable, then what about it becomes objectionable when it is involuntary? This position implies that involuntary inequalities are harms in themselves, whereas other inequalities are not. The first part claims that the thing is not inherently bad, whereas the second part assumes that it is, and can only be true if it has the possibility to be so.

It is important then, not to consider “inequalities” in abstracto, but to identify the specific kind of inequality, or to answer the “Equality of What?”⁴³ question.

³⁹ Lake, 2001, p. 14.

⁴⁰ *ibidem.*, pp. 14-15

⁴¹ *ibidem.*, p. 14.

⁴² Lang, Gerald., ‘Two Objections to Inequality’, www.trinitinture.com/documents/lang.pdf.

⁴³ Sen, 1979.

Consider this passage from Barry:

[I]f I make a bad decision because of my background then this is a case of bad luck. If everyone else chose better (because of their backgrounds), then they have enjoyed better luck than me, and this is unjust from a luck egalitarian point of view. On the other hand, if everyone else made the same bad choice as me because of some similarity in our upbringing and we all end up equally badly off, I still suffer from bad luck, but so does everyone else and for this reason, there is no injustice involved.⁴⁴

It is important to specify here *in what sense* Barry means that he is equally badly off. At first glance, this seems to be just the sort of example that suffers from the levelling down objection; which plays on the idea that where a worse off party cannot be raised to the level of the better off party, treating equality as inherently valuable legitimises worsening the situation for the better off party in the name of equality.⁴⁵

The reason it seems vulnerable to this objection is because it holds that there is no injustice if we are all equally badly off, but that there is injustice if some benefit and others do not. It therefore assumes the inherent value of equality. If we are talking about being “equally badly off” in terms of opportunities however, such an assumption may be justified. Equality of opportunity, appears, in my view, to be the closest that we can get to discovering a value inherent in an equal distribution. This is because opportunities can be conceived of as relational or interpersonal advantages.

3.1. Interpersonal v Intrapersonal Advantages

Lake draws the distinction between intrapersonal advantages/disadvantages, such as pain or hunger; those whose level does not change relative to others’ experience, and interpersonal advantages/disadvantages, such as votes, or opportunities. In the former, what we are concerned with is the existence, period. In the latter, we are concerned with their contextual, relational existence. “Put another way, they are things of a kind that we cannot judge as ...beneficial or harmful without viewing them in the context of a plurality of individuals between who such judgments of (relative) advantage and disadvantage can be made.”⁴⁶ It is my position relative to others that determines to what extent I make use of these advantages.

This is why, in the case of equality of opportunity, an equal distribution seems to be extremely appealing, and will be much less vulnerable to any sort of levelling down objection. We must

⁴⁴ Barry, 2008, p. 144, footnote 28.

⁴⁵ Temkin, 2000.

⁴⁶ Lake, 2001, p. 18.

then be clear about the types of inequalities we are talking about. I believe that this lack of clarity is one of the reasons for confusion over the LE position.

4. *The problem of the approach as a whole*

4.1. *The Unease of the Equality-Responsibility Balance*

For Lake, it seems that in fact, the luck egalitarian position is an uncomfortable balance of two standards that sit uneasily and do not seem to belong with one another. He states:

Indeed my suspicion is that the intuition seeks to combine what are, in this context, two quite independent tests of fairness in distribution. One test has it that fairness demands equality. The other has it that fairness demands each receive what he is responsible for. ‘On the face of it, there is nothing discernibly egalitarian in the idea the individuals should benefit or suffer according to what they are responsible for... Indeed, the impulse to qualify the commitment to equality by incorporating claims about responsibility seems designed not so much to replicate the true nature of underlying egalitarian concerns as to help egalitarians get out of a philosophical and political fix.’⁴⁷

Lake continues:

That claims about equality and responsibility should be *thought* to belong together is understandable. After all, Egalitarians have long felt themselves vulnerable to the charge that an unbridled commitment to equality – a commitment to equality in holding come what may – is counter intuitive. It is counter-intuitive precisely because the demand to preserve equality in distributions appears to require that resources be systematically diverted from the prudent to the profligate.⁴⁸

Lake, then sees this uneasy balance as simply descending into a form of Prioritarianism.

4.2. *Anderson’s critique*

Is there anything else that might be problematic about the LE position taken as a whole? Elizabeth Anderson, as already mentioned, launched a powerful critique of the theory, to a large extent in response to Ronald Dworkin’s famous two articles, mentioned above, which arguably ignited the whole luck egalitarian debate.⁴⁹

Anderson takes issue with the fact that the luck egalitarian’s aim is to neutralise or correct “cosmic injustice” (in the form of brute bad luck) and sees several problems with this approach, believing primarily that [t]he proper negative aim of egalitarian justice is not to eliminate the impact of brute luck from human affairs, but to end oppression, which by definition is socially

⁴⁷ Lake, 2001, pp. 97-98.

⁴⁸ *ibidem*. p. 97.

⁴⁹ *supra*, n. 8; n. 28.

imposed.” And that “[i]ts proper positive aim is not to ensure that everyone gets what they morally deserve, but to create a community in which people stand in relations of equality to others.”⁵⁰

In a rather damning assessment, Anderson states that, “equality of fortune fails the most fundamental test any egalitarian theory must meet: that its principles express equal respect and concern for all citizens.”⁵¹ One of the reasons Anderson holds such a view, is one we have already looked at; the “abandonment” or “harshness” problem, whereby over-reliance on the brute luck/option luck distinction, leads to victims of bad option luck labelled as responsible for their losses and being left to fend for themselves. Anderson also takes issue with the fact that the only escape from this position is paternalism. But she seems to take quite a stigmatising view of paternalism, which may be needed in any society, when unexpected losses occur. By and large, however, this objection seems justified, and implies, at the least, a refocusing of the responsibility principle.⁵²

The second reason that Anderson believes LE to “fail this test” is that:

[E]quality of fortune makes the basis for citizens’ claims on one another the fact that some are inferior to others in the worth of their lives, talents, and personal qualities. Thus, its principles express contemptuous pity for those the state stamps as sadly inferior and uphold envy as a basis for distributing goods from the lucky to the unfortunate. Such principles stigmatize the unfortunate and disrespect the fortunate by failing to show how envy can obligate them.⁵³

Let us focus on this in slightly more detail. Anderson states that, “equality of fortune bases its distributive principles on considerations that can only express *pity* for its supposed beneficiaries”. At first glance this argument seems extremely compelling. But it may not be as strong as it appears. The idea that equalising these inequalities must pity the less well-off, assumes that we *must* necessarily be moved by pity to act. Might we not, just as easily, be motivated by an ideal of the inherent value of equality, insofar as we are not responsible for our choices? It seems to me that whilst pity evokes feelings and desires to help a person because

⁵⁰ Anderson, 1999, pp. 288-289.

⁵¹ *ibidem.*, p. 315.

⁵² Voight has claimed however, that this objection has been overstated. Voight, p. 389, 2007.

⁵³ Anderson, 1999, p. 289.

one can see that he is less well off than the pitier, such ideas of equality are generated by a feeling of togetherness and understanding.

One of the reasons that Anderson's argument seems to hold such strength is because she conceives of a certain notion of pity, prejudicing it by mentioning the idea of pity as one where a note may be sent to the disadvantaged person explaining how their inferiority justifies the redistribution. Her notion of pity certainly does not seem to respect people equally. But does it necessarily follow that I must feel pity, or this type of judgmental pity which Anderson lays out, when I wish to equalise the sorts of inequalities that luck egalitarians would agree to? I may wish to act out of a strong sense of equality, tempered by a belief in the importance of individual responsibility. This may in turn, have a side-effect that certain people in society feel pitied, but it is not true that the equaliser must feel pity. Let us imagine that an independent adult, who loses his job through no fault of his own, and struggles to make ends meet, does not want to accept what he sees to be "charity" money from his mother, to help him put food on the table for his family. We can see that he has a certain sense of pride and independence and does not want to be pitied. The mother however, we could say, is not acting because she pities her son, but is doing so out of love and compassion, understanding his difficult situation and wanting to help. Perhaps she is motivated by an idea that all of her children should have the same chances to succeed in life, and that this money will help her son to achieve this.

One could argue that this is a special case of family, but in a sense, does the State not follow a similar model? What is true, however, is that the son may still feel pitied. Is it enough to undermine equal respect for all people that some people feel this way? I would argue that it is not. In the choice between (potentially) damaging someone's (subjective) pride, whilst helping them to an equal position after undeserved misfortune, and failing to help them, but affording them their equal "respect" in the meantime, choosing the latter would seem counter-intuitive.

The third objection of Anderson's is that, "equality of fortune, in attempting to ensure that people take responsibility for their choices, makes demeaning and intrusive judgments of people's capacities to exercise responsibility and effectively dictates to them the appropriate uses of their freedom."⁵⁴

⁵⁴ *ibidem*.

Anderson's issue here, I believe, is that because the LE position mandates the neutralisation of brute luck on distribution, the level of intrusion and coercion is likely to be very high. Such intrusion would most likely occur *ex post facto*, to extinguish the effect of the brute luck disadvantage, but it would surely also, in reality, begin to affect people's behaviour and sense of freedom. Indeed Anderson states that:

[S]uch a system requires the state to make grossly intrusive, moralizing judgments of individual's choices. Equality of fortune thus *interferes with citizens' privacy and liberty*...such judgments require the state to determine how much responsibility each citizen was capable of exercising in each case. But it is disrespectful for the state to pass judgment on how much people are responsible for their expensive tastes or their imprudent choices.⁵⁵

Ultimately, Anderson states the problem (citing Hayek) that "people are forced to obey other people's judgments of what uses they should have made of their opportunities, rather than following their own judgments"⁵⁶, which seems somewhat offensive to dignity and autonomy. Not all of Anderson's criticisms hit their mark, but she certainly lands some heavy blows. Her comments, plus some of the problems and inconsistencies that we have seen so far, seem to leave LE at the best, in dire need of further justification, and at worst, in somewhat of a mess, needing further alterations, nuances, qualifiers and conditions. What then, does Anderson propose instead?

5. Anderson's Approach – Democratic Equality

Anderson is heavily influenced by a capabilities approach, developed by Martha Nussbaum, who in turn took what Sen had primarily linked to economics, and linked it to development, justice and human rights.⁵⁷ Sen himself, then wrote of an equality of capabilities approach, developing it further.⁵⁸ Nussbaum proposes a list of core and central human capabilities in a way that aims to make them political goals, essentially suggesting that every person should be in the possession of these core "beings and doings". The strength and appeal of this position is that it is intuitively informed by an "idea of a life that is worthy of the dignity of the human being",⁵⁹ and that it is a practical and realistic theory, appealing to "real" ideas of "what people

⁵⁵ *ibidem.*, p. 310.

⁵⁶ *Ibidem.*

⁵⁷ Nussbaum, 2000.

⁵⁸ Sen, 1992, p. 49.

⁵⁹ Nussbaum, 2000, *ibid* p.5.

are actually able to do and be”.⁶⁰ Anderson believes then that “egalitarians should seek equality for all in the space of capabilities.”⁶¹ She states that her view of democratic equality, “thus aims for equality across a wide range of capabilities.”⁶² More specifically it seems that the capabilities involved are those required to ensure functioning as an equal citizen in society. Anderson explains that it is effective *access* to levels of functioning, that is ensured, rather than tying subjects to particular functioning themselves. This is where and how Anderson would tie in an element of responsibility into democratic equality, as the citizen would be free to make a choice within the framework of equal access. Anderson specifies that the access to these functioning must be such that the person is able to “stand as an equal in society.” In a criterion that would seemingly avoid the high levels of paternalism with which Anderson appears to take issue, “democratic equality guarantees effective access to a package of capabilities sufficient for standing as an equal over the course of an entire life. It is not a starting-gate theory, in which people could lose their access to equal standing through bad option luck.” The attempt is thus to dodge excessive paternalism, as well as the “abandonment objection” which we saw earlier. Finally, Anderson stipulates that freedom as equals may necessitate unequal division of resources, in order to ensure that everyone has “enough”, with a particular view to accommodating the disabled. Ultimately, Anderson envisages democratic equality to lead to “participation as an equal in a system of cooperative production.”⁶³

Anderson’s theory is not fully developed, but that said, any such theory might struggle to ever be fully developed. Despite this, it seems extremely alive to the criticisms scored against the luck egalitarian view, and seems to be a more realistic understanding as well as a more theoretically satisfying series of stipulations. LE strikes an uneasy balance between equality and responsibility that throws up confusions in both. Even with further justification, the impression is that with each qualifier, revision, or attempt to “save” the position, it becomes more complex and convoluted.

Initially inspired by Sen’s equality of capability and independent of Anderson’s approach, I would propose, as a starting point the theory of “equality of opportunity to live a dignified life on one’s own terms”. This clearly has similarities with Anderson’s approach, and given that I

⁶⁰ [ibidem](#).

⁶¹ Anderson, 1999, p. 316.

⁶² *Ibidem.*, p. 317.

⁶³ *ibidem.*, p. 321.

have gained confidence and inspiration from that, it will also aim to answer a great many of the criticisms levelled at LE in similar ways. Whilst Anderson's approach is clearly more comprehensive, it is important to remember that, in order to avoid intrusion, intervention and paternalism, she must promise a system in which equality of capability and functioning is *already* so guaranteed, that it is insulated from such post facto redistribution. In reality, this would surely be exceptionally difficult to set up. Democratic equality assumes creation and construction of an entire system of its own, to mitigate against relevant inequalities before they even arise.

6. *Equality of Opportunity to Live a Dignified Life of One's Choosing*

In my view, opportunities and capabilities present the only parameters within which a relative disadvantage can be a bad thing in and of itself. This is because it brings to bear directly on the way I am able to live my life, relative to others. If we consider life to be a race or competition, where you have more opportunity than me. By analogy you start the race further ahead. It is this *relative* disadvantage that is bad for me.

By using that one conception of 'equal opportunity to live a dignified life of one's choosing' we reduce it down to a single fundamental and intrinsically valuable equality, which can necessarily encompass all the capabilities necessary to live a dignified life of one's choosing. The opportunity requires the capabilities (in this sense the tools) necessary to be able to exercise my autonomy and functionings; a key element of dignity. This approach addresses many of the criticisms that we have seen aimed at the LE position. A life of one's own choosing, introduces a concept of responsibility that does away with the brute luck/option luck terminology, whilst the concept of dignity, can act as a guide in the autonomy/paternalism debate, as well as a safeguard, protecting against the "abandonment objection." The equal opportunity to live life on one's own terms implies the institutionalisation of equal opportunities, bestowing upon people equal capabilities to access education, to participate politically and to control one's own environment, all compatible with the same opportunities and capabilities for others.

This approach can explain the earlier distinction between the two gamblers, one who wins and one who loses. And the Motorcyclist, who is paralysed after riding his bike. As alluded to earlier, allowing the gamblers to live dignified lives on their own terms, implies allowing them the capabilities to freely choose their behaviour and interact with the world around them and to "play". It would be a greater offence to their dignity, or their ability to choose their own life,

if we were to impose paternalistic conditions upon them, to prevent them from losing. As we would be robbing them of capabilities essential for their autonomy and dignity.

Equal opportunity for dignified life choosing however also implies an assumption of a choice that is compatible with a dignified life itself. In the case of the motorcyclist, it would be an offence to his equal opportunity for a dignified life to offer him no help. Here the paternal/autonomy balance within dignified life living, necessarily falls in favour of paternalism, given that he has suffered serious loss that no one could hold him responsible for having chosen.

As with Anderson's position, ensuring equal opportunity for all, may well imply unequal shares of resources to guarantee. This sort of equality will necessarily filter down into sufficiency of resources that need not necessarily be equal. It is argued that it has the possibility to offer crossover and flexibility and encompass those inequalities which seem intuitively just, whilst providing logical reasons for the abandonment of those which do not. The reason this may not satisfy egalitarians is that rather than focusing on equality of outcome, this position is more likely to come close to an idea of ensuring that everyone has "enough".⁶⁴

7. Conclusion

Throughout this paper, we have seen how luck egalitarianism's flaws and the attacks that it has sustained, have left it in great need of defence. Unfortunately this paper has not been able to offer a great deal in this sense. The position contains circularities and assumptions, which although not fatal, may lead to difficult or confusing cases. If we take LE's aim to ensure equality of opportunity, and even if we take this to be intrinsically valuable, we will still run up against an assumption of equality as a baseline, against which brute luck is the enemy, and the blurred distinction between talents and choices. The crude nature of the brute luck/option luck distinction might lead to abandoning those who have made extremely unfortunate choices.

Elizabeth Anderson's "Democratic Equality" position was considered, and although I believe she overstates the point on paternalism and, is wrong that compensating victims of brute luck is borne out of pity and stigmatises them, much of her approach seems more appealing, after having noted the flaws of LE.

⁶⁴ Frankfurt has argued that what really matters morally, is not equality, but whether everyone has "enough". C.f. Frankfurt, 1987, p. 21.

For my part, I noted that equality of opportunity and capability, seem to be where the intrinsic value of equality is at its most likely, and by outlining simpler approach of ‘equal opportunity for a dignified life of one’s choosing’ we can encompass the necessary capabilities, whilst the equal opportunity and dignity provisos work together to ensure that the capabilities are respected, autonomy is insured and choices are honoured. It would arguably prevent people from being abandoned also, as it is assumed that their choices are compatible with a life of dignified choice, but also a life of dignity itself. Abandoning those who suffer badly through their choices would offend this principle.

This is of course, not a full theory but more of a starting point, and is indicative of the fact that the LE position seems to me, to have too many flaws, circularities and inner confusions, to be workable in the forms examined here. Of course, we are likely to come up against flaws and similar blurred distinctions in this approach also, but the above is an attempt to sketch a simpler and more determinate theory that is based upon, explains, and fits intuitively with our fundamental equality as human beings.

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