Luck Egalitarianism and Educational Equality

A thesis

submitted in partial fulfilment

of the requirements for the Degree of

Doctor of Philosophy

in

Education

at the

University of Canterbury

by

John Sinclair Calvert

University of Canterbury

2014

Abstract

Luck Egalitarianism and Educational Equality

by

John Sinclair Calvert

This thesis investigates whether luck egalitarianism can provide a cogent and coherent interpretation of educational equality. Historically, the belief that each child should receive an equally good education has exerted a strong influence on policy makers and thus on educational practice, and this despite the vagueness of the egalitarian formula. More recently however, the ideal has been undermined in practice by the rise of neoliberalism and in theory by a number of thinkers advocating other principles of educational justice. But it is vital to be clear about what each child is owed because of the profound effects of education on a person's life prospects. The motivation for this work is therefore to determine whether educational equality can be rescued as a desirable and animating ideal of educational justice. In order to achieve this, I examine luck egalitarianism, a theory of distributive justice that has its origins in the work of John Rawls, but is now the major rival to his account of egalitarian justice. I probe at the fundamental moral intuitions underpinning luck egalitarianism and how it brings together the morally potent ideas of equality, luck and choice. I argue that these are of relevance for the education each child is owed and I propose a luck egalitarian conception of educational equality, argue that it is a cogent interpretation of egalitarian justice, and conclude that a luck egalitarian conception shows educational equality to be an ideal that is relevant, coherent and what morally matters most for justice in education.

I describe luck egalitarianism as resting on three basic moral beliefs: that distributive equality is a fundamental demand of justice; that luck undermines fair equality; and that a person's genuine choices can sometimes, under certain background conditions, render some otherwise objectionable inequalities not unjust. I then examine whether these three beliefs are compatible with each other and what, if anything, links them. Next, I consider luck egalitarianism's status as a theory of distributive justice and argue that far from this being a weakness, as Elizabeth Anderson (1999) has notably argued, it is a strength of the position. But to appreciate this it needs to be seen that luck egalitarianism makes no claim

to being all of justice and that the *equalisandum* of equality is complex and egalitarianism is intrinsically pluralist in nature (with a particular understanding of what is meant by pluralist). I consider too whether it is a mistake to say that inequalities that are largely due to luck can really be thought of as unjust. Thomas Nagel (1997) has argued that it is merely misfortune, unless the result of deliberate actions or social structures for which someone is responsible. I reject that position and argue that no one has to be responsible for an inequality for it to be unjust.

Having interrogated luck egalitarianism and found it to be a sound account of egalitarian distributive justice, I turn to looking at whether it can illuminate our understanding of educational equality. Educational equality is often interpreted in terms of equality of educational opportunity. I look particularly at a conception of equality of educational opportunity, strongly influenced by Rawls, that has been thoughtfully and carefully articulated by Harry Brighouse and Adam Swift (2008). I find their conception powerful, but flawed, and argue that a luck egalitarian conception can account for the appeal of their conception, but is an advance on it. I end by looking at a specific question of educational justice to test the luck egalitarian conception – is there anything inegalitarian about ability grouping? I conclude that, while still needing to have its implications worked out in full, particularly as regards choice, a luck egalitarian conception provides a compelling account of educational equality and reasserts that equality matters for justice in education.

Acknowledgements

I must express my deep and lasting gratitude to my supervisors Peter Roberts and Derek Browne for their care, encouragement, professionalism, humanity, insightful critiques, helpful comments, challenges to my thinking and writing, and overwhelmingly for modelling what makes for good philosophy and what makes for good philosophy of education. Their expertise and philosophical acumen has been indispensable and I feel lucky indeed to have had their guidance. It must be said too, that any flaws and holes in the arguments of this thesis are now entirely due to my choices, for which I can properly be held responsible. I had the most benign of background conditions, and a great deal of luck, and on that theme I must also express my gratitude to the University of Canterbury for offering me a Doctoral Scholarship. This enabled me to take a break from the classroom, after some 25 years, and this work would have been impossible without that.

There are so many others, many of them fellow doctoral students, who have also played an invaluable role in so many different ways. In no particular order, and with apologies for inevitable oversights, I am grateful to David Liu, Christoph Teschers, Caralyn Purvis, Lane Perry, Simon Fryer, Bree Loverich, Chris McMaster, Tabitha Dickson, Gerald Pfeifer, Sonia Smith, Louise Tapper, Cathy Solomon, Ray Genet, Filipe Santos, Murray Fastier, Jane McChesney, Janinka Greenwood, Ronnie Davey and Stuart Wise.

I must also acknowledge my wife, Julianne Pask, who had unchosen burdens imposed on her by my choices. Those burdens came in many forms and without her deep and unstinting support this thesis would not have been started, let alone finished.

Table of Contents

v

vii

Introduction

A little Learning is a dang'rous Thing;
Drink deep, or taste not the Pierian Spring:
There shallow Draughts intoxicate the Brain,
And drinking largely sobers us again.

— Alexander Pope, *An Essay on Criticism*

Biographical reflections

School is for learning. I learnt those lines of Pope's in what used to be called the sixth form, now Year 12. Later, still intoxicated from learning received at University, and the stereotypical OE in the UK, I became a Secondary Mathematics teacher. In my classroom I taught students about relationships called equalities and inequalities, about what was greater than what, and how something can be less than or equal to something else. But I also imbibed sobering draughts about equality and inequality myself, buried there in the hidden curriculum. There has never been a golden age of egalitarianism; New Zealand's egalitarian past is a myth. But myths are powerful things. They can offer mystical obfuscation and they can be moulded to serve malign ideological purposes. They can also be inspiring. Although the past was not as egalitarian as myth would have it, this does not mean some things haven't got worse and it does not mean that those emigrating in the hope of finding a South Pacific egalitarian utopia were wrong to do so. In what follows I suspect my recollections are prone to all the normal sorts of self-justifying biases and distortions of memory. However, the seeds of this work lie partly in them and I want to begin in the educational context that triggered this work and then end in that setting, after a long examination in between of the ideal of equality.

I started my teaching career in a large state co-educational New Zealand secondary school in 1986. It was generally seen as a very successful school – academically, culturally and in sport – and well regarded by its local community. I thought it a very good school. It had a diverse student body that seemed to be reasonably representative of wider New Zealand society. I liked the way it had children from working class areas on the one hand, and those from more affluent suburbs on the other. It is also worth pointing out that, as this was just prior to the full bite of the market reforms that began in the 1980's, socio-economic differences were not quite as great then as they are now. In case it is thought this

is just a nostalgic misrecollection, a pining for some prelapsarian Golden Age, according to the New Zealand Government's 2012 Social Report, in 1986 the disposable income of a household at the 90th percentile was 3.2 times larger than that of a household at the 10th percentile. By 2011 it was 4.0 times larger (Ministry of Social Development, 2012). Another way of looking at this is that from 1984 to 2011, the incomes of the poorest New Zealanders increased by about 13 % compared with a nearly 80% increase for the top ten percent of earners (Rashbrooke, 2013). The school also had a healthy mix of ethnicities; Maori, Polynesian and Pakeha (the rise in Asian immigration was not yet fully underway) although I won't say that intercultural relationships were always harmonious.

I felt comfortable in the school and was proud of what we did. It seemed to me the school provided a very good education for the full range of students it had. Some of them were very difficult, some were very limited and some were very gifted, but all were given as good an education as we could provide. Or so it seemed to me at the time. I might now revise my judgement about some aspects of what we were doing. But the evidence at the time, exam results, school inspections and the like, indicated we were doing about as well as any other school of a similar type. And, I recall, one recent student was the son of a local Member of Parliament who was soon to become the Prime Minister.

This situation was markedly changed by a couple of things in particular. Firstly, zoning was abolished in 1991 by the National Government of the time. This gave some parents much greater choice over where to send their children. Secondly, there was the move to a model of self-managing schools. Neither thing was necessarily a bad thing in itself, but they were both part of an overall package that wanted to move schools to being seen as competing entities in an educational marketplace. It was hoped this would make schools strive to be more effective, thereby raising educational standards for all, although it was never clear how this approach might work for the losers in this competition. So what happened?

The better-off parents started sending their children to schools in whiter and better-heeled suburbs. One can speculate about their motives, but if my recollections are anywhere near correct, there were no particularly compelling *educational* reasons for doing so. The roll of my school dropped precipitously (from about 1600 to a low of around 700), morale of staff (year after year of redundancies) and students was dented and the demographic nature of the school changed (it went down in decile ranking, not that people had been that aware of deciles prior to the reforms). For someone with a particular view of New Zealand as a somewhat egalitarian society where people from diverse backgrounds freely mix together as equals and are happy to have their kids mixing, this was disillusioning and disheartening. It was also a lesson on how profoundly beliefs, in this case about free

2

markets, can affect the nature of our society and how the dominant political view can alter what schools do and how they see their task.

The next school I worked in was similar to how my first school had been prior to 1991 and still served a diverse community. But perverse incentives were now at work. We were now in a competitive environment that meant schools felt the need to market themselves. One consequence of this was a constant temptation to find reasons for turning away difficult students, while simultaneously fending off the predatory attempts of schools in wealthier suburbs to poach the middle-class students. The two were not unconnected, as success in the first made success in the second more likely. By and large the school resisted this temptation and marketed itself as a school that served its local community in all its diversity. This was not a value shared by all in the community though and we sometimes observed children moving on to wealthier schools. A place would become available, a ballot would be held and the lucky winners offered their prize of entry to the more desirable (read higher decile) school.

Over time these developments, begun in the late 1980's, have congealed. We have become accustomed to thinking of schools as entities competing for customers. League tables and the conflation of decile level with educational quality are commonplace features of the educational landscape. Parents have been habituated to thinking about education as an individual good that they must secure for their own child and the sense of it being a collective enterprise, it seems to me, has been somewhat eroded, but not lost entirely.

There were also some common teaching experiences that seem significant for this work. One was to do with the norm in New Zealand for streaming, or banding, classes in intermediate and secondary schools. Like most teachers, my school experience had been in 'A' band classes. In my naivety, it came as a surprise when I realized that what stream a class is correlated very strongly with the socio-economic and ethnic mix of the class and so could often be deduced just by looking at the students in the class. Bluntly, 'top' classes contain fewer Maori and Pasifika students and are more middle-class; 'bottom' classes contain more Maori and Pasifika students and are poorer (Hattie, 2002; Jones, 1991; Oakes, 2005). And while I have used scare quotes, that sort of labelling is ubiquitous, although sometimes disguised by more euphemistic labels like 'special needs' or 'gifted and talented'. The language is hard to avoid, and carries with it not so subtle value judgements about the children themselves. Schools generally stream students based on testing, but they could really save themselves and the students the bother and base it on their parent's income and educational backgrounds. Like most teachers, I was entirely complicit in this situation. It was just the way things were, and still are, done. It worked for me, so why should it not work for everyone else?

3

The other experience is related and also came quite quickly. After only a few years of teaching, interacting with a range of children and meeting their parents from time to time, it became apparent just how much of a child's beliefs, attitudes to school and learning, motivation and achievement, were contingent on their home background. I started to form the strong impression that accident of birth played a large part in how a child's life plays out, certainly as regards schooling. This was certainly not a novel observation; people have been bemoaning the influence of fickle fortune on human affairs for millennia, so perhaps I was dim not to have noticed it before. But it was accompanied for me with a feeling that this was not just regrettable, but disturbingly unfair. Some have the misfortune of being born into difficult circumstances, while others have the good luck to be raised in very benign circumstances. What disturbed me was not so much that our lives are subject to the unpredictable vagaries of luck from time to time – life might actually be the poorer if it was not – but that how well a person's life goes seems so much a function of arbitrary accidents of birth that not only shape who we are, but also have a profound effect on the types of lives open to us.

For someone who thinks their beliefs are well-founded, based solely on good arguments and sound evidence, there is a quite unsettling discussion at the beginning of G. A. Cohen's wonderfully titled *If You're an Egalitarian, How Come You're So Rich?* (2000). Cohen begins with some biography too, interesting in itself, but also written with philosophical purpose. He points out that, on reflection, even though he has put his beliefs under intense scrutiny, tried to identify all the underlying assumptions, mustered rational arguments and evidence to support those beliefs, nonetheless, he cannot escape the nagging feeling that many of his beliefs, even, or perhaps especially, his deepest convictions, appear to have their origin in his upbringing and life history. It is impossible, he argues, for a reasonable person to escape the realization that, given different life circumstances (e.g. adoption into a different family at birth), he might well believe otherwise. Cohen gives as an example the fact that his adherence to the analytic/synthetic distinction seems to have a lot to do with the historical contingency of going to Oxford rather than Harvard University, and that his deep convictions about egalitarianism bear the unmistakable, and apparently ineradicable, imprint of his "Montreal Communist Jewish Childhood", as he calls it.

So too, despite the fact that I think my disposition towards egalitarianism is well-founded, it is hard to escape acknowledging that it also seems rooted in such contingencies as being raised in a place which identified itself with an egalitarian ethos (whether a myth or not), at a time of genuinely less economic and social inequality (well, for straight, male, Pakeha at least), when egalitarianism seemed in some dimensions more actual than just ideal, and in a family that encouraged and discussed such a view. No doubt that has influenced how I interpret my teaching experiences and has helped form this work. The

4

influence of luck seems inescapable, not just on our life prospects, but also on who we are and what we believe, often at the deepest level. So this thesis begins in experience, that experience has lead to reflection that involves leaving the concrete and particular to look at some fundamental but abstract principles. But once those principles are in place I will finish by applying them back in the material world of schools and students. It also seems to me that starting in the concrete shows there is a real problem to be grappled with. Luck and biography may lead us to doubt our most considered deliberations, but deliberate we must as ultimately we must make choices and decisions about how we are going to act. The knowledge that our deepest convictions are fallible should perhaps lead us to think and act in a non-dogmatic way and with some humility. But it does not seem to me that fallibility means that reason and rationality cannot help and that we are beyond moral appraisal for all our choices and actions. So this section has introduced the problem of luck, luck in the life prospects a person has and luck in what we believe. In both cases luck is seen to be undermining, of fairness and knowledge in particular but perhaps also of our sense of agency, of being effective actors in the world.

There is another aspect of these reminiscences worth mentioning. They are not dispassionate observations of a changing world, but clearly rueful reflections, tinged with nostalgia for a bygone, perhaps, more egalitarian age. David Miller (2012) has commented that much recent egalitarian political philosophy (and most political philosophy is egalitarian) has moved in a quite radical direction, entirely contrary to prevailing social and political trends where inequality has not only increased, but acceptance of inequality has increased too. He has rather wittily called this "political philosophy as lamentation"(p. 228). There is something in this and I do not find myself entirely unhappy with the description, although I would not accept for a moment that this is all, or even most, of what radical egalitarians are engaged in. Egalitarian thinkers have, properly, responded to political trends and certainly there can appear to be an abyss between political theory and political practice. It would be well not to exaggerate it however. Policies are still often promulgated under some understanding of equality, and not always cynically.

The more significant problem though, is the way Miller's description portrays egalitarian thinking and egalitarian ideals – which may well be somewhat utopian – as *mere* lament. It is not clear that having ideals that are not currently popular, and arguably stand little chance of being implemented, is a mistake. Peter Roberts and John Freeman-Moir (2013) maintain that ignoring utopian ideals involves narrowing our vision of how the world can be and shows insufficient consideration of how things can be better. Ideals can be action-guiding. They can point us towards some, perhaps far-off, destination. Consideration of whether the destination is desirable, and how to get there, will involve taking careful account of present realities, and perhaps also lamenting present injustices. There is too another point that will

be returned to many times; the fact that the world is a certain way, or is heading in a certain way, does not, I claim, invalidate principles of justice. Ideals are always that, ideals, and equality is a particularly venerable one that, despite ebbs and flows in its popularity, still holds a resonance impossible to ignore, even for those who reject it. The history of lamentation is a history of human beings decrying injustice and the suffering caused by injustice, and very often in positions from which they could nothing to alter their condition. I do not believe this is a bad thing.

The aim of this work

In this thesis, I argue that luck egalitarianism provides a cogent grounding and interpretation of educational equality. The motivation for this is to articulate a theory of educational equality that is a compelling ideal of educational justice as, currently, educational equality is under threat both as an account of educational justice and as an ideal which grips policy makers and exerts a strong influence on educational policy. This is partly because of the clichéd observation that educational equality is a contested ideal. When one reads the literature on educational equality, it frequently seems that the writers are disagreeing about different things. One reason for this is that we are often not clear about what grounds educational equality. But it is only by being clear about the grounding of educational equality that we can be clear about whether equality is a value that ought to have some bearing on educational policy and practice. This requires us to look closely at the wider egalitarian landscape.

Educational equality is often conceptualized within a framework influenced by the work of John Rawls, and for very good reason; Rawls is a giant in philosophy. But here I propose to look at it from the perspective of the main rival to Rawls' brand of egalitarianism. I think it offers a significant clarification of the ideal and a challenge to a turn that can be observed in educational thinking towards non-egalitarian ideals of educational justice. Luck egalitarianism has partly grown from Rawls rich body of work and, as the subject of intense research in political philosophy over the last few decades, has become one of the dominant egalitarian theories. It may be questioned whether one can just take an egalitarian theory from political philosophy and apply it to education, but there is at least nothing idiosyncratic in doing this; there is a tradition of adapting and applying egalitarian theories to education (e.g. Brighouse, 2000). But this undertaking should also be seen as testing the theory itself by seeing whether it has the power to illuminate a specific area of interest.

Education is a good of weighty moral significance because of the way it profoundly affects a person's life. It multiplies the kinds of choices, options and lives we can have. Education deeply informs our understanding of the world and of our place in the world, it influences who we are, and who we want to be and it shapes our ability to act in the world.

It is a good both intrinsically and instrumentally. It is in itself better, for an individual and a society, if people are educated. In addition, education is also a principal means by which a society pursues a range of other goals and a means by which an individual gains access to many other social and economic goods and a greater range of opportunities. This assertion, which has echoes of R. S. Peters' (1966) claim that education has built into it the notion of changing someone for the better, is not going to be extensively defended here. Certainly, nefarious purposes can be served by an education *system*. For example, an education system could play a part in socializing individuals to accept arbitrarily allotted places in society, or accustom them to mindlessly obey those in authority, or prepare them to die for their country. But these are more corruptions of the idea of education, or faults of particular systems embedded in particular societies at particular times. All education systems will have elements that appear not to be for the betterment of the learner, and no doubt there is a continuum from less to more beneficial. It is likely that some aspects of formal education, of dubious benefit, are unavoidable as they exist largely to satisfy the practicalities of having to administer institutions containing large numbers of children, some of whom do not want to be there and/or do not want to learn – no matter how strongly it is asserted that education is good for them. Nevertheless, it will be taken as true that education is something of benefit to its recipient, a good.

Education is as well an innately social benefit, a product of social co-operation and in turn necessary for continued social co-operation. It is a good that comes out of our need to raise our children. John Dewey (1921) pointed out that not only must children be educated into the ways of their social group in order to survive, but the social group itself ensures its own survival by the transmission of its aims, beliefs, hopes, practices, ideals and knowledge to its young. The idea of an individual engaging in education, in isolation from any social context or social input, is incoherent. A web of people encompassing almost everyone is involved in the provision of education in one way or another – families, teachers, administrators, researchers, policy makers, employers, builders of infrastructure, cleaners. But the claim that education is one of the many benefits of a system of social co-operation is also one that is going to be more assumed here than defended.

These are, I believe, reasonable and relatively uncontroversial assumptions. One question that then arises is; *how can we best distribute education* by which I more precisely mean *how can we most fairly distribute education*? Should it be distributed according to ability to pay and left to the market? Should it be available according to a person's potential to benefit themselves and others from an education and thus maximize the social product? Should it be organized to meet the individual needs of each child? Should such decisions be left to parents to choose what is most appropriate for their children? Should education be distributed so that each gets enough (whatever that may be)? Are some children more

7

worthy of a better education than others, perhaps due to how hard they try? Or should it be distributed so that the least well-off are as well educated as possible?

These are some possible answers to how we should distribute education and they reflect different judgements about what the operative distributive principle ought to be; but none of them are mine. My answer is *equally* and the main aim of this work is to explain and justify why I believe that each child is owed an equally good education, as a matter of justice, and to articulate a conception of what an equally good education means, not at the level of practical implementation, but in principle. Such a task belongs within the ambit of distributive justice and has two parts to it. Firstly, we need an answer to the broader question of what the most appropriate principles of distributive justice are, as education is but one among many distributable social benefits, albeit a particularly significant one. I believe egalitarianism, and in particular *luck egalitarianism*, gives the most promising current answer to this and early chapters defend this belief. Secondly, education may have some special considerations, as might other goods such as healthcare. So any general distributive principles will need to be tailored to the special circumstances of education. Later chapters therefore develop a specific conception of educational equality that is luck egalitarian.

As is often the case, my answer to how education ought to be distributed must be qualified. Does that weaken the claim? I do not believe so as acknowledging complexity can cut off simplistic straw men objections. In defending the claim, rival principles to equality will keep surfacing. It is worth noting then that I do not claim that equality is the only appropriate distributive principle. I make the slightly weaker claim that, on balance, it is the stronger principle. I argue against other principles, but I do not claim that they have no weight. That, in very broad terms, sets out the contents of this thesis.

In Chapter 1 the thesis is set within the context of analytic philosophy and political philosophy. This approach is defended and some important limitations of this approach are noted. In doing so I make it clear that this thesis is principally about identifying the fundamental principles of distributive justice and is only interested in policy implications or the application of those principles to the extent that doing so can throw light on what those principles are. Chapter 2 sets out the principles of luck egalitarianism, a particular theory of distributive justice. Luck egalitarianism holds that it is unjust if some are worse off than others due to no choice of their own, but largely because of bad luck. It further holds that the only things that can make inequalities sometimes permissible are the genuine choices of persons under suitably benign conditions. This chapter delineates the main features of luck egalitarianism and argues for the coherence of its three core beliefs to do with equality, luck and choice. The next 4 chapters then look in more depth at each of those three aspects. Chapter 3 looks at what is meant by luck, its corrosive effect on our moral judgements and

justice, and whether luck-neutralization is a coherent goal of luck egalitarianism. Chapter 4 focuses particularly on what grounds equality and how we should understand what equality fundamentally is and chapters 5 and 6 examine, and defend, the controversial place of choice and responsibility in a theory of distributive justice. Chapter 7 then examines the particular significance of identifying luck egalitarianism as a theory of distributive justice and defends this view of equality as distributive against a view that identifies equality as being principally to do with social relations. Chapter 8 asks why bad luck, for which no one is responsible, should sometimes be seen as unjust rather than mere misfortune.

In chapter 9 I finally get to educational equality. The preceding chapters have laid the foundations for a critique of some current theories of equality of educational opportunity. I argue that equality of educational opportunity is fundamentally unstable and must be abandoned as a conceptualization of what it means to provide each child with an equally good education. Chapter 10 then develops a luck egalitarian conception of educational equality. I argue that luck egalitarianism provides a superior framework for understanding what it means to give each child an equally good education and therefore for thinking about what is required in an education system. Chapter 10 tests that understanding in the context of ability grouping, a widespread educational practice, often instituted for the best of intentions, but which many researchers condemn as inegalitarian.

Chapter 1:
The Philosophical Location

The purpose of this chapter is to consider some worries associated with methodology and with locating the aim of this thesis within distributive justice. The two turn out to be related.

Method, facts and values

The methods employed here are simply those of analytic philosophy where analysis, drawing distinctions, argument and justification are held to be central. Clarity of argument and a certain plainness of expression are seen as virtues. Arguments ought not to be just rhetorical or polemical in nature but must be justified by (good) reasons and (relevant) evidence. Furthermore, those reasons should cohere and be consistent both with each other and with wider theoretical understandings. Arguments thus shift between a consideration of our broadest and most general understandings and a consideration of facts and fine-grained details. Our general understandings must fit the details and the details must fit within the more general theory. As well, in trying to find abstract general understandings, alternatives, counterfactuals and possibilities are imaginatively explored.

This is not a work within the tradition of continental philosophy then. I understand continental philosophy to include within its compass post-modernism, structuralism, post-structuralism and critical theory, among other schools of thought. Beyond the fact that it is the analytic tradition I am familiar with, this requires some small justification because there is a substantial amount of work within Philosophy of Education which lies more within the continental tradition. I am aware that some of that work critiques some of the liberal values engaged with here, such as equality and choice. So it may be thought an egregious oversight that I do not address that work more directly. However, in defence of my (considered) failure to do so, it seems to me that these traditions are two very broad ways of doing philosophy that come at things in different ways, with different modes of thinking and with different concerns. They offer different perspectives of and different insights into philosophical questions.

However, my observation is that few philosophers can straddle the two traditions comfortably and do justice to both, and generally, few care to. What often happens instead is that those in the two traditions talk past each other, or misunderstand what the other is saying, or worse, do not engage adequately or entirely honestly with the other. Caricatures of positions and straw men are common. For example, James Marshall (1996a, 1996b) attacks the idea of the "autonomous chooser" in liberal thought from a Foucauldean

perspective. Fair enough, such an approach offers some useful insights. Marshall is very knowledgeable when it comes to Foucault's work and makes a valuable contribution to understanding his work. But it is not so obvious that he is equally knowledgeable when it comes to the literature on autonomy in analytic philosophy. His target conceptions of autonomy are roughly those of the classical liberal figures Kant, Locke, Rousseau and Mill. These figures are important and have considerably influenced more contemporary analytic philosophers, among whom Marshall notes Robert Nozick and, indirectly via the work of Stefaan Cuypers (1992), Gerald Dworkin and Harry Frankfurt. But other major figures, in particular John Rawls and Ronald Dworkin, are surprisingly absent from his discussion. And, while certainly he is within the liberal tradition, Nozick is generally differentiated from mainstream liberalism by being labelled libertarian. Rawls (2005, pp.455-456) in fact denies that autonomy as a moral value pertaining to individuals is a core liberal commitment at all, at least, as far as his idea of political liberalism is concerned.

I do not wish to exacerbate this problem or fall into this trap. I think some intellectual modesty is required and so I think it prudent, and expedient, to stick within the one tradition. For me, that is the analytic tradition.

The methodology used here is best characterized as that which Rawls (1971) first discussed and is generally known as *the method of wide reflective equilibrium.* Norman Daniels (1996) describes it as a coherentist approach which is not only a kind of method for doing, in particular, certain sorts of work in political philosophy and ethics, but also serves as a way of justifying ethical theories. As described by Rawls and Daniels, the method of reflective equilibrium involves the attempt to align our considered judgements or intuitions about particular cases or situations, sometimes idealized so as to home in on one aspect but sometimes left richly complex, with the general reasons, principles or rules that we believe underlie these judgements. It also involves the effort to link these with wider theories, moral and non-moral, that are relevant to supporting or rejecting these judgements and principles. We attempt to match or find coherence between, on the one hand, our considered judgements about relevantly similar cases and, on the other hand, our beliefs about their guiding principles. This is done through a process of reflection and eventual reconciliation.

Sometimes, in order to find coherence, it will be necessary to amend principles. At other times it will be necessary to amend the judgements or intuitions we might have about a case. Intuitions are not epistemically privileged and even strongly held ones must be discarded if they do not accord with other considered judgements and considered principles. In this fashion a point of equilibrium is eventually reached as moral judgements or intuitions and theory are jointly modified until they approximately fit with one another. The process needs to range widely over theories that support or oppose the judgements

and principles and is always seen as fallible; conclusions are always tentative and open to revision. The process also needs to range widely in interrogating our considered principles and beliefs. Beliefs, intuitions, our deepest convictions, need all be tested as to why they should be accepted, especially in light of the fact that an individual's moral judgements owe so much to accidents of culture and history. This can be difficult, particularly at the most fundamental level, what Amartya Sen (1970) has described as the level of basic values. At this level it becomes almost impossible to adduce any deeper reason for a belief and we tend to look more for logical consistency and how well beliefs cohere with other principles and beliefs. There are rarely to be found knock-down arguments; disagreements about judgements are always possible and different theories can be variously weighed as best supporting or counting against those judgements. Often two very similar cases with just one difference are compared – this is sometimes called the method of difference. In this way judgements can be tested against what are believed to be the relevant underlying principles supporting those judgements. This can bring to light either the inapplicability of the principles we believed were operative or a change in our judgements of those cases.

As a brief example of some of the ways this method could take us, consider a welfarist principle of equality that holds that we are required to equalize levels of well-being. One interpretation of this principle is that it requires us to distribute resources in such a way that levels of well-being are equalized. This will mean in the first instance perhaps an inquiry into beliefs about well-being, what are the best theories of well-being, and how can it be measured. An implication would seem to be that we are required to distribute resources into raising the level of well-being of some who are very seriously impaired and might derive little or no benefit from even vast inputs of resources (Dworkin, 2000). But this seems to entail reducing everyone to an equally miserable level, the so-called bottomless pit problem (Brighouse, 2005). Our considered judgements about the consequences seem to be at odds with the principle. Now there are a number of ways to proceed from here. One may involve changing the principle in some way, perhaps by appealing to a further principle that we are not morally required to do something that is impossible i.e. raise the level of well-being of those whose levels cannot be significantly improved no matter how many resources are put into them. Another way might be to say our considered judgement is wrong, that equal misery is required. Or we may say that although our principle requires one thing, in certain circumstances that can be trumped by other principles, in this case perhaps a utilitarian principle that requires maximizing average levels of well-being. This process involves us in a consideration of alternatives where we weigh up different possible ways that things can be arranged along a number of dimensions. In this way we see that the method involves us in wide consideration of circles of beliefs, principles and theories and a process of adjusting, weighing, rooting out inconsistency and looking for coherence.

12

We might wonder then; how widely should wide reflection roam? There is considerable disagreement over the limits of philosophy and my inclination towards the widest possible reflection is no doubt coloured by the historical accident of an education that has had a dusting from both the humanities and sciences. It is sometimes claimed that philosophy does not deal in the empirical, but only in the most general and abstract of considerations, so that would appear to define one limit. But this poses some difficulty when the sphere of interest is not some 'meta' concern, but some concrete area of experience, such as education or politics, where it might be hoped that philosophical reflection has some actual bearing on practice. We might then wonder how the facts of the world and the more abstract generalizations of philosophy relate to each other. One way this difficulty is sometimes posed is in terms of the facts/value distinction.[1]

There is a type of argument that goes something like this. What is ideally required can only be required in the light of how the world and people actually are. The consequences for a theory (and for people!) can be disastrous if we do not take into account what people are like or how the world actually is. A fashion designer must take at least some cognizance of the facts of human biology or her creative productions will fall off, be missing in crucial places or not be functionally adequate. Principles in many areas are subject to modification in the light of other facts. A particular antibiotic ought to be prescribed for a certain disease, but not if the patient is allergic to it. A building design may be perfect for Auckland, but not for more earthquake prone Wellington. We can think of such principles as normative, this is what we ought to do, but they are always responsive to the facts and those facts are not always moral.

So, in like fashion, philosophical theories must have some nodding acquaintance with facts about the world. It is murky exactly how facts relate to philosophy but there is a strong conviction that they do in some way. So for example, Philip Pettit (1997, p. 97) notes that a common objection to consequentialism is that it misrepresents human moral psychology and in so doing fails to deal correctly with what motivates people and how they think and feel. Pettit takes this argument seriously and accepts that if the objection is true it would seriously undermine the case for consequentialism. He therefore proceeds to argue that consequentialism is not guilty of using a false model of human moral psychology but is actually in perfect harmony with those facts. To our point, his reflection takes in matters of fact, human psychology, while considering the truth of an ethical theory. If consequentialism is not in accord with human psychology it cannot be a serious contender as an ethical theory purporting to say how people ought to act. This seems a plausible approach. But note that Pettit does not build consequentialism out of facts about

---

[1] I am using 'value' loosely here, including with it things like ideals and ethical or normative principles.

psychology; rather he attempts to show that it does not contradict them. The fact/value distinction thus seems intact, but wide reflection seems required to test that fact and value are *coherent* with one another.

Consider next another argument of this type that touches on the prospects for egalitarian theories. Peter Singer (2000) has argued that one of the problems with Marxism, one that still infects some thinkers of the left, is a flawed belief in the total malleability of human nature.[2] He claims that this belief led some communist states in the twentieth century to think that, under the altered social conditions of communism, peasants would be happy to labour for the good of all. Policies predicated on this contributed to devastating famines in Russia, China and elsewhere when the peasants proved to be not so amenable to labouring altruistically for the benefit of unknown others. Many factors contributed to the famines, but the policies failed partly because they did not take into account the importance to individuals of personal incentives, an importance unaffected by the changed ensemble of social relations under communism, and partly because people will make sacrifices for others, but are more reluctant to do so for strangers or non-kin.[3]

Singer's central argument is that the egalitarian left needs to seriously engage with how science is developing a well-founded appreciation of the powerful role played by evolution in shaping human nature. Policies that accurately reflect our human nature and take realistic account of it will have a greater chance of success than those that do not. Singer speculates that the success of capitalism to date, relative to communism, may owe something to its recognition that we are all, to some extent at least, motivated by self-interest. Marxists have ignored this, he claims, believing instead that a tendency to act sometimes out of self-interest is socially constructed and can therefore be changed by changing the nature of our social relations. But Singer argues, maybe not, and seeing that we are an evolved species may help explain why not. Just as in medicine it would be foolish to ignore genetic aspects to an illness, and in educational policies it seems sensible to take into account the best understandings we have of child development, so too egalitarian theories ought to pay attention to facts about human nature.

Views such as this have often met with hostility. Perhaps this is because of corruptions of evolutionary thinking such as Social Darwinism. The hostility is misplaced because evolutionary theory carries with it *no* ethical implications. Social Darwinism is rightly criticized for trying to draw ethical conclusions from matters of fact. What Singer is saying is the rather different point that matters of fact have relevance when it comes to trying to

---

[2] "But the human essence is no abstraction inherent in each single individual. In its reality it is the ensemble of the social relations" (Engels & Marx, 1845/1949, Theses on Feuerbach, VI). This belief seems similar to the claim that human nature is socially constructed.

[3] There are parallels here with observations made by Aristotle in *The Politics* in his discussion of property.

formulate how to apply ethical principles that have been independently arrived at. If we are to formulate *policies*, not principles, that are to have some chance of success, they need to be formulated in view of the facts about people *and* of our most considered moral principles.

The common conclusion to draw from this is that Social Darwinism, and any other doctrine that tries to draw moral lessons from evolution, commits the mistake of deducing an *ought* from an *is,* of deducing values from facts*.* The mistake in this case is that, from the fact that we are the products of evolution, nothing moral follows at all and no moral programme can be deduced. Singer notes pointedly that, no matter what we discover about how humans tick, there will be no ethical premises among those discoveries. The fact of evolution says nothing, for example, about whether equality is desirable or not. But in telling us something about what sort of creatures we are it might give us insight into what aspects of our nature might work in favour of or against pursuing such an ideal. And if there are some such facts to be considered then it would be very unwise to ignore them[4]. We may have any number of evolved predispositions, but this says nothing about what we ought to do or what we ought to value. Without further ethical considerations we cannot know whether a disposition ought to be nurtured or discouraged.

This points us to the idea that wide reflection is required not just for coherency then, but also for reasons to do with implementation. What will need to be drawn into view depends partly on whether the goal is to find correct ethical principles or the best policies for implementing those principles. This can be partially obscured in areas like philosophy of education where we might reasonably be pursuing both goals, looking for principles of justice, and how we can, or to what extent we can, implement them successfully in a given social context. But the two ends are distinct and ought not to be conflated.

As the aim of this thesis is to inquire into the appropriate egalitarian principles for distributive justice, and is not directly concerned with their implementation, then this may not matter. Further, it does not appear that egalitarianism is inconsistent with the facts of human nature. Christopher Boehm (2001) has made a good case for egalitarian predispositions being a part of our evolved human nature. He argues that our political nature favours dominance hierarchies just like those of chimpanzees and gorillas. We only have to look at how common chiefdoms, rulers and power elites of various stripes are to see this and observe that there is no shortage of individuals who desire power, control, and domination over others. Boehm argues that egalitarianism is not the mere absence of

---

[4] In a similar vein, David Hume concluded *A Treatise of Human Nature* with; "And thus the most abstract speculations concerning human nature, however cold and unentertaining, become subservient to practical morality; and may render this latter science more correct in its precepts, and more persuasive in its exhortations" (Hume, 1739/2003, p. 442).

hierarchy, but is a special type of hierarchy where the rank and file deliberately work to suppress dominant and powerful individuals (upstarts) and points to a good deal of anthropological evidence in support of this claim. The main point of relevance here is that, if Boehm is right, then egalitarianism is no more contrary to our evolved nature than hierarchical organisations are. In fact, hierarchical structures may be a good deal more a matter of culture than egalitarianism, which seems the default social organisation in hunter gatherer groups, which all human societies were at one time.

Unfortunately though, this may be a little too quick. A picture has been painted of basic values that can be formed in isolation from facts about the world which only become relevant for coherency or implementation. Peter Railton (2003) has made a case for believing that there may be no clear fact/value distinction and that values have something of the hardness commonly ascribed to facts alone. The sort of value he is particularly addressing is intrinsic value, that is, those things which are good for an individual or group (as I claim education is), what is a good life to lead or what ends are intrinsically desirable (as I claim equality is). He thinks the claim for the fact/value distinction rests partly on an assumption of value absolutism, which he rejects. He rejects it because notions like good and bad have purchase only to the extent that there exist beings for which things can be said to matter at all and that there are facts about what sorts of things could possibly matter for such beings. So people bring with them the very possibility of value because they are the kind of beings for whom it matters how things go.

Railton contends that what in particular matters to people will be contingent on facts about how people are; their nature, desires and beliefs. Differing desires and beliefs mean that what matters to humans need clearly not matter to all persons, and what matters to some individual humans will not matter to all because of contingencies of personal history. But, Railton argues, it is questionable, and psychologically unsatisfying, to claim that values are ultimately grounded in nothing more than personal whims and quirks of personal history. We feel our goals should be worthwhile, should have some point, and satisfying this criterion seems to require us going beyond our personal beliefs and desires. According to Railton then, we need some fixed point beyond the self that gives our values a grip on the world. He believes that the fixed point is facts whose truth does not depend on our own individual desires and beliefs. Historically such things as gods have fit this purpose or, for existentialists, acts of will.

We can link this idea back to Singer's argument and the fact that we all have a common evolutionary history to see that there are facts about our evolved nature that affect the sort of things that could possibly be of value to us in the first place. For example, it is of some significance that we are sexual and not asexual beings. This fact has enormous consequences for what matters to us, including that the well-being of others, typically kin,

matters to us. Likewise, it is of significance that we are social animals and not solitary. Equality, a comparative value, could not matter to a solitary animal. The fact that children are relatively helpless and take a long time to mature underpins the significance of education, as too does our social nature. The fact that we are beings who can experience pain and pleasure is clearly significant, as too is the fact that we are self-conscious thinkers. How to pursue what is of value is not discernible in our nature. But what could possibly be of value is largely written there and could all have been different with a different evolutionary history or different mechanisms of genetic replication or had natural selection been different. So no moral implications, in the sense of how we should go about pursuing what matters, can be drawn from evolutionary theory. However, the contingencies of evolution have influenced the sort of things that are going to matter to us.

This partially justifies the earlier claim that education is an intrinsic good. It is a good because of the type of being we are, although this says nothing about how best to distribute it. Of more significance here is that the realm of facts, if Railton is correct, should not be dismissed as irrelevant to considerations of principle either, nor restricted only to issues of practical implementation. Wide reflective equilibrium needs to be wide indeed. Of particular pertinence to education and equality we might note the partiality and concern we show those related to us and, in particular, our children. Children matter to beings like us. There is no evaluative claim here or suggestion that such a trait may not be somewhat culturally malleable. It is clear that people can come to care about the children of others, particularly those that are related, and beyond. It is just that any theory of educational equality that makes demands in conflict with the partiality parents feel for their own children may have difficulty. And any policy that allows such a tendency too much sway may also have unfortunate consequences for the education of some. It would be foolish to ask or expect parents not to act in what they perceive to be the interests of their children. But it is as well to be clear also that evolutionary theory does not show that people cannot be motivated by a desire to consider others.

A wide search for coherence is wise and if one is trying to make some meaningful connection between practice and theory, as much philosophy of education is, then wide reflection on the facts of a situation, the cultural context, salient moral principles, their implications and the sifting of alternatives is in order. It is still vague though to what extent each consideration should count and there is also some question about the idealized role played by fallible human reason in all this.

Principles of distributive justice

The main aim of this thesis was located within the realm of distributive justice. Distributive justice is concerned in the most general way with the identification and

17

evaluation of just principles to regulate the distribution of the benefits and burdens of social co-operation. Some object that this is a sterile academic exercise in utopianism, of little or no import in the messy non-ideal world we inhabit. The point of this section is to extend the argument that this is not so.

We can begin by observing that real children, real people, are affected, for better or worse, by the distributive effects of our extensive and pervasive social and political arrangements. These arrangements – which include institutions, laws, rules, policies, rights, duties, norms and mores as well as the daily choices people make, deliberating and acting within this web – are all, at least partly, warranted by and derived from *beliefs* that people hold about what we owe each other as fellow citizens and persons. Many political (and smaller scale) debates are precisely about how best to distribute some benefit or burden – wages, ownership of assets, taxes, student loans, land, pensions, compensation for accidents and disasters, healthcare, education, pocket money, household chores – and everyone has a stake, and probably an opinion, in the answer. To justify their opinions, people and governments commonly appeal to things like need, fairness, efficiency, feasibility, prudence, productivity, equality, desert, liberty, deprivation, merit, and legitimate expectations. We use principles based on concepts like these to determine what people are owed, to justify what we think people are owed, and to guide us in designing, changing, or removing the social and political structures and institutions that have such an enormous and ubiquitous influence on people's distributive shares. Identifying appropriate principles of distributive justice and clarifying our thinking about them would therefore appear to have considerable social and political relevance. It is a task, not just of pure reason, but also of practical reason, by which I mean that the outcomes of such deliberation are intended as a guide to what we should actually do.

As well, it is impossible to ignore questions of distributive justice. To try and do so is to tacitly accept the status quo as if it were some naturally just arrangement instead of something built by people, perhaps pursuing their own self-interest to a greater or lesser extent. The task of deciding on just principles must be squarely and explicitly faced up to because we can be sure that the institutions, laws, political processes, social structures and choices of individuals are distributing advantages and disadvantages in *some* way, and there is little reason to believe that a fair system will come about spontaneously without deliberate intent. We have a strong cognitive bias to accept the status quo as the natural baseline from which to evaluate alternatives, to muddle what is the case with what ought to be the case (Eidelman, Crandall, & Pattershall, 2009). And yet we also exhibit the conflicting belief that the status quo is not as good as it could be by the way our political processes involve constant changing and tinkering with laws and policies. This must be based on an assumption that we can improve things and make our society fairer. We can also make it

worse and less fair. But the status quo should not be the privileged baseline for evaluation; rather, ideals of justice should be. To work out what is just, we need to abstract from the biases, prejudices, vested interests, confusions, traditions, conventions and accumulated cultural baggage of a contingent status quo. So the philosophical task of inquiring into questions of distributive justice is also a practical task, an exercise in practical reason, and emphatically relevant to how our society actually is and should be. Our social and political structures are not accidents of nature over which we are powerless. They are constructed by us and it is therefore as well to be clear about the principles we are using, or should be using.

This view of what distributive justice is about, which I incline to, is not without its critics however. One line of objection has it that justice is an ideological tool used by the strong to exploit the weak and to disguise the real power relations in a society. This view can be traced to Thrasymachus in Plato's *Republic* with his claim that justice is whatever is to the advantage of the stronger. In this view, power and self-interest are all that count and talk of justice is just a smokescreen that blurs this reality and helps facilitate the exploitation of the weak. Someone who holds this view gains some support from history. They will point out how past norms and beliefs, judged morally correct at the time, were used to support a range of heinous practices from slavery to genocide. They will point out too that the most salient feature of these noble moral codes and impartial, universal principles of justice is a remarkable tendency to reflect and promote the interests of those in power and legitimize the prevailing distribution of benefits and burdens.

While there is something to this objection it is really much too extreme, too cynical. No doubt some, maybe even most, in positions of power do use justice as an ideological weapon. But it is a stretch to say that all talk of justice has this character and that whenever people complain of some injustice this is just an expression of their own self-interest. When marginalized, exploited, and oppressed groups or individuals demand justice, they are certainly not trying to legitimate a status quo stacked against them. They are precisely trying to appeal to principles they believe any reasonable person should assent to and would look nakedly venal denying. If all talk of justice were just a disguise for the power relations in a society, then it is hard to see what grounds there would be for criticizing that situation. Justice would be merely what those in power say it is and there would appear to be no principled ground for criticism. Certainly not on justice grounds anyway, as any such criticism would only be an equally disingenuous expression of competing self-interest.

A more measured objection accuses this approach of simply being irrelevant to real politics and the reality of our lives. This objection worries that the standard philosophical approach is too abstract, too concerned with universal principles which, if they exist at all, are of little or no relevance to daily political actions and decisions. Iris Marion Young (1990),

is one who makes this sort of claim. She sees why many have sought principles of justice that are abstracted from the particular and concrete realities of social life. Such principles are meant to serve as impartial, independent and objective standards by which to evaluate social institutions and relations between people. But Young thinks any such theory is likely to be too abstract and removed to be of any use in evaluating actual social conditions. She argues that we need to start normative theorizing from the particular historical and social context that we find ourselves in and that without social theory "normative reflection is abstract, empty, and unable to guide criticism with a practical interest in emancipation" (1990, p. 5). She comments approvingly on Lyotard's claim that the sense of justice arises from listening rather than looking. The sense of justice, while still involving rational discourse, is more about listening to some people and heeding their calls and claims against others. For Young, normative ideals can only come out of concrete conditions, the cries of the oppressed and dominated, and the yearning for unrealized social possibilities. Ideals are thus creations of the imagination which transform experience into what could be.

There is no disagreement that social realities are important, but I cannot help but wonder why Young thinks we should have an interest in emancipation and why we should feel a need to respond to people's cries for freedom. Those are claims which do not seem to come organically out of a social context. You need some sort of theory to support an emancipator goal and some sort of abstract idea of the good. Unrealized possibilities look suspiciously like unrealized ideals. An alternative to Young's position – which if not relativist is very close to it – is that there are principles that are universal, transhistorical and transcultural, having force for every single individual because of the extensive similarities we share by virtue of our common humanity (Nussbaum, 1992, 1993). We all share the ability to reason, argue and evaluate, for instance, and Nussbaum argues cogently for ten features that seem to be part of any human life, past and present. On this account, rather than being a disadvantage, it is an advantage that principles of justice are abstract. This gives the space to take sufficient account of the differences between contexts, for different cultures and different groups to work out their local understandings and translations of universal principles that apply to any beings like us.

Bernard Williams (1985; 2006) is another who has argued that much ethical theorizing involves many, often simplistic (if not just plain wrong) assumptions and beliefs about how people are and about possible ways society can be. While there is a strong echo here of the problem discussed in the last section, Williams has the different intent of questioning the whole idea of distributive justice as the search for impersonal or universal principles of justice. He argues that the complexity of real life renders the attempt to find a rational, coherent system of intuitions and principles futile, if not impossible. Theorizing in terms of universals, ideals and impartial spectators distances us from a human point of view and

towards "a point of view that is no one's point of view at all" (1985, p. 119). He presses for argument that is more grounded in the human and the particular and is less in thrall to Kantian notions of rationality and reason that seem far removed from social and historical reality and the lived experience of individual lives. It is thus not, for Williams, clear that our moral opinions can or should be unified. He offers, as an example, finding utilitarian arguments apt in one context, but not in another, and suggests that such apparent inconsistency ought not to concern us; it is a non-problematic feature of the complexity of moral experience.

There is much to this. Let's assume that some propositions of the following type are true: People can rationally hold a plurality of values; there can be different and valid ways of evaluating a state of affairs; there are many reasonable conceptions of the good life; human beings are not simple rational machines but can, reasonably, sometimes hold contradictory beliefs; real life contexts are complex and many conflicting moral principles can be salient. Under such assumptions the possibility of moral conundrums looks a necessary and ineliminable fact of human experience, and probably is. There is no question that individual context is important. But now I seem to be forming another generalized and universalizing principle; that one should always take into account the particularities of persons and contexts which can be rich in ways that make them hard to compare. Appeal to generalized principles abstracted from cases judged relevantly similar seems hard to avoid.

It has been argued that wide reflection on the world is required but that the facts, while relevant in grounding values and for framing practical policy, cannot alone determine what we should do. It can be accepted as well that principles of justice ought not to be mere abstractions but rather, motivated by and grounded in, real concerns about human lives. However, this does not tell against an understanding of universalizing, that Williams seems to accept, that if I ought to do something in a certain context, then anyone else ought to act similarly in similar circumstances (1985, p. 82). Individual circumstances are no doubt richly complex, but I am not convinced that different situations involving different persons cannot be relevantly similar. There is something of a conceit in the idea that all our experiences are so unique that they are beyond reasonable comparison. I'm more inclined towards the sentiment expressed by the writer of *Ecclesiastes* that there is nothing new under the sun.

Another who has made a sustained and nuanced argument for a more contextualized (he calls his approach contextualism), individualized, way of looking at distributive justice is David Miller (2012). He rejects the approach to distributive justice that sees it as the search for independent principles of justice in favour of one that sees justice as a human creation formed in response to individual, living, circumstances. Because of the complexity of life, the diversity of individual circumstances and in particular the range of relationships that people can stand in relation to each other, he is sceptical of approaches to distributive justice that

21

look for a single, universal principle or for fundamental principles that are true independently of facts about the world and the way society is. Any such attempts are, in his opinion, likely to result in theories that are either hopelessly inaccurate or hopelessly vague and thus of no practical use in guiding action. Miller believes that facts act as feasibility constraints, not just on the implementation of principles of justice, but on the principles we can hold. The truth of our principles depends on empirical facts to the extent that they are rendered invalid if the facts should turn out to be otherwise. With such an understanding, appealing to imaginary situations can only mislead as what is required is an appreciation of the concrete circumstances of the real world in all its political, cultural and social complexity.

There is a great deal to take from Miller about the importance of being sensitive to context. His arguments are certainly a good counterweight to any tendency for theorising in distributive justice to forget that the lives of real people are ultimately at issue. The point of view of the individual human being operating within a matrix of social, cultural and historical factors is indeed morally significant, as has already been indicated. However, there are reasons to resist fully endorsing Miller's view.

Miller asserts a number of things about principles of justice. One is that principles are grounded by empirical facts in such a way that if the facts were different the principles would be invalid. As he puts it, principles have factual presuppositions. He seems to mean this in much the same way as the argument met earlier from Railton. The possibility of something mattering depends on facts about the world and facts about the nature of beings for whom things can matter. So Miller argues that liberty could not matter to us if we were not beings with a capacity for self-conscious choice. The problem is that he may be stretching this point beyond what it can bear. He argues that our capacity for self-conscious choice grounds the principle that, within limits, "it is intrinsically valuable for humans to enjoy liberty of thought and action provided they do not infringe the equal liberty of others, or harm others' interests" (p. 23). It can be agreed that such a principle does presuppose self-conscious choosers. But it has considerably more substantive content to it than that fact can support and it is hard to see how context alone could supply such content. *Equal* liberty does not obviously presuppose self-consciousness. Nor does it fall out that from that fact that we should not harm others' interests as opposed to trying to, say, maximize our own liberty. In general it is true that questions of distributive justice do not even arise if there are no people, and people of a particular nature, for whom things matter. But the mere fact of there being such people does not, and cannot, answer these questions.

A second claim Miller makes is that there is a plurality of principles. This is a widely accepted idea and it is common to observe that many moral difficulties are the result of principles coming into conflict. The problem here is that it is a little mysterious just where

Miller believes principles come from, as he sometimes talks of them as if they are independently existing givens and we can help ourselves to the relevant ones we need to fit the particularities of a given context. Adding to the problem, he does at times still refer to general principles, as when he suggests that culture seems not to always matter at the level of general principle.

A third point is to do with the role played by personal convictions in contextualism. Miller says, for example, that if principles are meant to be action-guiding "they cannot contravene the deeply held commitments of present-day citizens … People cannot reasonably be expected to act politically on principles which if realized would have outcomes that they regard as wholly unacceptable" (p.43). As previously argued, facts about the world, including what people believe, will place constraints on how a principle is applied. At this level feasibility is important. But Miller's view appears stronger than that and seems to imply that the suitability of a principle depends on people's deepest convictions. People's beliefs cannot be overlooked, but to think that strength of conviction is enough to sometimes trump principle is mistaken. People can strongly hold all sorts of, deeply mistaken, views. Miller seems to be committed to such a view as he thinks justice is a human invention and so our convictions are not just the stuff we work with, but must be all we work with. For him, there would appear to be no fact of the matter that can be appealed to beyond what people believe and any facts about a context that can be ascertained.

There is the danger for Miller then, that contextualism will fall into relativism or conventionalism, a danger he is aware of, but does not convincingly avoid. If the relevant principles to apply in a context are dependent only on the facts of that context, then some things that appear unjust are not going to be judged so. Without being able to appeal to relevant principles of justice that are, at least partly, independent of context, it is difficult to see how one could claim that some dominant cultural practice, such as homophobia say, is wrong. Justice seems to involve more than a claim that something is wrong for me, or wrong for this culture, or wrong in this context. There is more at stake when we say that slavery is wrong or war is wrong. People arguing such positions are expressing more than just a deep personal conviction. Of course they could be wrong, but seeing whether they are involves pointing to a deeper truth beyond the particularities of a time and place, to things that are not arbitrary because they are not tied to the way things are. Some things are done in a historical context, like slavery, and the particularity of their time and place does not alter the fact that they are, and were then too, wrong (Aristotle's arguments notwithstanding).

Some see the task of philosophers as being to sniff out beliefs that are ideological in nature, beliefs which are used to justify oppression, domination or discrimination against others. Such a task would appear hopeless if principles of justice are dependent solely on people's beliefs and if there are no fundamental principles that are in some way above

23

personal predispositions and prejudice. The possibilities for realizing a principle, say that of democracy, can be very bleak indeed in a society without the necessary cultural conditions, and Miller usefully points out that imposing political principles on others can be intellectual arrogance. But it is a stretch to go from that to denying that there is something fundamentally wrong about despotic rule and something fundamentally right about the idea that people's consent has moral relevance, and we can agree that both judgements are dependent on there being self-conscious choosers.

With this in mind, more needs to be said to defend the initial position taken that the main task in thinking about distributive justice is to identify sound principles. So here is a competing account. Justice claims are strong claims. While justice at any cost may be irrational, justice claims are often thought to trump many other sorts of claims and are considered particularly binding on governments, especially if they wish to lay claim to legitimacy and the allegiance of their citizens. We also need strong principles that place a limit on what a state can legitimately do to and for its citizens and to guide what agents of the state can legitimately do. This strength lies in the recognition that principles of justice are non-arbitrary and binding on all agents, regardless of position, in relevantly similar contexts and that their force is independent of the perspective and interests of any one person. This is almost the very thing that is the focus of much of the foregoing criticism.

Certainly there are reasons for exercising some humility over the ultimate *sway* of any particular principle of distributive justice. It need not be thought, for instance, that identifying the correct principles of distributive justice settles all arguments about what people are owed. This is because, difficult as it is to identify the correct fundamental principles, they are extremely unlikely to be fit for use straight off the shelf. The complex circumstances of lived experience, so clearly identified as salient in the critique, make it inevitable that such principles cannot be implemented without being adapted in a way that takes account of those circumstances. There is therefore room for a great deal of reasonable disagreement over the best possible feasible rules for the organisation of society, which is to say, over how principles of distributive justice can be effectively implemented with maximum fidelity. Context is important then. But context does not determine the principles of justice. Rather, context alters the implications of those principles and what they demand. The one and the same ahistorical principles will have different implications in different places and at different times (Cohen, 1995).

Do we have other good reasons to believe that there are fundamental principles that can be identified? G. A. Cohen (2008) argues for the existence of fundamental principles of justice that hold independently of any facts and which have universal validity. If a principle is dependent on facts, Cohen argues this can only be because there is some yet more fundamental principle that explains why that fact supports that principle. In this way

24

ultimate principles can be determined, but there is little suggestion here that they can be worked out *a priori*, independently of experience, but are rather an example of, on my understanding, inference to the best explanation. Fundamental principles are the best explanation for our considered judgements over a range of situations. On this understanding there is no brute insensitivity to context, more a generalizing from multiple contexts, an attempt to distil from all of experience patterns and what is most morally significant overall.

Cohen further argues that the best all-things-considered *social arrangement* will involve a balancing of considerations, moral and pragmatic, as well as considerations of both distributive and non-distributive justice. Because of this, Cohen maintains that the best all-things-considered social arrangement, while superior to all others, need not be *perfectly* just. Sometimes, wider moral and pragmatic considerations, and considerations of non-distributive justice, will simply outweigh the demands of distributive justice. This does not mean that the principles are wrong or misguided. It is only that they are not everything that is relevant to assessing a state of affairs and deciding what we ought to do in a given context. Without the sort of fundamental principles Cohen is talking about it is hard to see what explains why particular factors must be taken into account at all. This seems to require recourse to some more general principle that can tell us what things can be morally relevant, how important they are and what theoretical understandings may be significant. Without fundamental principles, it is also hard to see how borderline cases could be resolved. And it is only the most fundamental principles, in Cohen's view, which are universal. So he can acknowledge much of the context-sensitivity that Miller helpfully points us towards.

As an illustration of some of this, and taking a lead from John Stuart Mill, say we hold the (non-distributive) principle; *we should prevent harm to others*. This may be very close to a fundamental principle and I think Cohen would argue that it holds independently of whether there are beings who can be harmed or not. It is rather that it only becomes operative when there are such beings. But even then it cannot be straightforwardly implemented. There is a need to be clear about what constitutes harming. Does it include the withholding of a benefit, for instance? Or does an act like euthanasia cause harm? Answering this appears to involve us in consideration of the facts of particular cases as well as other moral principles. What if I am attacked? The harm principle could here clash with another principle about the right to self-defence. What of people on a hunger strike? Are we entitled to forcibly feed them, against their wishes and at the cost of inflicting acute physical discomfort, in order to prevent a harm they may be voluntarily inflicting on themselves in order to force others to act in some way? Then there are situations where we must choose between certain harm to one versus certain harm to five (e.g. trolley problems). Here we

need to appeal to further principles about numbers and sins of omission versus sins of commission. All of this indicates that, even when we have identified what we hold to be a correct principle, other considerations will always be pertinent. However, none of these complexities shakes the conviction that the harm principle is correct in some way that does not depend on the particularities of context. Even if other reasons, such as self-defence, can sometimes outweigh the injunction against harming others, they do not erase or negate the idea that harming others ought to be avoided. There remains the feeling that someone who denies the principle is making a fundamental error in their moral thinking.

It is important to be as clear as possible about Cohen's distinction between the best all-things-considered social arrangement and fundamental principles of justice. He is not saying that feasibility constrains what is just. So for instance, X may be unjust, but there is nothing we can do to neutralize the injustice of X. According to Cohen, the fact of infeasibility does not impugn the injustice of X, as this depends only on the truth of some normative principle. It may be thought that this is the case with the education of those with profound cognitive impairments. That they are not well educated is an injustice. That they cannot be well educated does nothing to negate this. It remains unjust, *even though* we can do little or nothing about it. This, to a large extent, deflates the force of so-called bottomless pit objections to egalitarian distributive principles (e.g. Brighouse, 2005). We are not obliged to pursue a futile, or negligibly beneficial, course of action in response to injustice. We are still obliged to act as humanely as possible however.

Taking a somewhat different line, Adam Swift (1999) argues that, because thinking about principles of distributive justice is intended to have some bearing on actual practice, it must attend to political feasibility and popular opinion more than might be the case in other branches of philosophy. He takes pains to point out however that, *a la* Cohen, popular opinion and political feasibility do not in themselves have a bearing on the truth of principles of justice. They do, however, offer a forceful reminder that justice does not trump all and perfect justice is something that is more aspired to, than achieved. To use Cohen's terms, we might conclude that feasibility and popular opinion may have an effect on the *rules of regulation* we adopt, but not on the ultimate normative principles we hold. And those principles play a significant part in formulating rules of regulation. Practical reason requires us to attend both to what is ideally just and to what is feasible in a given context in order to choose how to act.

The question about the relationship between principles of justice and feasibility has some similarity with the related problem of utopianism, often felt to be a particularly acute issue for education. The objection here is that principles of justice can sometimes seem completely unrealistic, certainly in comparison with the way the world actually is, and could feed into an inflated, and ultimately self-defeating, public discourse about education.

Education policies are meant to be implemented, so the argument might go, but the educational policies that a government adopts, the way schools operate and the actions of teachers are deeply influenced by theories and beliefs of all sorts, often not held explicitly, and sometimes inconsistent with each other. It may be reasonable to think then, that if theory is to usefully inform educational practice, it would be best to avoid overly utopian visions of education or develop theories that are based on implausible assumptions about what it is motivationally possible for human agents to do. In other words, it may be wise to proceed on some sort of Kantian assumption that 'ought implies can'. If we decide that we *ought* to be doing something in education, then it must be the case that we *can* do it, under a number of understandings about what *can* entails. For example, it should be politically, materially and economically feasible and also psychologically and motivationally possible given certain facts about people and societies. It could certainly be conceded that we need theory and ideals to inform our practice, but utopian musings ought to be avoided as they pose a danger of being counterproductive in the long run if the inevitable failure to realize them ends in disillusionment. It can be observed that a lot of our public debate and political rhetoric about schooling is wildly hyperbolic; we want the best system, the best schools, the best teachers and the best learning outcomes so our children can be the best that they can be. While these aspirations might be laudable, they do seem to set us up for failure and disillusionment (Higgins, 2009).

If such an argument is meant to discourage us from searching for appropriate principles of justice it misses the mark. What it constitutes is an argument against certain forms of public rhetoric. The fact of something being just gives us a reason to do it, which can be countered by its impossibility. In the realm of practical discourse it may well be prudent to keep this in mind and avoid proclamations that may well be impossible. But it does not tell against a principle of justice that it may be unachievable.

Now, my argument to date has been something of a longwinded defence of an omission that might be thought a glaring weakness in this thesis. There has been a great deal of valuable work done in the field of Philosophy of Education on neoliberalism and its connection with educational equality, among other things (Codd & Sullivan, 2005; Olssen, O'Neill, & Codd, 2004; Openshaw & Clark, 2012; M. Peters & Marshall, 1996; Roberts, 1999, 2004, 2007, 2009; Roberts & Peters, 2008). One of the things this body of work discusses is how neoliberalism has become the dominant policy narrative in education for at least the past two decades, and how neoliberalism has been used to justify, and perpetuate, educational inequality. In this work I discuss some of the beliefs grounding neoliberalism, generally in its libertarian form as articulated by Robert Nozick. But I do not generally engage with this educational literature. This is because the focus of this work is on the fundamental principles of distributive justice and when it comes to this, the policy

27

implications are not particularly relevant. Neither is it relevant to my focus what the causes of educational inequality are. My concern is with identifying the correct principles of distributive justice that enable us to identify a difference as an educational inequality in the first place. As Roy Nash (2004) observes, it is important to be clear about the distinction between differences and inequalities. Empirical research can identify differences for us, but whether they are morally relevant differences and constitute actual inequalities requires philosophy and a theory of justice.

I am going to close this chapter with some thoughts from Rawls, the philosopher most responsible for reviving philosophical interest in distributive justice, and one of the targets of many of the foregoing criticisms. In his later work, *Justice as Fairness* (2001), Rawls notes four roles that political philosophy may play in a society's political life. He first thinks it has a practical part to play in trying to find whether there is any reasonable common ground that parties involved in divisive political conflicts can agree on. He notes historical examples of this such as the formulation of the principle of toleration that helped end the religious wars of the sixteenth and seventeenth centuries. We could also note that thinking (much if not all of it philosophical in origin) on human rights, equality and democracy has helped shape debates and policies in New Zealand about the Treaty of Waitangi and, more recently, gay rights. This work is part of the ongoing, unsettled, and at times quite divisive debate over equality and liberty, and a response to one particular idea of liberty which is currently politically dominant. Rawls also believes political philosophy contributes to how people think about their political and social institutions and may serve to help reconcile citizens to what he believes is the greatest constraint on what is practically possible; the fact of reasonable pluralism. Lastly, Rawls claims that we should "view political philosophy as realistically utopian: that is, as probing the limits of practical political possibility" (p. 4). This means inquiring into ideals and principles in the belief that we can make changes to our institutions for the better that can help bring about a decent and reasonably just, but not perfect, society. If this is true, then "the limits of the possible are not given by the actual" (p. 5), which reiterates the point that principles of justice cannot be read from facts about how the world currently is.

Conclusion

We have good reason to believe that principles of justice play a weighty, and sometimes decisive, role in at least some of our deliberations and decisions. Popular opinion may well have turned in favour of gay marriage, and that gives politicians some reason to change the legislation. But the substantive argument is one about fairness, and the fairness or otherwise of gay marriage is a matter of what the correct principles of justice are, not what the majority public opinion may happen to be. Differences about what to do are often due

to disagreement about the relevant principles, how they are to be weighted and how they can be implemented. But the relevant principles themselves are not determined by actual circumstances. And, as a matter of human psychology, we might observe that people are acutely sensitive to questions of justice, especially concerning their own situation. Questions about implementation are important. However, implementation is not the focus of this thesis. It is not about how egalitarianism would work in practice, although such issues will from time to time be touched on, as they must be with education. It is rather about trying to determine and justify what are the correct principles of justice.

This chapter has set out to locate this project in a philosophical context. The philosophical context is going to be used to throw light on the educational question of how best to distribute education. It is the context of analytic philosophy and, broadly, within the liberal tradition in political philosophy. This is not to deny other philosophical positions or their possible relevance; it is just not the focus here. To criticize this work as liberal or analytic would therefore be misplaced. It would be like criticizing a biologist for working within an evolutionary framework or a sociologist for working within a Bourdieuian framework; yes there are other frameworks to use, but there is nothing inherently illegitimate in employing either of these. The task here has been defined as being to determine just principles of distribution that may have relevance to educational justice. It has defended this project against views that see this task as too abstract, too removed from everyday reality or too utopian. Marx says in *The Theses on Feuerbach* (1845) that philosophers have only interpreted the world when the point is to change it. If this is at all true, it needs to be added that the point is to change it for the better. While the world may ultimately be the arbiter of what is in fact better, it seems much more likely that change will be for the better if it is not blind and there has been some clear thinking about what is better, and what is worse. I turn now to the examination of a particular theory of distributive justice and a particular sort of egalitarianism.

Chapter2:
Luck Egalitarianism

Equality is an ideal with an impressive historical pedigree and considerable popular appeal. Unfortunately, there is also a good deal of disagreement and uncertainty over what it means. This has perhaps influenced some to argue that once we are clear on what it means, we find that the moral appeal of equality is an illusion and its value largely rhetorical, or instrumental at best (Cooper, 1980; Frankfurt, 1997). Ronald Dworkin has said that equality "is a contested concept: people who praise or disparage it disagree about what it is they are praising or disparaging" (2000, p. 2). Certainly there is no shortage of types of equality to disagree over; equality before the law, political equality, social equality, equal rights, income equality, gender equality, equal pay, marriage equality, racial equality, status equality, democratic equality, equality of opportunity and of course, educational equality, are some. The essential feature these all share is that they involve comparisons between people or groups of people in respect of some (more or less vague) variable. So that is something to be clear about; equality is fundamentally a comparative principle of justice (Feinberg, 1974). But beyond that it is unclear what else they have in common. It looks entirely possible that one could be in favour of, say, equality of opportunity but deny that this has any implication for income equality. More importantly here, being in favour of any one of these interpretations of equality need not mean one is an egalitarian in the sense I intend to use the term.

I am going to follow Derek Parfit (2002) in saying that the type of equality that is normally meant by egalitarians holds that people ought to be *equally well off.* There is a fundamental belief that it is unfair if some people are worse off than others. This sounds vague and any comprehensive account needs to tease out further what exactly is to be equalized; not all things matter for equality. In fact, failure to appreciate this point is the origin of many *reductio ad absurdum* arguments against equality. It is pointed out that it hardly matters what colour hair people have, or that people are plainly of different heights and have diverse abilities across diverse areas. If equality means making people the same, the objection continues, then it is not only patently absurd, it is impossible and, indeed, somewhat abhorrent.[5] This argument fails because egalitarians only claim that equality matters in the context of some other substantive good and because inequality is not the

---

[5] This idea is put to good dramatic effect in *Harrison Bergeron*, a short story by Kurt Vonnegut Jr. (1961), also made into a 1995 television movie by Showtime.

same as mere difference.[6] That said, much of the territory of equality can be mapped out with no need to specify exactly what is to be equalized, a vague notion of well-being, economic or broader, generally serves well as a placeholder that stands for whatever is thought to be the appropriate metric of equality. The principles of equality I am going to argue for are not committed to any particular currency of equality and that is something that makes them very suitable for application to education, another substantive good.

Many egalitarians hold equality to be intrinsically and non-derivatively valuable. This does not mean that equality cannot also be thought to be instrumentally valuable, nor does this mean that there are not other values that can be held. In fact, I think that most luck egalitarians will believe that equality is *both* intrinsically and instrumentally valuable and will be pluralists about value. For example, most egalitarians will value well-being and perhaps also some sort of value like fraternity, solidarity or community and that these can only be realised in a context of equality. So equality would be seen as instrumentally valuable for realising true fraternity or community. But, I am going to take it that those who hold that equality is *only* of instrumental value, valuable for promoting some other ideal, or who believe that equality is derivative of other more fundamental values do not count as egalitarian in the way that term is normally understood.

There are a number of questions that are typically asked of egalitarian theories:

What are its fundamental principles?

What justifies or grounds those principles?

Why does equality matter (the value of equality)?

What is the metric or currency of equality (equality of what)?

Who are included within the circle of moral concern (equality among whom)?

What is the relevant time period for consideration: is equality required at any instance in time, or over a lifetime, or over some other interval?[7]

This work is largely concerned with the first three questions, to a lesser extent the fourth, and not at all the last two. A reason for the relative lack of interest in the last three questions is that the principles I set out are compatible with almost any answer to those questions. Furthermore, my concern with educational equality in New Zealand sets some rather natural parameters to work within.

---

[6] The fact that equality can only matter in the context of the distribution of some substantive good means most egalitarians will be pluralists about value. This point will be discussed in chapter 7. But for now it accounts partly for some of the complexities to do with equality; people can reasonably disagree about what else matters.

[7] See for example Dennis McKerlie (1989) on this.

The main aim of this chapter is to give the framework for a particular conception of egalitarianism. I first set out three core beliefs about distributive justice that ground the egalitarian theory I will be using and which animate and suffuse this thesis. These will be fixed reference points which this work will continually circle back to, seeking to clarify what is meant by them, showing how they complement and support each other, and arguing that they have significance for the education each child ought to get and how the institutions responsible for that education ought to be organized. I then focus on arguing that the principles these beliefs warrant are coherent and can fit within a specifically egalitarian theory of distributive justice. Some arguments will be given to justify these principles and say why they matter for egalitarians. Succeeding chapters will examine in greater detail the individual principles.

Three core beliefs

The first belief is about equality and distributive justice; it is unfair, unjust, for some to be worse off than others in respect to the distribution of goods. When we have no good reason to discriminate between individuals over some distribution of benefits and burdens, in particular the benefits and burdens of social cooperation, then our considered intuition is that it is fair, that justice demands, equal shares for each person (setting aside for now the complexities involved in determining what might constitute equal shares). A reason for thinking that persons should be equally well off is that we each have but one equally valuable and equally important life to lead. Crucially too, lives are separate, meaning a sacrifice or burden carried by one person cannot be compensated by a benefit to another person, absent certain circumstances (and the probability of an after-life where the books are balanced looks as close to zero as it is possible to get).[8] From each person's viewpoint it matters enormously that their life goes as well as possible. Ronald Dworkin (1983, 2000) argues that any political theory needs to identify what constitutes people's interests in the most general way. The preceding suggests that we all share a deep and common interest in ensuring that our lives are as good as possible, that they go as well as they can.[9] In this view then, each life is objectively of equal value.

A belief in the equal value of lives is often expressed as a belief in the moral equality or equal moral worth of persons. Bernard Williams (1973) expressed it as the claim that people

---

[8] The sort of circumstances where one person's burden may be compensated by another person's benefit are those where one person *chooses* to take on burdens in the hope of benefitting another or others. This is the case particularly within families. The fact of choice is significant here. Exploitation can be seen as one person, or group of people, benefitting from the imposed burdens of others.

[9] This should **not** be interpreted as a statement of solipsism. Living well certainly encompasses conceptions of the good that involve caring for the lives of others and dedicating oneself to others. I would suggest that a life of self-interest is not in fact a good life, but it is also understood that we can be mistaken about how to live a good life, and there will be many, many ways in which a life can go well.

(he actually says men) *are* in fact equals and therefore ought to be treated as equals. But it also carries the sense that no one is *innately* any more deserving or undeserving than anyone else. No one is born with any attribute or property which gives them any greater or lesser right to having their interests considered than anyone else. No one is born with any greater claim to the world's alienable goods, happiness, well-being, freedom, respect, dignity, or a good education, than anyone else. So the equal moral status of persons implies an egalitarian principle of distributive justice. An equal distribution (of whatever is thought to matter) *embodies* the idea of moral equality and is, *ceteris paribus*, a just distribution.

The second belief is that luck, good and bad, undermines and erodes distributive justice. Fair equality is threatened when a person's distributive shares, the advantages and disadvantages they face (and which have such a far-reaching, inescapable and profound influence on how well their life goes), are largely a function of that person's good or bad luck.[10] It is *unfair* if one person is worse off than another simply because of bad luck, and this holds regardless of whether we can do much about it or not. It is unfair because luck is morally irrelevant for determining a person's distributive shares and it is unfair to hold people responsible for circumstances over which they had no control. States should therefore be organized, and we should act (within limits), in ways that ameliorate, prevent, purge or neutralize the influence of luck on distribution as much as possible. This in no way means luck does not have a place in how our lives go or that it can, or should, be banished from human affairs. To try and remove luck from people's lives would not only be impossible, it would be misguided as it would take some magic from the world. It is rather that, to the greatest extent possible, and compatible with other values, we should endeavour to prevent luck from determining a person's distributive shares (which includes their education), and in so doing having an unfair influence on how their life goes. Person's should not be advantaged or disadvantaged solely on account of good or bad luck, because how well a person's life goes should be as much as possible in their own hands, and that brings us to the third core belief.

The third belief is that inequalities may sometimes be permissible if they are the foreseeable and avoidable result of the genuine choices of agents, or in some way deliberately chosen, or could have been avoided if certain reasonable and feasible choices had been made, but were not for reasons under the control of the agent. Genuine choice is the antithesis of luck. Note that I do not say that such inequalities are just, but they may not be unjust, they are permissible. This needs to be teased out more, but the main idea is that choice must be part of any adequate account of distributive justice that is grounded in a conception of persons as agents, capable of choosing and acting in the world. Ingmar

---

[10] As G. A. Cohen vividly puts it; "Brute luck is an enemy of just equality" (1989, p. 931).

Persson puts it that "autonomy can make it morally permissible to bring about an unequal outcome, although it is not just" (2007, p.85). In his view, considerations of autonomy do not trump those of justice as much as render them inapplicable. Another view is that not all inequalities should be judged objectionable as "it is morally fitting to hold individuals responsible for the foreseeable consequences of their voluntary choices" (Arneson, 1989, p. 88). Sometimes individuals are properly held responsible for their choices, tastes and preferences. People also cherish choice in their lives, they want to live as far as is reasonable according to their own tastes, preferences and desires. People want to be able to make choices about their friends, their work, their leisure and a myriad other things; choice adds value to life. This being so, it is fair that an agent should, at least sometimes, and, to some extent, bear the cost or enjoy the benefit of his or her choices. This may involve otherwise unjust departures from equality.

These three core beliefs identify the position taken here as luck egalitarian. Richard Arneson (2011) has emphasised the protean nature of luck egalitarianism as a family of views, sharing some core beliefs and principles, but differing markedly in what else follows according to what other non-core positions you hold. For example, interpretation of the core intuitions could vary greatly depending on whether one was a consequentialist or non-consequentialist, opportunity-oriented or outcome-oriented. But, whatever else they believe, luck egalitarians share core beliefs about the value of distributive equality and the significance of luck and choice for distributive justice.

The luck/choice principle

Luck egalitarianism has its roots in two places. The first is traditional liberal thinking about the values of equality and freedom, most especially as developed in the work of John Rawls. The second is, a little awkwardly, as a reaction to the polemic of the libertarian or neoliberal right over the last few decades.[11] Rawls' work highlighted both liberal values but also quietly, but perspicaciously, noted that luck has relevance to how we think about distributive justice. The right relentlessly, but not baselessly, asserts the moral relevance of choice and responsibility. Ironically perhaps, luck egalitarianism is a term coined by a critic, Elizabeth Anderson (1999), that picks out the importance of luck to this particular conception of equality. It would be just as fair though, to call it choice egalitarianism (or responsibility-sensitive egalitarianism is a term that has some merit (e.g. Knight, 2009)) and even more accurate to call it choice-sensitive and luck-insensitive egalitarianism – but not as

---

[11] There are subtleties I'm ignoring, but I take laissez-faire, neoliberal and libertarian principles to be broadly the same. These terms all refer to a position that espouses a minimal state that exists only to protect private property rights, free market exchanges and to prevent individuals from physically harming others. I will generally refer to libertarianism and in doing this I therefore intend its right sense and not its left sense.

catchy. Arneson (2011) describes luck egalitarianism as combining egalitarianism and luckism, but a combination of egalitarianism and choicism (with connotations of autonomy and liberty) is more perspicuous.

At the heart of luck egalitarianism then, what is distinctive about it and what distinguishes it most clearly from other varieties of egalitarianism, is the distinction "between choice and luck in the shaping of people's fates"(Cohen, 1989, p. 907), what Kok-Chor Tan (2008) refers to as the luck/choice principle. There is the idea that people's lives should be shaped predominantly by their choices and not be largely a matter of how lucky or unlucky they are (Kymlicka, 2002, p. 74). A life shaped by our own considered choices contrasts with a life dominated by the influence of luck and thus robbed of agency. So the sense of choice being leaned on here relates most closely to ideals of autonomy and liberty. It relates to ideas about the freedom to pursue one's life in accordance with one's preferences and conception of the good. Indeed, the freedom to choose one's conception of the good and make decisions about how to live based on that choice. Luck egalitarianism therefore interprets treating someone as an equal as meaning that luck should not be allowed to dominate a person's life prospects, particularly as regards the distribution of the benefits and burdens of social co-operation. But it also takes seriously the idea that persons are, to some extent, the authors of their lives and should be free to shape their lives (have the means and opportunities) in accordance with their genuine choices, and can be held responsible for those genuine choices.[12]

The core luck egalitarian claims are specifically to do with distributive justice as people's life prospects are powerfully influenced by their distributive shares. Cohen has described the basic claim as being that there is distributive injustice when "inequality of goods reflects not such things as differences in the arduousness of different people's labours, or people's different preferences and choices with respect to income and leisure, but myriad forms of lucky and unlucky circumstance" (2000, p. 130). This statement, like many similar statements of egalitarian conviction, has inequality as its subject. But it is worth underlining that egalitarian convictions can be stated more positively in terms of a belief about distributive equality. So luck egalitarianism can be stated as the claim that people should be equally well off, not in every respect, but as regards the distribution of the advantages and disadvantages of social co-operation which are of such importance to how a life goes. On

---

[12] I sometimes wonder if there are cultural reasons why I find luck egalitarianism plausible. For example, it seems to me that luck egalitarianism appears to support the NZ practice of not splitting restaurant bills equally, but paying for your own choices. In fact, having a split bill could have the effect of changing your choices, in a perhaps undesirable way, as you consider the costs and consequences. Equality in this case seems to require one's share in the bill to match one's choices.

this construal the luck/choice principle sets out the conditions under which deviations from equality may sometimes be permissible.

A maxim

There is a maxim commonly used by egalitarians, and in particular luck egalitarians, which states, with some minor variations, that it is bad – unjust and unfair – if some are worse off than others through no fault or choice of their own (e.g. Arneson, 1989, p. 85; Lippert-Rasmussen, 2011; Parfit, 1984, p. 330; Temkin, 1993, p. 13). With the addition of a luck clause this becomes: it is bad – unjust and unfair – if some are worse off than others through no fault or choice of their own, but due largely to luck. I think the extended maxim is to be preferred as it roughly encapsulates the core luck egalitarian intuitions and I will use it from time to time. However, there are some unsatisfactory and distorting aspects to it which need to be understood.

The maxim trades on some nonegalitarian values. This in itself need not be a problem. Values pluralism is a respectable position to take as it seems only sensible to acknowledge that equality is not the only value, that in any given situation a number of values may be salient and that sometimes other values may even trump equality. We just need to be clear and explicit when other values may be working to motivate or justify the position. But there are two values implicit in the maxim that I think luck egalitarianism should not deny, but distance itself from. One of these values is implied by the way the maxim refers only to people being worse off. This tends to focus attention on inequality and the condition of the worse-off which tempts us to think in terms of the value of giving priority to the interests of the worse-off (prioritarianism). The other value being smuggled in is that of desert, by the reference to *fault*.[13] Now, a priority principle *could* be part of a theory of distributive justice that includes a luck/choice principle. But it would not then be an egalitarian theory.[14] And desert *could* be appealed to in support of the luck/choice principle e.g. people deserve the outcomes of their choices but not outcomes that are lucky. But I think desert offers weak, if any, support. I am not saying that priority and desert have no moral weight or that they have no place at all in thinking about distributive justice (for priority anyway). I am rather making the claim that priority is not the same value as equality, or as morally weighty as equality, and that the idea of desert does not offer the best, or any, justification of the luck/choice principle.

---

[13] Arneson (2008) notes that the maxim, as stated by Temkin, is ambiguous and might be interpreted as a principle of moral meritocracy requiring distributive shares to reflect degrees of merit (faultiness).

[14] This is controversial as some writers include prioritarian principles in the broad egalitarian family (e.g. Arneson, 2011). Prioritarian concerns will often coincide with egalitarian concerns, but I claim they are not the same. A concern for the condition of the least well-off need not imply any concern that people be equally well off. This is discussed further in chapter 4.

There is a rather simple reason why egalitarians ought to be wary of a priority principle. Like prioritarians, egalitarians want to improve the position of the worse-off too and will look to make a distribution more equal by first improving the position of the worst-off. Egalitarians also deplore poverty and deprivation as intrinsically bad and this provides *some* motivation for equality as instrumentally valuable. But egalitarian moral concern is with more than just the condition of the worse-off and has its origins, not in what we find objectionable about poverty, but in the idea of treating people as equals. In addition, luck egalitarians find offence not just in some being poorly off and not just in some being worse off than others, but in some being worse-off than others because of bad luck. The arbitrariness of such inequality makes its injustice particularly acute. Prioritarian principles do not reflect this. They reflect the disutility of poverty and the badness of people being absolutely worse off, rather than being worse off in comparison with their moral equals. Prioritarianism has some attraction, but it does not *embody* the belief in the equal moral worth of persons. Furthermore, I take it as implicit within a principle of equality that the interests of the least advantaged will often take priority anyway, for reasons such as the greater moral urgency of their claims and diminishing marginal utility (Hirose, 2009, 2011; Nagel, 1991a).

As for desert, the idea that people should get what they deserve has considerable popular appeal (Pojman & McLeod, 1998; Samuel Scheffler, 1992) and some believe it has a role in luck egalitarianism (e.g. Arneson, 2007; Sher, 2010). However, I am sceptical that desert has a significant role to play in distributive justice at all, let alone that luck egalitarians should embrace it. A major objection to desert as a distributive principle was tellingly made by Rawls (1971). He argued that people can be deserving in the weaker sense of being entitled to those things that a public system of rules will lead them to legitimately expect. So people can be said to deserve the weekly pay to which their contract or union agreement entitles them. But a stronger sense of desert is often claimed where people are said to deserve things because of their particular talents and natural assets. Rawls points out though, that no one can be said to deserve their natural endowments any more than they deserve the social circumstances of their birth. It could be objected that perhaps people are deserving to the extent that they have worked hard to develop their talents. This has some intuitive force, which is largely undermined by Rawls further observation that the possession of the sort of attributes and dispositions which might lead one to expend such effort is also largely subject to the vagaries of personal circumstances, and therefore we cannot be credited fully for them also. The heart of the argument is that if we cannot coherently be said to deserve those attributes which are so often the basis of a desert claim (e.g. talent, effort, productivity), then we do not deserve, in any strong sense, the fruits of those attributes. As Lamont (1999) tells us, desert seems to require some degree of

voluntary control over the alleged desert basis that we do not ultimately have. Rawls (2005) also observes that justifying an ideal distribution in accordance with desert would require a comprehensive moral doctrine. Such a doctrine would be inconsistent with the idea of a pluralistic society committed to a notion of justice that requires an overlapping consensus, reciprocity between citizens and gives citizens the freedom to pursue their own conceptions of the good.

Perhaps even more significantly, the influential libertarian philosopher Robert Nozick (1974) also rejects a role for desert in justice. Nozick disagrees sharply with Rawls about the permissibility of distribution being influenced by a person's talents and natural assets. But this is not because he thinks that justice demands rewarding desert. Rather, Nozick claims, natural assets may influence distribution because people own themselves, and are therefore entitled to what flows from their natural assets and what they do with their natural assets.[15] So his argument that distribution may justly be influenced by talents is not based on any claim that people deserve their talents or deserve the fruits of their talents.

Lamont also argues that desert is problematic for the further reason that the basis of desert claims change with context according to other secondary goals and values we hold, and this is often not made explicit. So desert is often appealed to by people who hold further values about whether aggregate well-being is best enhanced by rewarding people proportionate to their effort or proportionate to their productiveness. Someone holding these secondary values is likely to say that people *deserve* distributive shares proportional to their efforts or their degree of productivity.

Now this is not what luck egalitarianism is doing. In saying this, the idea that desert claims can have legitimate moral weight in some situations is not being dismissed. Neither is valuing effort and productivity being dismissed. Rather, luck egalitarians make claims about luck and choice on the basis of a quite different value that renders desert simply inapplicable in the context of distributive justice. That value is the equal moral worth of persons. Saying that distributive justice requires insensitivity to luck and sensitivity to choice is not about desert, effort or productivity. It is about what it takes to treat someone as an equal. Lamont argues that in a given context, there are values (like rewarding effort or productivity), external to the concept of desert, which define the desert basis for that context. So, I think moral equality is the defining value for the context of distributive justice. I think people are born equally deserving (or undeserving), so it is unsurprising that I see little applicability for desert claims in the context of the fair distribution of the products of social co-operation. I also think that the commonly cited desert bases of effort and

---

[15] Interestingly, the idea of self-ownership entitling one to the fruits of one's labour is something that laissez-faire capitalist libertarians seem to share with Marxists (Cohen, 1995).

productivity have some value. I just don't hold those values strongly enough to find the concept of desert particularly compelling for thinking about distributive claims in general. Certainly, when thinking about what justice demands for a young child's education, it is hard to see a space for desert at all. Any basis of desert – talent, effort or productivity – is too clearly the result of fortunate or unfortunate circumstances to make desert at all compelling. A final sceptical note is that too often desert claims seem dependent on institutional features that make ability to pay the key attribute that someone must possess. I do not find ability to pay a compelling basis for desert claims either.

To return now to the maxim, in favour of it, we can say it does bring out the fact that equality is essentially comparative in nature and that its value lies in it being a type of fairness; inequality is bad because it is unfair (Temkin, 2003a, 2003b). Luck egalitarianism emphasizes the idea of fairness by appealing to the acute unfairness of luck determining how well off similarly placed people are relative to each other. There is the further unfairness of a person imposing unreasonable burdens on others through their voluntary choices – particularly if all have started from a position of fair equality. This is fine, but the fairness appealed to is at least partly grounded on the deeper principle of the equal moral status of persons. So Tan, for instance, writes that luck egalitarian beliefs about the significance of luck and choice seem to follow "if we accept the premise that individuals are equal moral agents"(2008, p. 667). Now this premise is in need of some justification itself and that task is turned to in chapter 4.

The maxim also has some popular intuitive appeal and is at times heard in the public arena. For example, John Key expressed it in the aftermath of the September 2010 Christchurch earthquake.[16] His comment, while directed towards the situation of an individual, implied that he believed the people of Christchurch, including those who were uninsured, should not be worse off due to the earthquake, an event that was purely a matter of bad luck. The government accordingly was committed, as a matter of justice and not charity, to putting in the resources to compensate those who had been adversely affected. To have left the people of Christchurch as they were, worse off because of bad luck, would have been unjust.

An ill fit?

Philosophy often features conflicts between intuitions that seem to pull us in contrary directions. Luck egalitarianism takes one of these conflicts and places it squarely at its heart.

---

[16] He said, "The waitress working at one of the bars in Christchurch which has closed as a result of the earthquake through no fault of her own, can't go to work, and has to meet her obligations, well it's a little unfair if she can't be paid" (quoted in *The New Zealand Herald* of the 7th of September 2010, http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10671659).

It claims that the ideas of luck and choice are *both* fundamental to an adequate conception of egalitarian distributive justice. This can be a difficult and uncomfortable position to hold. The conflicting intuitions for these morally pregnant ideas appear very strong. They can also seem incompatible and, in the case of choice particularly, inimical to the idea of equality. This may explain a tendency to promote one of these ideas while deriding the other.

On the one hand, there is a view, perhaps most closely associated with those on the right, which emphasises the moral significance of choice and responsibility and downplays the influence of luck on our fortunes.[17] On this view, we choose our own destinies and make our own luck. Choice and freedom tend to be viewed as sharply distinct values from equality, and of greater weight. If some people make prudent choices that harm no one and lead to them being better off than others (the emphasis is often in this direction), then so much the worse for equality. Nozick famously argued that people choosing to act in various morally permissible ways will disrupt any pattern of distribution we think desirable. He thought that the maintenance of any patterned distribution would require constant, and unjustifiable, interference with people's liberty by either stopping them from making certain choices, or by interfering with the just outcomes of those choices by, for example, redistributing resources. As he pithily put it, "The socialist society would have to forbid capitalist acts between consenting adults" (1974, p. 163). This view supports the idea that adults making choices about how to live ought to have their choices respected by others, as long as no harm is done to anyone else. It is also part of common discourse that adults are people who accept responsibility for the consequences, good or bad, of their freely made choices. Now it is quite possible that these intuitions are flawed or distorted in some way. Intuitions are rarely infallible guides to the truth and there are serious questions about the metaphysical and ethical status of choice. But it would be foolish to dismiss lightly intuitions that are widely, genuinely and strongly held. There is something in these claims that appears, *prima facie*, to have moral significance.

On the other hand, there is a view, perhaps most closely associated with parts of the amorphous and ill-defined left of the political spectrum, but socially liberal and egalitarian at least, which argues that a person's distributive shares ought not to be a matter of luck. It is emphasised on this view that much of a person's situation is the outcome of such an array of chance factors and social forces that choice is of trivial significance, relevant only to discussions of what flavour of ice cream to buy. And even that is subject to the influence of

---

[17] By the right I mean almost the entire spectrum of the right, neo-liberals or libertarians, as well as those normally called conservative. Both these groups emphasise choice, one for economic reasons (the rationally choosing *homo economicus*) and the other more for reasons to do with the idea of people taking responsibility for themselves and their families. Representative of this, the N.Z. National Party's website lists as two of its nine values "Individual freedom and choice" and "Personal responsibility", interestingly, right after equality of opportunity (retrieved 3/9/2013 from http://www.national.org.nz/About/vision.aspx.).

marketing, and cultural background, and family circumstances, and genetic predispositions and so on. This view tends to insist that it is not merely bad luck, but unjust if some are worse off than others due to no fault of their own. It views luck as a morally arbitrary feature of a person's circumstances that cannot possibly justify inequality – certainly not the degree of inequality we actually see in the world anyway. In such accounts there appears to be little place for choice as it can seem as if people's choices are as much subject to luck as anything else, the outcome of social and natural forces beyond any individual's control. These intuitions too are subject to fallibility, but it would be equally foolish to dismiss lightly intuitions that are widely, genuinely and strongly held. There is something in these claims too that appears, *prima facie*, to have moral significance.

In this sort of situation there is a temptation for people to dismiss opposing views as obviously wrong, their opponents as clearly mistaken and/or disingenuous. This can lead to the setting up of straw men or caricatures of the opposing view. The egalitarian left accuses the libertarian right of fetishizing choice, an obviously real, but morally trivial phenomenon when correctly contextualized. The right accuses the left of denying people their liberty, of being deterministic and paternalistic and, as a consequence, regarding people as objects tossed hither and thither by external forces beyond their control and lacking any real agency.

Luck egalitarians say there is something right in both accounts and an adequate conception of equality must incorporate aspects of both ideas. An adequate conception of equality must take account of how the distribution of advantage and disadvantage ought to be sensitive to at least some of an agent's choices, but not to how lucky she is. There is something about genuine choice that makes some inequality permissible in a way that luck cannot. There is also something about luck that makes some inequality unfair in a way that choice does not.

This could be a problem for luck egalitarianism. Jonathan Quong (2011) says that a good theory of justice will not involve any unresolved conflicts between its fundamental values. This is because one way of assessing the validity of a theory of justice is if it gives definite answers to disputes over what actions are permitted and what prohibited. But I do not believe that luck egalitarianism need involve any unresolved conflicts, at least, not in principle. The conflict is more within the moral intuitions and motivations of people, combined with some very difficult practical problems to do with determining when and to what extent something is a matter of choice or luck. There are in fact good grounds for believing that luck and choice can both be accommodated within an egalitarian theory and that distributive justice requires us to take cognizance of both these ideas. For one thing, choice and luck are not unconnected. A major reason one side has for believing that luck is

an unjust distributor is the very reason the other side has for believing choice to be a just distributor.

Control

The Greeks understood luck, *tyche*, as those aspects of the human condition beyond our control, those things which just happen to us and are not a result of the exercise of agency (Nussbaum, 2001). The idea of luck thus seems tightly linked to that of lack of control and lack of agential control provides a powerful reason for rejecting luck as a just distributor.

In his work on free will and moral responsibility, John Martin Fischer (2012) points out that we intuitively feel some sort of control is required for moral responsibility. He argues that moral responsibility requires what he calls *guidance control*, typified by the sort of control we have when driving a car. Guidance control is contrasted with *regulative control,* which requires an agent to have access to alternative possibilities, the ability to have done otherwise. This has largely been the traditional compatibilist criterion for freewill. However, Fischer argues that moral responsibility does not require regulative control, partly because so-called Frankfurt cases suggest that the hypothetical ability to have done otherwise under the same conditions does not seem to be what matters for moral responsibility (Frankfurt, 1969).[18] Rather than requiring open alternatives, Fischer argues that the sort of control required for moral responsibility is one where agents have relevant control over the actual sequence of events leading to an event. He claims that this involves an agent being responsive to reasons, and that the mechanism by which the agent responds to reasons is the agent's own mechanism i.e. he has not been subject to clandestine manipulations of the brainwashing, hypnotism, evil demon, mad scientist type.[19] Alfred Mele (2006) adds the further idea that control (whatever the true account of it is) is what we use to gauge the extent to which luck has a bearing on an agents freedom and moral responsibility. The more control an agent has, the less we are inclined to see luck as a factor in events, and the more we are inclined to find an agent is properly held to be accountable, or can rightly be thought blameworthy or praiseworthy for outcomes.

---

[18] Frankfurt gives us the case of Jones, who for his own reasons decides to perform some action. However, unbeknownst to Jones, Black is observing his actions and Black would have manipulated (choose your own preferred method of manipulation) him into deciding to perform, and into performing the exact same action if he had not decided on it himself. Frankfurt argues that, although Jones could not have done otherwise, he is nonetheless rightly held to be morally responsible. This is because the fact that Black was lurking ready to override Jones decision if it was not the one Black wanted, played no part in the actual sequence of events and should therefore play no part our judgement of Jones' moral responsibility.

[19] This understanding that what is important is the actual history of an action (or choice), rather than a worry about whether alternative possibilities were really available, is one shared by other writers, prominently among them, Susan Hurley (2003).

42

Luck egalitarians say there is something similarly significant about control for questions of distributive justice. They are not the first to do this. The utilitarian philosopher Henry Sidgwick wrote that "all men should enjoy equal amounts of happiness: for there seems to be no justice in making *A* happier than *B*, merely because circumstances beyond his own control have first made him better" (1907, p. 284). The extent to which agents have, or had, or will have, control over events, outcomes or important aspects of their situation (including aspects of themselves), is a measure of the extent to which we think luck has influenced that situation. The knowledge that a distribution is largely due to factors beyond the control of its beneficiaries and maleficiaries (to coin a term), the result of a multitude of causes over which there was little or no agential control, inclines us to think it is just a matter of dumb luck. Now the idea of justice sits uncomfortably with dumb luck. It seems unjust to many people, for example, if the quality of education a child receives is dependent on factors totally beyond the child's control (which is most). Lack of control, by which we infer luck, erodes our confidence that a situation should, without question, be accepted as just. Talk of justice seems inappropriate, out of place, inapplicable, or perverse even, when control is lacking and luck is rampant. This is because what constitutes a just distribution depends on values; like equality. But as an equal distribution could possibly come about by luck too, it is clear that luck itself does not tell us how to distribute. The strong smell of luck only warns us that it is extremely unlikely justice is being served.

The sort of factors which play a major role in determining distributive shares, and are often cited as unjust determinants – things like ethnicity, race, family background, natural assets, sex and social class – are all beyond an individual's control. It appears, on reflection, monstrously unfair to hold people responsible (in the sense of expecting them to bear the consequences) for weighty aspects of their condition over which they had, are having and will have, no control. They could do nothing about these things, so it is unfair to hold them responsible for them. It is then, according to luck egalitarians, unfair if a person is disadvantaged or advantaged due to natural, historical or social contingencies, as these are beyond anyone's control, simply lucky or unlucky, and for that reason morally arbitrary.

Conversely though, we have control over our situation when we can shape it according to our choices or when our choices have a significant effect on the likelihood of some outcome. Actions, outcomes and situations we choose are actions, outcomes and situations we, to some extent, have control over. We therefore have a reason to think it fair that people should, sometimes at least, and under appropriate background conditions (for example, forseeability or avoidability of outcomes) enjoy the benefits or pay the costs of those choices. In practice, we tend to hold people responsible only for outcomes that we think they had some substantive control over. So, mental impairment, duress, lack of

knowledge and age are all believed, in some contexts at least, to work against the control necessary to deem a person fully responsible for their choices.

The luck/choice principle then, can plausibly be viewed as the short version of a coherent, but longwinded, belief: it is unfair if people are better or worse off due to things over which they have no control, for which they are not responsible, and these are commonly instances of good or bad luck, but inequalities are permissible when they reflect those things which a person can control, for which they are responsible, and these are commonly the chosen aspects of their situation. Choice and luck are therefore seen as the flipside to each other – they are inverse correlates (Hurley, 2003) – with one involving the absence of control and the other its presence. We have control over our choices, but we have no control over luck. On this understanding, there is no conflict then in luck egalitarians holding it to be unfair if people are unequal in advantages and disadvantages as a matter of luck, but not as a matter of choice. Indeed, there is an underlying coherency to the luck/choice principle which implies that commitment to the significance of one logically commits us to the significance of the other. Anyone who finds questions of luck morally salient to distributive justice ought to find choice salient too, and *vice versa*.

In this context, reference is sometimes made to the control principle (CP). One fairly typical version of this states that: "one is not (properly held) responsible for what lies beyond one's power to control" (Arneson, 2004, p. 3). This also has the corollary that the harder or more difficult it is to control something then the less one can be held responsible for that situation or for the outcome of that situation. The argument can be put as follows:

1. We are (properly held) responsible only for that which we can control (CP).

2. We can, sometimes, control outcomes via our (genuine) choices.

∴ 3. We are (properly held) responsible for outcomes which reflect our (genuine) choices.

4. We cannot control our luck.

∴ 5. We are not (properly held) responsible for outcomes that are lucky or unlucky.

One response to this argument may be to object that, if determinism is true, then agents do not control anything. Now Fischer claims his idea of guidance control *is* compatible with determinism. This allows him to claim that moral responsibility is possible in a deterministic universe. Mele also points out that the objection is mistaken and appears to do so on the basis of an idea of control similar, if not the same, as Fischer's guidance control. Mele writes that when I drive a car, I control its path and where I go in it, even if determinism is true. There can be doubts about whether the control I exercise is merely *proximal* or *ultimate.* But, compared to any passengers in the car, I certainly have a control that they lack, and we

44

can sensibly say I have less control when conditions are icy or the steering is dodgy. So the salience of control is unlikely to be negated by the truth or falsity of determinism.

However, while the argument from a control principle does support the idea that luck and choice are not unrelated, it also makes explicit a rather important feature of the debate that has so far been glossed over. It shows that much may hinge on what is meant by *being responsible* or *being held responsible*. Certainly the control argument seems to lean on notions of responsibility just as much as it does on control. This indicates that the concept of responsibility requires more attention. We often link choice and responsibility together somewhat heedlessly; this may or may not be unwarranted.

Responsibility

The significance of responsibility is further emphasised when we see that the control argument can only partially capture what luck egalitarians want to say anyway. Susan Hurley (2003) points out that choice and control are ways in which an agent can be causally responsible for an outcome. But genes control the building of proteins and thermostats control temperature. Genes and thermostats are therefore causally responsible for certain outcomes; but nothing of moral significance follows from this. Hurley suggests that choice or control is therefore necessary for moral responsibility, but neither is sufficient. This is an important point for luck egalitarianism if it is to successfully counter the coarse right wing thinking that asserts people are rightly held responsible for any choice they make.

Another difficulty is pointed out by Levy and McKenna (2009) and concerns omissions. Some situations where agents fail to do something often involve little in the way of deliberate control. Think of a student, Jimmy, who does badly in a test because he forgot about it and did not study for it. The oversight of failing to study for the test does not seem to involve any sort of direct control. We can certainly believe that Jimmy did not set out to intentionally forget about the test and that he did not deliberately choose not to study; he just did not care enough to remember or take steps, such as writing a note, in order to remind him about the upcoming test. In such situations though, of little apparent control, we are still inclined to hold the person responsible for their omission. But maybe we are wrong to do this. If Jimmy had little control over shaping the dispositions that led him to attach little importance to the test and remembering it, then maybe we are wrong to hold Jimmy responsible. But then we are led to concerns about what happens if people are never held responsible for such things. This is an ethical question that cannot be ducked just because of metaphysical knots. And teaching people to be responsible seems to require us, at least sometimes, to hold them responsible.

However, I do not think that this case is quite as devoid of control as Levy and McKenna claim. It is right to say that Jimmy may not have deliberately and consciously chosen not to

study. Nonetheless, we can still credit him with some control over his own behaviour. What we should say is that, as Hurley points out, control does not settle the issue of responsibility. Jimmy appears causally responsible for failing his test. But this does not seem sufficient for holding him morally responsible, or responsible in a sense that luck egalitarians may think justifies any great distributive inequality.

The greater significance of responsibility over control has been further illuminated by George Sher (2010). Sher describes several – rather amusing – cases which appear to fall in a gap between a control-focussed luck/choice principle and intuitions about responsibility. In these cases control is largely absent, luck is playing a large role, but we nonetheless want to say that agents should have to bear (some) responsibility for the consequences of their choices, or rather, lack of choices. Sher's argument exploits a clash between our intuition that something is lucky for someone if it was an unforeseen consequence of the choices they have made, and our intuition that sometimes people are responsible for aspects of their situation which they did not foresee. This, after all, is the basis of concepts of negligence, of holding people responsible for things they should have foreseen, but did not. If Jimmy winds up drifting out of school and into low paid, unsatisfying jobs because of things he didn't do at school – like studying for tests – it is hard to say he has any direct control over this and it is not necessarily true to say he deliberately chose such an outcome. Nevertheless, we may hold him responsible for his situation. Of course, the degree to which we think Jimmy is rightly held responsible is going to depend a lot on background facts about Jimmy. But this does not show it is unreasonable to think that, while we may sometimes be mistaken to hold him responsible, sometimes we are right. For instance, we are right to hold him more responsible for exhibiting this behaviour as a 20 year old university student than as a 10 year old primary pupil. This is because we can be fairly confident that the 20 year old does have some rough grasp of the likely consequences of not-taking-tests-seriously behaviour, a grasp we cannot assume for a 10 year old.

Sher also offers a helpful diagnosis. He argues that part of the difficulty around how luck, choice, control and responsibility fit together is to do with the fact that a defender of luck egalitarianism (or any theory of distributive justice) is faced with two tasks. One is to do with *analysing* what justice requires and the other to do with *justifying* it. So luck and choice, with their control link, are part of the analysis of what distributive justice requires. But responsibility, a value distinct from equality, is doing the job of justifying their place in the theory. We need control-tracking features like luck and choice in an egalitarian theory because control appears to be a necessary, but not sufficient condition, for responsibility; it *normally* tells us it is proper to hold someone responsible. If someone can properly be held responsible, then the independent weight of this value will sometimes legitimate some inequality. This justification comes apart when luck and choice do not do what the justifying

condition requires i.e. tell us when someone is appropriately held responsible for the consequences of their choices or actions.

On this understanding we could say that the luck/choice principle is a (very good) heuristic. It usually tracks when a person should or should not be held responsible. But sometimes it doesn't. And when it doesn't the problem is often to do with our intuitions regarding a person's responsibility not aligning well with their apparent control. In such circumstances we need to go with whether we have good reason for believing someone to be properly held responsible, rather than puzzling out the possibly more metaphysical problem of control. The issue for distributive justice is at heart an ethical one, not a deeply metaphysical one.

Sher's analysis is astute, very helpful, but not the whole story. This is because the place of choice and luck in an egalitarian theory is justified by reasons other than just the value of responsibility. Some have already been mentioned; the unfairness of luck having a large influence on distributive shares, the unfairness of imposing the costs of your genuine choices on others, and the outcome legitimating and autonomy promoting features of choice. Sher also thinks that other values may have a justifying function, especially desert. I reject this. I think our intuition about the inequality permitting quality of genuine choice is more to do with notions of control, fairness and the value of choice than with the value of desert. I am not saying that desert has no place in thinking about what people are owed in any context. I am rather saying that, *ceteris paribus*, in the context of determining a person's fair share of the benefits and burdens of social co-operation, the concept of desert does not accurately capture why choice can make some inequalities permissible. I think it is inaccurate to say that people *deserve* to be worse off or better off in their share of the social product because of choices they have made. It is more that inequalities flowing from a person's genuine choices are sometimes permissible because they flow from a person exercising control over the shape of their lives. This can give that shape, for better or worse, a legitimacy it would not have if it was imposed or a matter of luck. It has *value* to us to, at least partly, align outcomes with our choices.[20] Inequalities are also sometimes permissible because it is proper for agents to accept responsibility for the consequences of their genuine choices. It is often not proper for agents to impose the costs of their choices on others. Now in this there is no need to invoke the idea of desert. So I see less reason to permit inequalities than Sher does. There are fewer things that justify inequality on my account, and I therefore hold equality as a stronger value.[21]

---

[20] There is a much fuller discussion of this claim in chapter 6
[21] Chapter 5 has further discussion of the relationship between desert and choice and responsibility.

Sher's general claim about the significance of responsibility is plausible though, and echoes claims made by others about the importance of getting things straight about responsibility.[22] Susan Hurley (2003) argues cogently for the need to be clear about responsibility and its role in distributive justice and Carl Knight (Knight, 2009; Knight & Stemplowska, 2011) also stresses a view of luck egalitarianism as combining the two values of equality and responsibility. There is a view, that what really matters for egalitarians is getting it straight about when we can legitimately hold someone responsible for a state of affairs. Responsibility is a major justification for appeals to choice and control as these are frequent, but not infallible, indicators of responsibility, while luck and lack of control are frequent indicators that we cannot attribute responsibility to someone. This has led some thinkers to focus largely on responsibility and talk of responsibility-sensitive egalitarianism rather than luck egalitarianism. This is perhaps a better title, and arguably better reflects some luck egalitarians' concerns. But for now the label of luck egalitarianism has stuck and the luck/choice principle remains a useful way of drawing attention to issues of responsibility, besides having independent support from other considerations. There is another view that sees the problem somewhat differently. This view suggests that what we need to get straight is the circumstances under which someone can properly be held responsible for their choices. This view sees choice rather than responsibility as of fundamental value.

A number of attempts have been made to clarify the concept of responsibility, in a regrettably jargon multiplying and not always edifying way. Part of the difficulty is making it plain that the sort of responsibility important for distributive justice is not the more commonly discussed notion of moral responsibility, which has been the target of a lot of philosophical interest. But neither is the sort of responsibility being traded on entirely distinct from concepts of moral responsibility either. Despite these difficulties, we can discern some rough consensus emerging in the distinctions being drawn.

Thomas Scanlon (1988, 1998) distinguishes between responsibility in an *attributive* and a *substantive* sense. Responsibility in an attributive sense is about to whom we can attribute an action (who did it?). Scanlon believes that questions of moral responsibility are frequently of this type, a matter of attribution that provides us with a reason for deeming

---

[22] I detect a, possibly concerning, equivocation in luck egalitarian writing about responsibility. At times writers say that responsibility matters because it reflects choices. For example, Cohen writes that the aim of egalitarianism is to eliminate disadvantage "for which the sufferer cannot be held responsible, since it does not appropriately reflect choices that he has made or is making or would make" (Cohen, 1989, p. 916). But at other times it is said, as with Sher, that the value of responsibility shows why choice matters. So is it the value of choice or the value of responsibility that is significant, or can luck egalitarians have it both ways? For what it's worth, I incline towards thinking it is choice that has value, and when an outcome does not reflect that choice, then there will be a question as to whether it is right to hold the chooser responsible for that outcome. But there is more on this in chapter 5.

someone praiseworthy or blameworthy. Substantive responsibility is about more than that someone has performed some action. It involves them being responsible for an outcome in a way that entails they should bear the costs of that outcome. If they are not responsible in this sense then they have a legitimate claim on others to relieve them of the burden. This is the type of responsibility of interest to luck egalitarians, a type which can legitimate distributive inequalities. Scanlon further believes that substantive responsibility is choice-aligning. It is a person's choices, under suitable background conditions, that largely enable us to make judgements of substantive responsibility. It is appropriate to ascribe a weightier sense of responsibility because the fact that someone has voluntarily chosen an outcome can legitimate that outcome.

Ronald Dworkin (2000) makes a very similar distinction between what he calls *causal* and *consequential* responsibility. Causal responsibility appears to match Scanlon's attributive responsibility and is a matter of whether someone caused something or not. But, as people can cause things by accident, it is not sufficient to assign responsibility in the way that interests an egalitarian. Dworkin therefore gives us the idea of consequential responsibility which addresses "When and how far is it right that individuals bear the disadvantages or misfortunes of their own situations themselves, and when is it right, on the contrary, that others—the other members of the community in which they live, for example—relieve them from or mitigate the consequences of these disadvantages?" (2000, p. 287). Of particular note here, Dworkin also thinks that this sort of responsibility is absent when something is a matter of luck, but correctly assigned when it flows from an agent's choices.

Another way of typifying the distinction being made by Scanlon and Dworkin is to say that attributive or causal responsibility is descriptive; it describes an agent's causal role in bringing about some state of affairs. In contrast, substantive or consequential responsibility, is normative; it tells us whether an agent should bear the burdens or enjoy the benefits of some state of affairs (Colburn, 2012). There is another sense of responsibility that is normative and means someone or some institution has an obligation or duty to perform some action. This sense is sometimes a form of substantive or consequential responsibility. For example, that parents are responsible for their children's upbringing may be thought to be consequential on the choices they made, or didn't make. But this is not the same as what is meant when we say that schools have a responsibility to educate children. This does not appear to be the substantive or consequential sense, but it is normative. However, this sense is not normally the one that presents difficulties for distributive justice, so we can set it aside here.

Building on these ideas, Knight and Stemplowska (2011, pp. 11-15) discuss what they call *agent responsibility* and *consequential responsibility.* Agent responsibility they define like this: *A* is *agent responsible* for *X* if *A* brought *X* about. Agent responsibility carries with it the

idea of authorship. It is not quite enough that someone causes something to happen (causal responsibility); it also needs to suitably spring from their agency, they need to be the author of their situation. Jimmy, the student who forgot to study for his test, is *agent responsible* for doing badly in the test as he is the author of this outcome. Not only did he bring this result about by the mere fact of taking the test, but the poor result is at least partly because he forgot to study and this suitably reflects his agency, as he could have taken steps to remember. His failure to study is plausibly an expression of his attitude as it is plausible that if he had cared more he would have studied.

While agent responsibility is more than just causal responsibility, Knight and Stemplowska claim that it stops short of being moral responsibility. Moral responsibility involves being able to blame or praise an agent for what they've brought about. We may not wish to do this in Jimmy's case as we may recognize that given his circumstances it is not surprising that he has an indifferent attitude to study (it may be that a big part of a teacher's job will be to try and change this attitude). There will in fact be a vast range of actions and outcomes for which we can attribute agent responsibility but ought rightly to withhold from attributing moral responsibility. One can see though, that attribution of agent responsibility could easily slide into attribution of moral responsibility, as agent responsibility will be a precondition for attributing moral responsibility. Knight and Stemplowska argue that this is an important distinction for egalitarians as what is required as a matter of egalitarian justice need not run parallel to either what one can be blamed or praised for, nor to what one is *agent responsible* for.

We can note a couple of reasons why this might be so. For one thing, as already claimed, luck egalitarianism is not rightly interpreted as a desert theory of justice. It is more credible under a desert theory to think that distributive shares may be sensitive to blameworthiness and praiseworthiness. But it is wrong, I believe, to think that distributive shares should reflect our moral judgements about persons. Rather, fairness dictates that the benefits and burdens of social co-operation should be equally shared unless inequalities are in a sense chosen. The point here is not about desert, but about the freedom to choose different ways of living. The belief that inequality is sometimes permissible is not related to any moral judgement about persons (although if not careful it can easily become this) but about what might reasonably be permitted because it predictably and fairly obviously flows from a person's choices and, in the absence of significant autonomy undermining circumstances, a person is the author of their choices. Choices are an expression of a person's agency.

Knight and Stemplowska also point out that what is meant by *authorship* will largely be cashed out in terms of choice and control as being typical indicators, with qualifications, of agent responsibility. But as well as being able to determine what actions are genuinely reflective of a person's agency, the idea of agent responsibility also requires us to identify

those outcomes which are clearly linked to the action of the agent. We might think Gavrilo Princip was *agent responsible* for assassinating Archduke Franz Ferdinand, but may not want to extend his responsibility to starting the First World War. Or, thinking of Jimmy again, his poor test result is linked directly to his actions, but it is less clear that other possible outcomes – for instance being unable to take some course in a subsequent year with all the on-going ramifications that may have – are so directly related to his action on this occasion if, for all Jimmy knew, this was just an ordinary class test.

So we see that, as with Scanlon's attributive responsibility and Dworkin's causal responsibility, agent responsibility, although a somewhat thicker (or maybe just more detailed) conception than those others, still does not account for all that concerns egalitarians. Agent responsibility still leaves it open whether someone *ought* to bear or enjoy any or all of the disadvantages and advantages that result from their agency. However, as pointed out, moral responsibility does not provide the solution to this either. Moral responsibility is very likely to entail that outcomes should be borne, but not always, as blame and praise are not a necessary nor sufficient condition for thinking a person should bear the costs of their situation. The sense of responsibility relevant to distributive justice will be sensitive to many considerations, control and what outcomes can most reasonably be linked to agency are some, and these need not track moral responsibility.

Knight and Stemplowska therefore argue that the concept of responsibility of most significance to distributive justice is closest to Dworkin's idea of *consequential* responsibility. They leave it open whether other theories could offer different reasons for attributing consequential responsibility. It may be possible, for example, to devise theories where it tracks desert or rights or needs. But for luck egalitarians, consequential responsibility is best seen as flowing from a person's genuine choices, while luck relieves an agent of consequential responsibility. This concept is at the heart of luck egalitarianism as it bears directly on the question of when and to what extent any inequality is permissible. Moral responsibility is perhaps a version of consequential responsibility, as they both require that there first be agent responsibility. But the consequential responsibility an egalitarian is interested in differs from moral responsibility, in being focused on the just distribution of benefits and burdens, rather than the just distribution of praise and blame. Further, it is holistic in nature, by which Knight and Stemplowska mean that attributions of consequential responsibility are dependent to some extent on the overall distribution of advantages and disadvantages in a society.

We may therefore get to the heart of the problem of distributive justice by putting together agent and consequential responsibility, Knight and Stemplowska suggest. They suggest the key question to be answered is: "Under what conditions, if any, could being agent responsible for finding oneself in a situation in which one suffers a disadvantage (or

enjoys an advantage) make one consequentially responsible for the (dis)advantage as far as distributive justice is concerned?"(2011, p. 14). The short luck egalitarian answer to this question is; when initial conditions of equality pertain and agents' situations are due to their genuine choices and not to luck. This quick answer will be elaborated throughout this work.

Luck egalitarianism thus asserts a strong link between choice and some appropriate understanding of responsibility. However, it should be clear that, although the link is sometimes expressed quite dogmatically, it is in fact a highly qualified link. We do not consider it appropriate to hold a person consequentially responsible for all their choices. The crux of the issue is partly getting it right about whether an agent's situation is more a matter of luck or choice. As the discussion of control suggests, this at least partly depends on the extent to which we believe that they have (had, will have) relevant control. But that is not all that is important. It also depends on the extent to which agents are choosing from positions of equality. The more constrained someone's choices are, the less we are inclined to think their choice may legitimate any subsequent inequality. That is why there have been frequent references, somewhat opaquely, to *genuine* choices. When you ask me to choose heads or tails on a coin toss, I control my choice in a way that no one else does. It is, in a simple attributive sense, *my* choice. But whether I should rightly be held responsible for any outcomes attendant on that choice, whether that choice is what I am calling genuine, is a further question that depends on a complex of background considerations. For example, whether the outcome matters much or not, the possibility of malign demons or mad scientists controlling my thoughts, my knowledge of the circumstances I find myself in, the forseeability and probability of any outcomes, the fairness of the coin and whether you are holding a gun to my head. All such considerations affect judgements about the extent to which I should be held responsible for my choice, because they weigh on whether we think something is more a matter of luck or genuinely chosen. One of the sources of disagreement between the libertarian right and the egalitarian left is the extent to which the link between choice and responsibility is thought to be problematic.

One further point to make is that the discussion I have begun here about responsibility should make it clear that luck egalitarianism is not making claims about choice based on a metaphysically suspect notion of autonomy. Rather, the place of choice in luck egalitarianism is more to do with ethical considerations about responsibility and what it is to treat someone as an equal. Autonomy is not a major justification for believing choice important to distributive justice, although I would not claim it has no part. It is a value to be promoted that contributes to individual well-being and a factor to be considered when judging the genuineness of a person's choices. Autonomous choices can be contrasted with coerced choices for which people are not properly held responsible.

52

Moral arbitrariness

A reason for believing it wrong to allow luck to be the dominant factor in how well off someone is – and also for believing it appropriate to let choice have some play – is Rawls' observation that it is unjust for a person's distributive shares to be influenced by factors that are *arbitrary* from a moral point of view. By this he makes it clear that he means those factors which are for each individual a matter of "their social fortune or their luck in the natural lottery"(1971, p. 75). Intuitively, these provide no good reason; they are irrelevant to how the benefits and burdens of social cooperation should be apportioned to people. The theory of democratic equality that Rawls developed, combining the principle of fair equality of opportunity with the difference principle, was intended to eliminate or mitigate the influence of such factors on a person's shares. Fair equality of opportunity would eliminate inequalities due to morally arbitrary social factors such as class and race. The difference principle, with its requirement that inequalities be arranged so as to be of most benefit to the least advantaged, would mitigate any inequalities necessary for the *non*-arbitrary reason of providing incentives for people to exercise their talents and be productive. The root idea then is one of fairness. It is not fair, and a society is not just, if inequalities stemming from morally arbitrary factors are permitted.

However, we can agree with Rawls that justice is served by eliminating the improper influence of morally arbitrary factors on distributive shares, but disagree with him over the best solution to this problem. This is what Will Kymlicka (2002) does, arguing that Rawls' solution to the problem is ultimately inconsistent with the underlying intuition. Rawls has more than one argument for the difference principle, but one of his major ones is the argument from moral arbitrariness. Kymlicka, however, points out that the difference principle is sensitive to *all* inequalities and does not, therefore, necessarily follow from an argument that is only about *some* inequalities i.e. those that are the result of morally arbitrary factors. There are two main difficulties, as Kymlicka sees it. The first difficulty is that Rawls uses primary social goods (e.g. rights, liberties, opportunities, powers, income and wealth) as his metric of equality. But this means some disadvantage is going to be invisible to the difference principle. As Kymlicka points out, two people could have equal bundles of the primary social goods and so be counted equally well off. But if one of them has extra costs, as a result of some handicap or disability say, she is in fact less well off, and because of a morally arbitrary factor. So, not all of the unfair effects of the natural lottery are mitigated by the difference principle.[23] The second difficulty for Rawls, according to Kymlicka, is that the least well-off are not a morally homogenous group and not all of them

---

[23] This was also an argument offered by Sen (1979) for rejecting the primary goods approach, and in favour of capabilities. Primary goods do not take sufficient account of the actual diversity of people, their differences and, in particular, their differing abilities to convert the primary goods into what they want to be and to do.

will be in that position because of morally arbitrary factors. Some may very well be among the least advantaged, in terms of social goods, because of the altogether more salient reason that they have chosen, in some way, to be in those circumstances. After all, people sometimes trade off greater leisure against being more productive. It appears in this case that the difference principle would have the consequence of imposing unfair costs on some in order to subsidize the choices of others.

One credible view of luck egalitarianism then, is that it represents an attempt to be true to Rawls' claim that distributive shares should not be sensitive to morally arbitrary factors. Luck egalitarians say that moral luck is part, but not all, of the class of morally arbitrary things, particularly pertaining to distributive justice. Circumstances that are largely a matter of luck for the individual are for that reason *arbitrary* from the moral viewpoint and should therefore be irrelevant as determinants of the distributive shares of each person as they provide no good moral reason for what a person's share ought to be. The sorts of circumstances that are commonly described as being of this nature are those one is born with or born into. They are just a matter of historical and social contingency or, as Rawls put it, the natural lottery. It is wrong, therefore, for one's life prospects to be determined by factors and circumstances that are largely a matter of luck. How one's life goes, or what one's life prospects are, is too important to be left to luck and ought to be something a person shapes themselves. Luck egalitarians therefore believe they are being true to Rawls' claim when they say it is unjust if people are advantaged or disadvantaged by lucky and unlucky circumstances.

However, Nozick (1974, pp. 226-227) pointed out some difficulties with arguments being based on a fact being arbitrary from the moral viewpoint. He says of people's natural assets – which Rawls claimed to be arbitrary from a moral point of view – that people are entitled to what flows from them *regardless* of whether or not they are arbitrary from the moral point of view. Now, it is a little unclear whether this is because he has a fundamental disagreement with Rawls over the significance of something being morally arbitrary or whether he just disagrees with the force of this point as regards natural assets. It is perhaps the latter because a little further on he states that there is an ambiguity about what is meant by saying something is arbitrary from the moral point of view. It could mean "that there is no moral reason why the fact ought to be that way, or it might mean that the fact's being that way is of no moral significance and has no moral consequences" (1974, p. 227). This distinction is important to bear in mind if we are to avoid some morally trivial claims. Some situations, in some respect, ought to be determined by moral reasons. The argument of egalitarians is that a person's distributive shares are one of these situations. Because of their pervasive effects on life prospects they ought to be determined by moral reasons rather than being decided by 'morally arbitrary' factors like luck. But some things, and

natural assets *can* be in this category, are a matter of luck and this is no reason to object to them. It only becomes objectionable when distributive shares are too closely linked to natural assets. Egalitarians therefore do not share Nozick's belief that people are entitled to whatever flows from them. A person's entitlements are largely set by our social structures and institutions and we ought to design them in such a way that 'morally arbitrary' features of a person, not objectionable in themselves, cannot determine a person's fair shares.

It can be seen from this then that context, unsurprisingly, is important for judgements. Although it is widely thought that luck ought to be morally irrelevant,[24] luck egalitarians should not be seen as being committed to anything more than the claim that justice, and in particular distributive justice, should not be hostage to brute luck alone. Luck becomes problematic when we have reason to think that it has denied an agent sufficient control over themselves and their circumstances or interfered substantially with that control. It can be imagined that there are some situations where other features may render luck to be morally salient. For example, not all things that are a matter of luck are morally arbitrary in the sense of having no moral significance. This, for example, is the case with gambling and various forms of risk taking where there is, presumably, a conscious choice to waive these considerations and allow that whatever occurs as a matter of chance will be permissible. There are limits to this though. We do not think that people should be allowed to let luck determine whether they live or die in Russian roulette and bankruptcy laws place a limit on the destitution that bad business gambles can throw people into. Interestingly, our intuitions don't seem as strong about limiting the upsides of risk taking, but this may well be mistaken, as I argue later. However that may be, in some gambling and risk situations, we believe that people's choices (under suitable conditions) to participate in a wager or willingly take a risk render the outcome, a matter of luck, non-arbitrary from the moral point of view and therefore relevant for determining distributive shares.

Then there are other sorts of context where the fact that something is a matter of luck does not mean it is always morally arbitrary or in all ways morally arbitrary. Such contexts make it important to distinguish clearly between the sorts of things for which a fact might be morally arbitrary from those for which it is non-arbitrary. Rawls' device of the veil of ignorance can be helpful with this. So in the following (and other) situations it is helpful to ask; "if I was in this situation, would I think these facts about me were good enough reason for affecting the opportunities, liberties and share of goods that I have?" The sort of facts paradigmatic of those things thought to be morally arbitrary because due to lucky and unlucky circumstances are race, sex, talent and class.

---

[24] See, for example, the Moral Luck debate (Nagel, 1979; Williams & Nagel, 1976) where it is claimed this idea is ultimately Kantian in origin. This will be discussed more shortly.

But take race; in many former colonial societies it will not be morally irrelevant what race one is if it is found that indigenous groups ought to be given compensation for past injustices.[25] Compensation will be precisely on the basis of one's race, something which is a matter of luck for the individual.[26] Race is not morally arbitrary when Ngai Tahu makes decisions about how to spend its Waitangi Tribunal Settlement money. Race is not morally arbitrary when making decisions about health funding for diseases which have rates of prevalence with a known correlation to race. In New Zealand diabetes might be like this. Race is not morally arbitrary, as the Maori Party pointed out in the 2011 election, when we make decisions about the age of entitlement to the government pension, and neither is class in that context. Now partly what is making race a morally non-arbitrary fact in some of these contexts is that egalitarian demands are at work. The injustice of some racial groups being worse off on average compared with other racial groups, due to no fault of their own, demands redress. But this is not the full case as partly compensation is owed for violation of other legal and moral principles such as those regarding treaties. Sex also is not morally arbitrary in all situations, for instance, when it comes to participation in sporting events. But it may well be a morally arbitrary fact about someone when it comes to determining their share of a prize pool. This is the substance of the debate in tennis and other sports over the relative sizes of the prizes for men's and women's competitions. The argument is not about who can compete with whom, sex is relevant to this, but whether men's and women's sports ought to be remunerated differently. The market may well say they should be, but this will not necessarily accord with what is just.

Seana Shiffrin (2010) points out that similar problems exist for talent. She argues that the talents we have are not arbitrary from a moral point of view in any sort of unlimited way. Rather, "they are arbitrary from a moral point of view *with respect* to income and wealth"(her emphasis, p. 122). Talent is not arbitrary, however, when it comes to the occupations and other positions of power that someone can occupy. On the contrary, it is entirely relevant what skills and talents one has and these could encompass a wide range from the physical, how strong or beautiful one is, to the intellectual and the social, such as an ability to get on with people. Pointing out that someone's talents are largely a matter of

---

[25] The use of the word 'race' is problematic and perhaps ethnicity is better. I am well aware that race has no biological basis but I use the term 'race' advisedly here. In New Zealand, being Maori can have legal status and is often defined in racialized terms pertaining to ancestry. Many New Zealand statutes use ancestry as the criterion for counting someone a Maori. For example, only those of Maori ancestry may enrol to vote in a Maori electorate or lodge a claim with the Waitangi Tribunal (Kukutai, 2004).

[26] This is meant in the sense of what Nagel (1979) called constitutive luck which implies something different than mere chance. Constitutive luck is luck in the traits and attributes that make us the people we are. In another sense it is not luck because if those traits and attributes were otherwise then *I* would not be *me*. To be who I am, I must have those traits and attributes, they make me (constitute) who I am, and are therefore not lucky in the sense of it being a matter of mere chance whether I possess them or not. This is discussed more in the next chapter.

luck cannot alter this fact. But, as with the other cases, this is not necessarily any threat to the central tenets of luck egalitarianism as this in itself says nothing about what people are owed for the exercise of their talents. Shiffrin's reason for this limitation on the implications of something being arbitrary from a moral point of view relies on an idea of moral equality grounded in our mutual capacity to develop and pursue a conception of the good. This capacity does not vary in strength or importance in line with what talents one has or whether those talents happen to be favoured by the market. There is no more reason to think that the lucky talented should be given a greater chance to develop and pursue their conceptions of the good than there would be to prefer the interests in this of one race over another or of one sex over another. But whoever you are, it is likely that the resources and opportunities to pursue your own conception of the good will be dependent on your income and wealth. So our talents are arbitrary from a moral point of view with respect to income and wealth, but not with respect to occupational choice.

This position contrasts too with Nozick's claim that one is entitled to whatever flows from one's natural assets. This is because he holds a view about self-ownership and about markets which means that, whatever the market gives you is, in virtue of that very fact, what you are entitled to. There is no separate or prior criterion of entitlement;[27] a just distribution is whatever the market, thought of as the sum of voluntary transactions, produces. Egalitarians can dispute this position in a number of ways. They need not accept the self-ownership thesis (Cohen, 1995). But of relevance here, they do not accept that whatever distribution results from a large number of voluntary market transactions is itself necessarily just. It cannot be, they argue, because market outcomes are heavily influenced by morally arbitrary factors such as the good and bad luck of people's family and personal circumstances. Neither do they accept that markets are some neutral mechanism. The distributive effects of the market and how it functions are themselves shaped by social institutions, legal machinery, political processes, and a multiplicity of individual choices and decisions that also leave plenty of room for morally arbitrary factors to influence their working. Luck egalitarians argue that the extent to which a distribution is just is dependent on all these things and, left to itself, the effects of morally arbitrary factors are going to lead to outcomes which we have good reasons to believe will not be fair. A free market then, is not sufficient for just outcomes. What flows from one's talents is mediated by a large number of socially determined processes and it is up for debate what these ought to be. So the question of what should flow from one's talents requires further argument, but the answer, for egalitarians, is not anything.

---

[27] Provided the initial acquisition holdings are also just.

In the same way that talent is relevant to occupations and careers, so it may also be thought relevant to education. It may be the case that the type of education one should receive should fit one's talents. Caution needs to be exercised with drawing this implication though as it may be that it is actually prior learning and current level of knowledge that are relevant rather than some more problematic and amorphous concept like talent. Those we label 'talented' in an educational setting may be just those who have a greater mastery than their peers of certain skills and knowledge. So this would be the reason for what is educationally required rather than some notion of talent. However, in parallel fashion to occupationally relevant abilities, even if we grant a simple idea of talent, this need have no relevance for determining access to quality education and quality of educational outcomes broadly conceived. Education equips people partly with the means to develop and pursue their conceptions of the good and there is no reason to believe that only a talented few should be well equipped in this way.

The other side of what has just been discussed concerning luck is that a person's choices do not seem to belong to the class of morally arbitrary things. It appears relevant from the moral point of view that an outcome was chosen by a person. One of the things that distinguishes those circumstances that are a matter of luck for an individual, such as those they are born into, is that they did not choose these things. So if the influence of luck means that facts and states are arbitrary from a moral point of view then its flipside, choice, means they are non-arbitrary. If differences in people's situations are due to the results of choices for which they can reasonably be held responsible, then we can say that the situation has come about in a way that has moral significance. The fact of choice, under suitable conditions, gives us good reason to think it is fair for people to suffer the costs or enjoy the benefits of that situation. It may still be bad for someone to be poorly off, all things considered, but our judgement about whether it is permissible or not can be tempered by our assessment of whether a person bears responsibility for their position or not.

Now this may seem to side with Nozick's point that a just distribution is whatever the outcome of a free market is. This seems to be, at least partly, because Nozick believes that the choices people make in voluntary transactions with others legitimate any outcome. But this is at variance with our common intuitions and beliefs that choice does not legitimate outcomes when, say, duress is involved, or minors, or the mentally deranged. Background circumstances can alter the context of choices in a way that robs them of legitimating force. Luck egalitarians make the claim, and this will be expanded on later, that conditions need to be reasonably favourable in order to think that choices legitimate outcomes. So, for example, we know choices about whether to participate in tertiary education are much easier to make with supportive, well-resourced parents than for someone with parents who place little value on education and have little money with which to give financial support. It

is hard to see choices about whether to go or not from such people as equivalent and it is thus hard to say that any substantial differences in well-being that result from them are fair. Scanlon (1988) makes the point that there is another sense in which the background conditions that arise from voluntary transactions are arbitrary from the moral viewpoint. They are arbitrary in that they could be almost anything, and any sort of conditions are no guarantee that conditions favourable to making good choices will arise. For choices to have a legitimating force for subsequent outcomes they must be made under suitable circumstances and under the laissez faire circumstances that Nozick advocates this is unlikely to be the case very often, if at all.

A final point to make here is that arguments about moral arbitrariness are *not* arguments in favour of equality, but about the sort of things that can fairly influence distributions. Arneson (2008) argues that the moral arbitrariness objection applies to any departure from some favoured starting point, which could be anything. The case for distributive equality then cannot be based on arguments about moral arbitrariness, but must be on other grounds, such as the moral equality of persons.

Equality among whom?

As stated earlier, one of the questions I am not going to investigate is the scope of equality; between whom should equality pertain? It is possible to argue that equality describes the right sort of relationship between the members of a just society. On this account equality can appear to be some sort of holistic value that applies to society as a whole. It is arguable that true citizenship, in democracies at least, seems to have equal consideration of each citizen's interests built into it. So when some in a society are treated with less than equal consideration, when some are worse off than others due to no fault or choice of their own, then they are not being treated as full members of that society and there is therefore something unjust about that society.

There is nothing particularly wrong with this way of speaking, but some point out that it may obscure the true unit of moral concern, which is the individual. They argue that how well off a society is can only be a function of the fact that it is made up of persons with their separate lives to lead. It is only meaningful to talk of the well-being of individuals and whether one individual is worse-off or better-off than another. Individuals can be members of groups and societies, but these entities cannot have well-being over and above the individual well-beings of their members, so there is no further fact about the welfare of a society beyond the distribution and degree of welfare of the individuals that comprise that society. Of course, membership of a particular society will have implications for the well-being of the individuals that comprise that society and sometimes it is relevant to talk of

groups within a society; but the ultimate justification for this will reside in its significance for the individuals making up that group.

As distributive justice is concerned with how benefits and burdens are distributed across individuals, the idea of the moral status of the individual would appear to be a good fit. When equality is asserted to be the central principle of distributive justice, then it follows that our paramount concern is going to be with how well off individuals are relative to one another. This individual-centric view has been challenged though and appears to many, liberals and others, untenable (e.g. Kymlicka, 1995; Young, 1990). Will Kymlicka argues that it is sometimes right to accord moral status to groups in a society, particularly minorities. In the past, a policy of ignoring the special characteristics of diverse groups has been a way for majorities to ignore deep inequalities and injustices within that society. So sometimes the interests of the individuals in a group are best served by considering the group as an entity with some moral status. I will most often evaluate equality on the basis of comparisons between individuals. However, this is more for the sake of simplicity and is not critical as luck egalitarian principles could be applied to groups as well as to individuals (e.g. Lippert-Rasmussen, 2011). Kymlicka argues for two constraints on the status we give to groups in this context, that one group should not be able to dominate another group and a group should not be able to oppress its own members. Both of these can be accommodated comfortably within luck egalitarianism.

It may be that those who are unsympathetic to views that focus on the individual are also those who are likely to be most critical of the place of choice in luck egalitarianism. Choices are acts of individuals, including choices to deliberate in cooperation with others and reach collective decisions. When we say that the people choose their government in a democracy, this is an aggregate view of a whole lot of individual choices. This may not accord well, perhaps, with some more sociological viewpoints of society that tend to focus on the whole. I think these are perfectly valid and valuable views to take. But they are not the view I am adopting here. So to this problem I can only respond that it seems to me that societies that ignore the moral significance of individuals, who ignore the choices of their citizens, or think them of little relevance, are not appealing places to live. Perhaps this reflects cultural bias on my part, but hopefully the arguments of this work suggest otherwise. So I acknowledge that those who are uncomfortable with the emphasis on the individual, typical of a generally liberal view, are likely to find the place of choice most problematic.

Further, my scope is going to be restricted to the citizens and groups within a state. The reason for this is more practical than theoretical as there is nothing in luck egalitarianism itself that implies that considerations of distributive justice apply only to members of the same state or political entity either. On the contrary, considerations of luck and choice seem on reflection to apply universally. Beyond the need to limit the size of this work though

another justification is that, as things now stand, the responsibility for the well-being and education of individuals lies predominantly within states and, to a large extent, only states have the institutions and power to effectively redistribute benefits and burdens. This certainly isn't the end of the story, it is highly unlikely that the demands of justice stop at borders – these are often historically contingent accidents and would thus appear to be arbitrary from a moral point of view – but for my purposes, a concern primarily for educational equality, this restriction is reasonable. As Dworkin has written; "Equal concern is the sovereign virtue of political community – without it government is only tyranny" (2000, p. 1) and we can understand political community to be most clearly an attribute of the nation state.

Conclusion

This chapter has set out the fundamental underpinnings of luck egalitarianism and argued their coherence. Luck egalitarianism holds that distributive equality fairly embodies the equal moral status of persons and that choice, under suitable conditions, is the only thing that can validate inequality. The flipside of choice is luck and the place given to the luck/choice principle is justified by considerations of control, responsibility and moral arbitrariness. The next chapter will take a closer look at the concept of luck, explores an interpretation of luck egalitarianism which sees it as having the goal of luck-neutralization and finds this inadequate, requiring us to consider more closely the value of equality.

Chapter 3:
Luck

"It's hard to detect good luck - it looks so much like something you've earned."
— Frank Howard Clark, American screenwriter

"It never occurs to fools that merit and good fortune are closely united"
— Johann Wolfgang von Goethe, *Faust Part 2*, 1832

The previous chapter set out the basic elements of luck egalitarianism and argued that, despite possible appearances to the contrary, luck and choice can coherently sit within an egalitarian theory. It is now necessary to look at those parts more closely. This chapter looks at a number of understandings of luck employed by luck egalitarians and others. As one of the basic claims is that luck undermines fair equality, one natural way of thinking about luck egalitarianism is to see it as having a luck-neutralizing goal. However, Susan Hurley (1993, 2003) argues compellingly that such a goal may be at odds with equality and does not necessarily justify distributive equality. This leads to a deeper investigation of the grounding of the value of equality.

The problem of luck

Luck's explicit place in luck egalitarianism is a new emphasis, but there is nothing particularly novel in the idea that luck can undermine various types of judgements we make. Thomas Nagel (1979) credits the view that luck should play no part in our moral judgements of people and their actions to Kant's claim that a good will can only be made good by its willing. Luck should therefore play no part in our moral evaluations of a person or their actions, as a good will shines by itself "like a jewel", its moral value unaffected by whatever happens in the world (Kant, 1785/1997, AK 4: 394). Nagel goes on to argue that, in fact, luck does profoundly influence our moral judgements and so we have the problem of *moral luck* (Nagel, 1979; Williams & Nagel, 1976). The concept of moral luck has purchase wherever normative claims are being entertained, as it seems part of our considered judgements that what we ought to do should be immune from the influence of luck, as should our moral assessments of persons and their actions.

Luck has been identified as a problem in other areas too. In epistemology we have a firm conviction that lucky guesses cannot count as knowledge. However, Gettier cases throw up examples where justified true beliefs turn out to be lucky in a way that seems antithetical to knowledge claims. Luck is an acute problem for free will and moral responsibility. Mele (2006) argues that it undermines, in particular, the libertarian view that we are free and morally responsible in a way incompatible with determinism, without necessarily

undermining moral responsibility itself. But Neil Levy (2011) makes the even bolder claim that it is not determinism that threatens the sort of free will libertarians claim we need for moral responsibility, luck does. He argues that, because of luck's pervasiveness in human affairs, we are not free in any way that means we can ultimately be held praiseworthy or blameworthy.

Martha Nussbaum (2001), in her study of Greek tragedy and philosophy, paints a picture of our exposure to luck on a very large canvas. She argues that the ancient Greeks developed a sophisticated understanding of how our most cherished values, the people and things we care about the most, our ability to be a good person or a good citizen and live a good life, are all inherently vulnerable to luck. In so doing the Greeks demonstrated just how fragile so many aspects of human flourishing are.

On a somewhat smaller scale, luck has been noted as problematic for education. Susan Pendlebury (1995) observes that there are enriching and serendipitous aspects of luck in teaching and learning that we should not want to lose. But she also notes that luck undermines our sense of people being responsible for teaching and learning. If teaching is just a lucky business, on what grounds can we hold teachers responsible and why spend public money on something that is just a gamble? She views both the early twentieth century application of Frederick Taylor's principles of scientific management to schools and teacher education, and aspects of later process-product research, as ill-conceived attempts to diminish the influence of luck on educational outputs. They were ill-conceived because they sought to diminish the influence of luck by removing teacher control or reducing the role of teacher judgement over many aspects of teaching and learning (has this changed?). Unfortunately, such solutions to the problem of luck are inimical to excellence in teaching which, arguably, requires some teacher autonomy, the exercise of judgement under uncertainty and responsiveness to the particularities of a learning situation. These cannot be controlled by central planners or by identifying the causes of learning, at least not in any simple minded technocratic manner. Andrew Davis (2008) has pointed out too that there is an element of luck in the questions faced by a student in an exam. He suggests that the fact that assessment results are partly subject to luck should worry us if those results are the basis of high-stakes judgements in an exam-based accountability environment.

So we have strong intuitions that a range of significant human actions, from attributions of responsibility and moral assessments of a person, to the truth or falsity of our beliefs, should not depend on luck. Our moral judgements and knowledge claims are too important, too weighty, to be the sorts of things that we can regard with equanimity as being subject to luck. It is strongly counter-intuitive that whether a person is praiseworthy or blameworthy, or whether we know something or not, or whether a teacher is doing her job properly or not, could legitimately be the subjects of luck. And yet, this often seems to be the case, and

when we see this it undermines our confidence in our moral judgements, knowledge claims or attributions of responsibility.

Luck egalitarians are trading on the same intuitions when they say that distributive justice is undermined by luck. A person's distributive shares are too important, too weighty, to be left to luck. Distributive shares and the education someone receives have such a far-reaching effect on how a person's life goes that it seems perversely absurd to leave them to the vagaries of social, natural and historical contingency. When an inequality between two people is seen to be a matter of luck, it has the effect of undermining any confidence that this could be a fair state of affairs. It seems wrong that how well off a person is compared to others could depend on brute luck. So luck egalitarians say it is bad – unjust and unfair – when some are worse off than others as a matter of luck.

Whether it is true or not that Rawls was a nascent luck egalitarian need not concern us (see Kymlicka, 2002; S. Scheffler, 2003). What is true is that luck egalitarians have drawn considerable inspiration from Rawls' insights about the significance of luck for distributive justice – as well as sharing his overarching goal of seeking to identify the just distribution of the benefits and burdens of social cooperation. Rawls highlighted the significance of luck when he observed that it seems wrong for a person's life prospects to be a matter of luck, subject to both social and natural lotteries. Rather we should seek principles of justice that "mitigate the influence of social contingencies and natural fortune on distributive shares" as these factors are "arbitrary from a moral point of view" (1971, pp. 72-73). He argued that, in the system of 'natural liberty' (more or less libertarian, laissez-faire capitalism), the distribution of the benefits and burdens of society will be greatly affected by natural and social contingencies and the playing out of numerous events both fortunate and unfortunate that make up our lives. But as he said, such factors appear arbitrary from the moral viewpoint. They are a matter of luck, good or bad, for the person. Therefore it seems that the system of natural liberty will result in much injustice, a person's share in the distribution of goods reflecting their luck rather than what is just. We can discern then, much in Rawls' theory of justice that seeks to minimize the effects of luck on distributive shares. So while they perform other functions as well, the veil of ignorance and his principles of justice, particularly the difference principle, have this in mind also.

Varieties of luck

While the idea of social and natural lotteries may be a potent metaphor, it still leaves the concept of luck largely intuitive and rather unanalysed, as indeed has this work up until now. Luck has been contrasted with choice, correlated with lack of control, and characterized as something which undermines both fair equality and the legitimacy of holding someone responsible. In his seminal paper on moral luck, Nagel (1979) suggests

there are four kinds of luck: constitutive, circumstantial, resultant and causal (see also Nelkin, 2013). Nagel does this as part of the different project of working out the relationship between luck and moral responsibility, but his categories may be broadly applicable to distributive justice as well. Of note is how important the idea of control is to all these types of luck.

Nagel describes constitutive luck as the sort of luck we have in the person we are. As it figures quite prominently in luck egalitarianism it requires some scrutiny. It is the luck we have in our natural assets, temperament, dispositions, personality traits, and genes. These are the things that make us who we are such that, if they were different, we would be different persons. Constitutive luck is to do with the way we were born and how we grew in interaction with our environment, rather than the features we have consciously developed, although, what we choose to develop is very unlikely to be independent of who we are. This luck is dependent on an array of factors over which we have no control; our parents and our environment in particular. If we can do nothing about who we are, then it seems unfair if distributive shares turn out to be too sensitive to such luck.

It has seemed to some that constitutive luck makes little sense (e.g. Hurley, 1993). If my traits and dispositions were different, I would not be me. So the ensemble of traits and attributes, that constitute who I am, are not a matter of luck, rather, they are necessary to my very identity. Perhaps some are not essential, it might be conceded. My genotype seems essential. It seems sufficient for saying that two people are different that they came from different zygotes. But that does not entail that changes in the environment in which I was raised could not have led to a different phenotype (Levy, 2011). Perhaps there is some, relatively trivial luck involved in small phenotypic differences that would not undermine the sense of who I am. So my eye colour may not matter or even my sunny disposition, perhaps. But it is hard to make sense of saying that it is lucky that I am, say, male. If I wasn't, we would be talking about someone else entirely. This objection to constitutive luck is basically a variant of the non-identity problem (Parfit, 1984).

It can be admitted that in a sense it is not a matter of luck who I am. I have to be the way I am in order to be me. But there is also a true sense, evident in everyday language, in which luck has played a part in making me who I am. It does not seem wrong to say that it was lucky for me that my parents met, for example. And we certainly understand what someone means when they say they are lucky to have certain attributes. Perhaps we can relate constitutive luck then to just the luck that we were born at all, an event over which we have no control, and no control therefore over our traits and dispositions.

If we accept the idea of constitutive luck, then it is clear that it is pervasive and unavoidable. It could then be objected that this must undermine all we do, nothing can be a

matter of real choice as the choice-makers are themselves lucky accidents. But constitutive luck does not entail that all my choices are also lucky, that I am absolved of all responsibility for my actions. Let's imagine that mathematical ability is partly at least a matter of constitutive luck, to do with how your brain is wired at birth and develops in the environment you find yourself in. Does this mean that your choice about whether to take Calculus in Year 13 is automatically invalid, that it is pre-emptively wrong to hold you responsible for that choice? This is an unpalatable conclusion and fortunately not one that luck egalitarians need accept. That your mathematical ability is, to some extent, a matter of luck, does not in any straightforward way that I can see, mean that you cannot make a choice that takes account of that fact and for which you can reasonably be held responsible. Making choices in line with one's tastes and abilities looks perfectly reasonable. Making choices that take account of one's abilities looks rational; you should take into account what sort of a person you are when choosing. In fact, this is a reason why luck egalitarians think choice is morally relevant, just so that people can align their choices with their constitutions. But what would not be permissible is if lack of mathematical ability was a reason for receiving a lesser education than others, or if it was a reason for being denied access to a fair share of the fruits of social co-operation. If mathematical ability were partly constitutive of a person, this does not mean that it is unjust that people perform differently in mathematics. It also does not mean it is unjust if some jobs require that ability. But it does mean it is unjust if distributive shares were to track that ability. The point then is about distributive shares tracking luck.

Circumstantial luck is luck in the circumstances one finds oneself in. This has a lot to do with the time and place we are born into which shapes, in interaction with our constitutive luck, many of the challenges we face. The obstacles and opportunities we face as a result of circumstantial luck are also largely beyond our control. Nagel vividly discusses what this means in relation to someone born in Nazi Germany and the opportunity they had to behave badly or well. As far as distributive justice is concerned, it is matter of circumstantial luck that I was born in New Zealand and not in, say, Haiti. You might say I was circumstantially unlucky to be in Christchurch during the 7.1 magnitude 2010 earthquake. But it was much more unlucky to be in Haiti during their 7.0 magnitude 2010 earthquake, and continues to be. We can see from this, that constitutive and circumstantial luck are not unrelated. The circumstance of having been born and raised in Haiti, even with the same parents, would have led to someone quite different from the *me* sitting here now.

Causal luck Nagel describes as having to do with the causes of actions, with "luck in how one is determined by antecedent circumstances"(1979, p. 28). It is unclear how something could be a matter of causal luck that was not also an instance of either constitutive and/or circumstantial luck (Levy, 2011). Nagel seems to relate causal luck to determinism. I have

66

suggested both that determinism does not undermine the control necessary for it to be sometimes fair to bear the consequences of one's choices, and that this is more a question about the metaphysics of free will than a normative question about distributive justice. But causal luck is also difficult to disentangle from resultant luck. How things turn out depends on the causes of those outcomes. Causes and effects are locked together in a way that implies luck with one entails luck with the other. It is therefore open to doubt whether the concept of causal luck is defined well enough to add anything that is not covered by the other three types of luck.

Resultant luck then, is about the effects of actions, luck in the way things turn out. This category is more difficult for luck egalitarianism as it is here in particular that uncertainties appear about when it is proper to hold someone consequentially responsible for their choices. Mere uncertainty of outcome does not suffice for this sort of luck to be as problematic for distributive justice as it is for the moral assessment of someone's actions. If a business fails because of global and domestic causes beyond the control of the owners and managers, this is bad resultant luck. We can certainly think those in control of the company need not be blamed, they have done nothing wrong. However, luck egalitarians may well think that they should have to bear at least some of the cost of their losses. This is because going into business is a risk, normally a chosen risk, and when it does not pay off it is not unreasonable to expect agents to bear at least some of the consequences, just as they may be entitled to some rewards if their gamble pays off. Luck egalitarians typically point out that uncertain outcomes are part of many choices, such as business risks and gambles, and so resulting inequalities may be permissible if that uncertainty was clearly embraced as part of the choice. Choosing to live in Christchurch did not seem to involve an obvious and conscious choice about accepting the risk of large earthquakes. So being caught in them appears in one sense to be resultant bad luck. But not being insured is possibly more a matter of choice, other things being equal, rather than resultant luck. In other words, there is much resultant luck that can be mitigated by the choices we make.

Nagel's discussion of the multitude of ways in which luck seems to undercut our moral judgements can be quite disorienting. Not only do we appear to be swimming in a vast sea of luck, even who we are seems subject to luck. The pervasiveness of luck which Nagel (and the Greeks) identifies has the effect of shrinking to a vanishing point how morally assessable a person is. And yet assess we do, and often quite confidently too. Thus we have the paradox of moral luck. Nagel's problem is not the same as the luck egalitarian's problem, but his analysis is helpful and largely applicable to distributive justice.

As I said, the category of resultant luck seems to sit awkwardly in a responsibility-catering theory of distributive justice. All instances of resultant luck will not be troubling for luck

egalitarians and so some distinguish between *brute luck* and *option luck* in outcomes. Dworkin defines them like this:

> Option luck is a matter of how deliberate and calculated gambles turn out – whether someone loses or gains 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 (2000, p. 73).

He further argues that the existence of insurance markets provides a link between brute luck and option luck; although it does not erase the difference. So, for instance, an unexpected earthquake is a matter of brute luck. But having house insurance to provide treatment in the event of one is a matter of option luck. You have some choice over taking out insurance, depending on your financial position, preferences for taking risks and how you consider your resources might best be deployed given your goals and conceptions of how your life can best be lived. The critical point about this distinction for luck egalitarianism is that inequalities that arise due to differences in option luck should not concern us from the standpoint of justice, whereas inequalities due to differences in brute luck are morally arbitrary and will therefore justify claims for redistribution. As Dworkin again says "individuals should be relieved of consequential responsibility for those unfortunate features of their situation that are brute bad luck, but not from those that should be seen as flowing from their own choices" (ibid). The distinction between option luck and brute luck in many ways reiterates the moral significance of responsibility and its dependence on judgements about whether outcomes spring from an agent's genuine choices or not. But it also alerts us that the sense of luck important to luck egalitarians, because it is relevant to the assessment of consequential responsibility, is not the same thing as mere chance.

So another account of luck claims there are only two sorts of luck which can cater for all the same intuitions underpinning Nagel's categories; *chancy luck* and *non-chancy luck* (Levy, 2011). Levy tells us that chancy luck involves three things; chanciness, significance and lack of relevant control. He gives us a modal account of chanciness. Roughly, an event is chancy if it occurs in the actual world at a point in time, but does not occur in a large proportion of nearby possible worlds. This shows that chanciness is not the same as metaphysical indeterminism, which, because we do not know the truth about whether the universe is fundamentally deterministic or indeterministic, is important to establish. However, for most purposes it can be asserted that the strong folk intuitions we have about chance, associating it closely with ideas of randomness and probability, are robust enough to mean that there is widespread agreement in a linguistic community about whether something is chancy or not.

For chanciness to count as luck though, a situation or event must have significance, it must matter to us and, from the viewpoint of distributive justice, it must matter for those aspects of our lives that are identified as of concern for equality e.g. education, resources, welfare, opportunities or capabilities. We could say that it is chance what classroom a child is taught in, but it is luck what teacher they have. What is lucky in one situation, an ace in a casino blackjack game, will not be in another, a dealer idly turning over an ace while waiting for players. Levy also points out that almost anything can matter to people, so almost any chancy event is potentially lucky too.

The presence of a control condition for luck is debatable because, as Levy notes, the concept of chanciness seems to have built into it the idea of lack of control. He defines what he calls direct control (it looks similar to Mele's proximal control) in terms of an agent being able to bring an event about by performing some action that he knows is very likely to bring about the event's occurrence. An independent condition requiring lack of this sort of control looks necessary for luck, as Levy insists. Consider a rock climber on a dangerous rock face. This is a chancy situation. There is a probability of things going wrong. The situation is significant as the climber could die. Nonetheless, when the climber reaches the top we do not generally call this lucky, because the climb was relevantly under the control of the climber. It would be lucky if, say, something went wrong, and by chance someone else happened by and rescued the climber. That someone else happened by was in no way under the climber's control.

Non-chancy luck Levy describes as the sort of luck Nagel called constitutive. It is not really characterized as chancy, despite calculations regarding the probability of particular genomes, because if any of the factors of relevance here were different, then *I* would not be *me*. What seems of most salience to constitutive luck is rather that I had no control over any of the significant chance elements that make me who I am, not the fact that those elements were subject to chance. And it is not clear that we can distinguish the essential from the trivial, because even seemingly trivial features, like say hair colour, could over a lifetime make a substantial difference to who someone is.

These are some ways of looking at luck then. The writers who have advanced these views have tried to capture what speakers mean when they say something is lucky or unlucky. The major features are the links to significant aspects of a person or their situation, chanciness and the idea of absence of control. I now want to look more closely at the relationship between luck and equality – and yet another taxonomy of luck.

Luck-neutralization and a default position

Luck egalitarianism is a ''starting-gate theory'' according to Anderson (1999, p. 308). In a horse race, if the horses all begin from the same starting-gate (under appropriate

69

handicapping conditions it should be added), then the race is deemed to be a fair competition. In like fashion, it could be argued that, as long as people start out in life with a fair share (of some good), then the subsequent competition for goods, offices, positions and other social rewards is also fair. It is not clear the conclusion follows from the premises (what about the rules of competition?), but nonetheless, the idea of a fair competition requiring some sort of equal starting point has some plausibility. The analogy seems particularly apt for egalitarian conceptions which place moral weight on the idea of *fair competition*. This is the case with the meritocratic conception of educational equality worked out by Harry Brighouse and Adam Swift (Brighouse, 2010; Brighouse & Swift, 2008). Their work will be considered in detail later where I will argue specifically against the idea of fair competition as a moral basis for educational equality. Anderson herself objects not so much to the idea of fair competition, but more to the idea that, starting from fair shares, then whatever else subsequently happens to people as a result of their choices is also fair. That is, she rejects the idea that choice can legitimate serious inequalities. Her point is well made, but more on this later.

I want to further examine the suggestion that luck egalitarianism is a starting-gate theory. The idea of a starting-gate is not one that fits with the notion of distributive equality as the embodiment of equal moral worth that I am trying to develop. However, I can see how luck egalitarianism can be perceived in this way. It is often pointed out that some sort of initial equality is a requirement of distributive justice. But in luck egalitarianism this is not so much to allow fair competition as it is to provide the sort of background conditions, in terms of resources and opportunities, which give persons the freedom to live according to their own conception of the good. As well, some sort of initial equality often seems a pre-requisite for choice to have the sort of moral force that can permit inequality. As Anderson acutely observes, people could be materially equal but face unchosen and unequal option sets. Under such circumstances it would be a mistake to suggest that their choices can non-problematically permit anything substantial in the way of inequality.

Another way of characterizing luck egalitarianism is to see it as making equality the *default* position. This is quite distinct from the idea of a starting-gate. A default position is one you stay in or return to according to other specified conditions, whereas we do not normally stay in or return to a starting-gate. There are two ways in which luck egalitarianism can be seen as having equality as a default position. One way is that it can be interpreted as claiming that people ought to be equally well off, in some respect, and it is deviations from equality that have to be justified, and the only justificatory condition is choices for which an agent can properly be held responsible (e.g. Knight, 2009). The other way is that it can be interpreted as claiming that people ought to be equally well off, and we should neutralize any luck or any effects of luck that undermine this. Both these views see equality as a

default position, but from the opposite ends of the luck/choice principle. Here I am going to concentrate on the second, luck-neutralizing, perspective.

As mentioned before, luck egalitarians gain much inspiration from Rawls' claim that principles of justice should aim to "mitigate the influence of social contingencies and natural fortune on distributive shares"(1971, p. 73). In a similar vein, Cohen says; "a large part of the fundamental egalitarian aim is to extinguish the influence of brute luck on distribution" and "anyone who thinks that initial advantage and inherent capacity are unjust distributors thinks so because he believes that they make a person's fate depend too much on sheer luck" (1989, pp. 931-932). Another luck egalitarian writes that "persons should not be disadvantaged or advantaged simply on account of bad or good luck" (Tan, 2008, p. 665), and Arneson says the "luck egalitarian is concerned to alleviate bad brute luck of any kind" (2011, p. 43). From these it seems reasonable to take it that a plausible sounding goal for luck egalitarians is to neutralize the effects of luck on distribution.

Consider Annie who has been born into a family where education is not valued; her parents are poorly educated and ill-equipped and disinclined to help her. This seems for Annie a matter of (bad) luck. Her educational disadvantage compared to others with educated, motivated and capable parents is involuntary. She did not choose the situation, had no control over it and cannot reasonably be held responsible for it. A luck egalitarian may then argue that Annie is entitled to some redress as a matter of justice. It is unjust that she should be educationally disadvantaged due to no choice of her own. So we can see luck egalitarianism as requiring us to undertake action that is (bad) luck-neutralizing. There are many ways this could be done, ranging from system-wide efforts that try to promote to parents the value of education, to measures more individually focussed on Annie. We might need to provide her with extra educational resources to neutralize the educational effects of those factors which are for her a matter of luck, those factors which are arbitrary from the moral point of view but which are likely to heavily influence educational outcomes for Annie.

Now Susan Hurley (2003) has been a critic of this position. While it may be the case that writers such as those cited above do not see luck-neutralization as the central goal that she perhaps suggests it is, it is nevertheless fair to say that luck-neutralization is an inference that can quite reasonably be drawn from some of their comments (Lippert-Rasmussen, 2005). Hurley first draws a distinction between *thin luck* and *thick luck*. She argues that thick luck encompasses a variety of conceptions of luck; for example, lottery luck, lack of control or choice, lack of predictability and indeterminacy. The ideas of luck put forward by Nagel and Levy are varieties of thick luck. Thick luck conceptions have content that, critically for Hurley, is independent of responsibility. This is significant because we saw earlier how tracking responsibility seems to be more important to luck egalitarians than tracking

71

control. But thick luck conceptions carry with them different implications and some may be compatible with responsibility while others may not be. This situation, Hurley argues, is at least potentially misleading and undesirable in itself.

Therefore she suggests that thin luck is to be preferred. She defines thin luck as simply the inverse correlate of responsibility and thus nothing is added conceptually. To say that something is a matter of thin luck for someone is simply to say they were not responsible for it, whatever our understanding of responsibility is, and nothing more. The only task is then to explain what is meant by being responsible for something and, as we saw earlier, that appears to be a key part of the luck egalitarian project anyway. If we agree with Hurley on this, then when luck egalitarians talk of luck, rather than introducing something requiring independent analysis, they are just saying appropriate conditions for responsibility are absent. When we consider some state of affairs there are not two separate questions. We don't need to ask; is this a matter of luck for the person? And then, does the person bear responsibility? There is only one question which can be looked at from two ends. If some state of affairs is a matter of luck for the agent then they are not responsible for it, or, if they are responsible for the state of affairs, then it is not a matter of luck for them. Recalling Sher (2010) though, it needs to be noted that luck is on this understanding *only* the inverse correlate of responsibility. This means it has no separate content, such as a control condition, and would therefore seem to avoid the gap Sher observes sometimes between luck and responsibility. On this account there could be no gap.

This seems an admirable piece of conceptual clarification and economy and seems to cohere well with a possible luck-neutralizing aim for egalitarians. It has the added advantage of also appearing to be the way that others have understood the relationship. So Cohen explicitly states that "genuine choice contrasts with luck" (1989, p. 931) which looks very much like an anticipation of Hurley's thin luck, albeit in terms of choice rather than responsibility. But Cohen also holds that we are only appropriately held responsible for things which are a genuine reflection of our voluntary choices, so this is not a difference of any substance.

It may be objected that if this is correct then someone couldn't be simultaneously lucky and responsible. But it seems one way they can be is in situations of deliberate risk taking. If Bill has a punt on a horse race, the outcome of the race is not something he is responsible for (unless he is involved in race fixing); it is a matter of luck. But our intuition, and common practice, is to hold Bill and gamblers like him responsible for the consequences of their wagers. Engagement in games of chance and similar gambles, such as business ventures, is not generally taken to absolve people of responsibility.

The reply to this is to see that while the outcome of a gamble is a matter of luck the decision to take a gamble is not. Such situations are ones of *option luck.* Luck egalitarians hold that agents ought to be held responsible for cases of option luck, for the outcome of risks freely taken.[28] This is because the appropriate point at which to make the attribution of responsibility is at the time of making a choice about whether to take a risk or not. At that time we can see whether any risks are being willingly taken, whether they could have been either avoided, as with games of chance and the like, or whether the risk could have been mitigated by, for example, the taking out of insurance. But while the attribution of responsibility for a choice may be right, it is still true to say that the outcome itself is a matter of luck. The main point is that situations of risk voluntarily taken are not a problem for Hurley's claim about the inverse relationship between luck and responsibility. We are applying in a non-contradictory fashion the luck/non-responsibility identification to two distinct events, the choice to take a gamble and the actual outcome of the gamble. It does not do any harm to our normal intuitions that someone ought to be held responsible for the outcome of a gamble freely taken. Indeed, the whole point of gambling would be undermined to a large extent if we didn't.

In a similar vein, it might still be objected that if the thin conception of luck is correct then it follows that, if you are not responsible for something, then it couldn't simultaneously be the case that it is not a matter of luck for you. I think this objection is perhaps true, but trivially so. There is much about the world for which we are not responsible, but it would be a stretch to say it is therefore a matter of luck for us. The laws of physics may be, in a cosmic sense perhaps, a matter of luck for us. But this isn't our normal way of looking at things. We don't normally think of all the facts about the world as being a matter of luck for us. It is perhaps fairer to say that it is irrelevant to assess most things about the world in terms of whether we are responsible for them or not. It comes down to personal salience whether attributions of luck or responsibility are meaningful.

Consider Charlotte, a 10 year old who lives in Christchurch. The quality of the various schools in Auckland, while she is not responsible for them, is not so much a matter of luck for her as simply irrelevant to her. If however her family was to move to Auckland then the quality of her local school will now be quite salient. Factors for which she is not responsible, for example the wealth of her parents and the area they buy into, are now for her a matter of luck and consequently the quality of the school she goes to becomes a matter of luck for her. So this objection is in a sense true, but is not of any real significance. This obviously

---

[28] Furthermore, depending on what is taken as the correct metric of equality, it might be a requirement of justice that risky opportunities of the type you might take in setting up or investing in a business ought to be open to all, or some other equivalent set of opportunities are. This relates to the idea that equality may require persons to have equal option sets.

leaves open the issue of how we think of responsibility and I have already touched on this and will have more to say later. For now we can say that there doesn't seem to be any obvious problem with accepting Hurley's stipulation that luck is the inverse correlate of responsibility, that they are flipsides of the same thing.

But definitional issues are not the main difficulty Hurley has with a luck-neutralizing aim. Rather it is that luck-neutralization gives us no reason to aim for an egalitarian distribution. Her principal claims are that a luck-neutralizing aim provides no basis for egalitarianism, neither in the sense of specifying what egalitarianism is, nor in providing some independent justification for egalitarianism. Luck and responsibility act as a filter for the luck egalitarian. Goods that are a matter of luck for people may be redistributed. But those goods people are responsible for, because of choices they have made, may not be redistributed. So Hurley argues that one difficulty for a luck-neutralizing account is that it still needs to be independently specified *what* exactly, that we have as a matter of luck, can reasonably be redistributed. It would be absurd to claim that anything we have as a matter of luck can be redistributed. For instance, it is absurd, as well as repugnant, to suggest that those lucky enough to have two eyes could be compelled to give one up for those unlucky enough to have no eyes. While an egalitarian might think it is not entirely out of the question to redistribute eyeballs on the basis of equality, other values will prevent serious consideration of the proposition, for example, those of bodily integrity. This point seems true but the fact that a metric of equality needs to be specified, and that sometimes there are other values that must be taken into account, does not in itself impugn a luck-neutralizing goal. It just means more has to be said and, as already stated, sometimes we don't need to be specific about what the metric is. But when we do, it does not undermine the luck/choice principle that the metric must be independently specified.

A greater difficulty is Hurley's observation that an equal distribution could just as well be the outcome of luck as an unequal distribution. Suppose that Debbie and Evan are similarly situated as regards educational resources. They have similar intellectual abilities, come from similar families, go to similar schools, have had similar teachers, have similar propensities to exert effort, and as a consequence have similar educational qualifications. This equal state of affairs is every bit as much a matter of luck, that is, something they are not responsible for, as any situation of inequality we could imagine is likely to be. As Hurley says; "The fact that people are *not* responsible for *difference* does not entail that they *are* responsible for *nondifference*"(her emphasis, 2003, p. 152). If this is true, any judgement we make about the justice of an equal state of affairs can hardly be on the basis of it not being a matter of luck. If we haven't had to neutralize any luck then equality itself has been a matter of luck. So it appears that any judgement we may make about the fairness of Debbie and Evan's state of equality is being done on the basis of other criteria. It is being done independently

74

of any facts about what part luck has played in bringing this state about. This must be the case. If it isn't then eliminating *inequalities* which are a matter of luck, while ignoring *equalities* which are a matter of luck, would appear to be somewhat arbitrary.

The obvious reply for the luck egalitarian is that equality is non-problematic as it is the default position and equalities cannot be unjust. The emphasis in *luck egalitarianism* ought to be on the *egalitarianism* part and it should not be thought that it is about neutralizing luck *simpliciter*, but with neutralizing inequalities, unequal outcomes, which are due largely to the influence of luck. Shlomi Segall (2010) argues that the thought that equalities may be morally troubling is due to a confusion with desert theories of justice which hold, roughly, that a person's level of well-being should be proportionate to their deservingness. The thought that equalities could be unjust will then be due to thinking that persons equally well-off are unequally deserving. I have already argued that luck egalitarianism is not properly cast as a desert theory however. But Hurley's main point is not that it is wrong to think that equalities are non-problematic, but that it needs to be justified that they are non-problematic and luck-neutralization cannot achieve that justification.

This conclusion is strengthened when we consider that, given an unequal distribution of some good, the aim to neutralize the influence of luck on distribution cannot tell us *how* we ought to redistribute. It might be telling us *what*, in the sense of that which is a matter of luck, but not the *how*. Hurley says to count as egalitarian a doctrine must involve a patterning constraint. It must favour more equal distributions in some dimension over less equal distributions. This preference may be overridden by other values, but in general, and *ceteris paribus*, the egalitarian prefers more equal patterns of distribution. But when we subtract the effects of luck from a distribution it is by no means clear that what we are left with must be a more equal distribution. In fact what we are left with is probably indeterminate.

Hurley gives us a couple of reasons for thinking this. One reason is that, given different circumstances, it seems impossible to say what people would have chosen to do. The choices we make are intricately linked with the circumstances in which we make them. If circumstances are changed, people will make different choices and there is no reason to believe this will result in more equal distributions. Another reason for this is that the very nature of responsibility and luck make them seem intrinsically unlikely to say much about equality. Luck, seen as the inverse of responsibility, is a factor that is specific to a person. This is because responsibility is an intrapersonal phenomenon, about an individual exercising choice or control. But equality is an interpersonal phenomenon. It concerns a comparison between different people, comparing amounts held of some good. We can be responsible or not for the level of goods we enjoy, but it seems strange to say that we are therefore also responsible for the level of goods we have relative to someone else. We are

responsible for our level, but not for someone else's level, so we cannot be responsible for the relationship between the two levels. But it is on the basis of the interpersonal relationship that we make judgements about equality. So judgements about responsibility/luck and judgements about equality are different in nature. Hence Hurley gives us reason to believe that if we neutralize luck for an individual, it is still likely to be a matter of chance how the resulting level of goods held by an individual compares with the level of goods enjoyed by others.

It might be objected that we do make comparisons of luck. We say things like Jack is luckier than Jill. This is true. But we are more likely to say that Jack has been lucky or that Jill has been unlucky; statements about the individual rather than comparative statements. And when we do make comparisons I am doubtful that we look too closely at responsibility. What excites our appraisal is more likely to be how well off Jack is or how badly off Jill is, in relation to some dimension, rather than to each other. It may be as regards material goods or emotional well-being or the opportunities open to them. So when we do compare people for luck I would suggest we are more likely to be weighing up their relative levels of some good. It is still a moot point what part luck played in their possession of those levels.

Conclusion

Hurley's contribution is important and she highlights a number of significant points for luck egalitarians to consider. Two in particular stand out. Firstly, thin luck as the inverse correlate of responsibility is a promising clarification, although it places a burden on luck egalitarians to be clearer about what they mean by responsibility. This task was begun earlier, and more will be said. Hurley herself makes a good contribution to this task. She argues that responsibility of a sort compatible with egalitarianism is not impossible, that it need not involve any infinite regress (i.e. to be responsible for some event one need not also be responsible for all the causes of that event, and responsible for all the causes of those causes, and so on), and that it should be understood as having causal actual-sequence requirements of reason-responsiveness. The second key point is that luck-neutralization is problematic as a justification for equality. If an equal pattern of distribution is to be the default position for luck egalitarianism, this will need to be justified independently of the aim to neutralize luck. On Hurley's account, luck-neutralization can neither specify in what way people ought to be equal nor justify equality as a desirable goal. She also gives us reason to be suspicious of the claim that luck-neutralization is likely to move a distribution towards being more equal because it seems there "is no inherent connection between aiming to redistribute goods that are a matter of luck, and aiming to redistribute them equally"(2003, p. 149).

Important as these points are in advancing thinking about distributive justice, they are not watertight. On the first point, it is questionable whether the concept of thin luck will satisfy all luck egalitarians. In the core beliefs I set out at the start, the belief about preventing luck from having an undue influence on how well our lives go, via our distributive shares, does not obviously entail any commitments about responsibility. If 'luck' was replaced by 'absence of responsibility' it is not clear we have the same belief. In other words, some luck egalitarians may well think that luck has content independent of responsibility and not wish to give up entirely on thick conceptions (Lippert-Rasmussen, 2005). One of Cohen's foundational claims is that "the primary egalitarian impulse is to extinguish the influence on distribution of both exploitation and brute luck"(1989, p. 908). This is reiterated by writers like Tan who argues that equality matters "in order to regulate the impact of luck on person's life chances"(2008, p. 674) . I think many luck egalitarians would agree with this and it appears to reflect a belief that the concept of luck has content beyond it merely being the inverse correlate of responsibility.

If we look too at Levy's (2011) project, he thinks that we first need a clear account of luck in order to better understand what moral responsibility requires. Segall seems similarly disposed. He argues that responsibility is best understood in the light of what we think brute luck is. To that end, he gives us a good working conception of brute luck as the "*outcome of actions (including omissions) that it would have been unreasonable to expect the agent to avoid (or not to avoid, in the case of omissions)*"(his italics, 2010, p. 20). Actually, Segall's suggestion has a number of attractive features. He highlights that it is a normative conception rather than epistemological (and I would add, it is not a metaphysical conception either). It takes the emphasis off the individual by focussing on what a society can reasonably expect of an individual in a given context. Further, while the definition makes use of the vague notion of *unreasonableness,* this may well be in its favour by opening up our understanding of a person's responsibility to a wide range of possible considerations. Also in favour of the idea of *reasonable avoidability* is that it will not legitimate all chosen inequalities, because it will sometimes be the case that someone could not be reasonably expected to have avoided a choice.[29] However, it may well be that none of this is particularly damaging to Hurley's point as it perhaps merely inverts her argument by suggesting that responsibility is best understood as the inverse correlate of luck.

About the second point, I'm not sure to what extent luck egalitarians ever really thought that luck-neutralization was the principal justification for distributive equality. There is something of a straw man in this point, and while perhaps it hasn't been articulated clearly

---

[29]   It may also be thought attractive that the idea of reasonable avoidability has some resemblance to Scanlon's contractualism which holds that the normative principles we ought to adopt are ones that no one could reasonably reject (T. M. Scanlon, 1982, 1998).

enough by some, I think luck egalitarians can put up a number of reasons for believing equality should be the default position. It has already been suggested that the idea of the moral equality of persons and the unfairness of allowing luck to strongly influence distribution do this. It is not clear to me that anyone ever really thought that luck egalitarianism was simply about the neutralization of luck. Rather, this may sometimes be used as a short-hand expression meant to convey the thought that how a life goes is too important to be left to luck and that many of those factors which significantly affect our life prospects appear to be arbitrary from the moral perspective.

It is also not clear that luck-neutralization can have no justificatory role for egalitarians, albeit not the primary justificatory role. Kasper Lippert-Rasmussen (2005) suggests that thick luck-neutralization would incline us to want to put individuals at the average level of well-being possible for them, possible levels being those that someone actually has. This neutralizes luck, according to Lippert-Rasmussen, because while an average level means that they could have had better luck, they could also have had worse luck. With this goal in mind we would therefore be inclined to think that we should lower the well-being of those at above average levels while raising the well-being of those at below average levels. Such a version of luck-neutralization will clearly justify more equal over less equal distributions without appealing to equality as the default position. Even more plausible though is Lippert-Rasmussen's claim that luck egalitarians actually have a more limited notion of luck-neutralization which fits even better a justificatory role. He argues that luck egalitarians are more concerned to neutralize the effects of bad (thin) luck on someone's well-being. Only wanting to neutralize bad luck justifies more equal distributions, as more equal distributions will tend to involve less bad luck caused inequality. This justification makes no use of the idea of equality as the default position, but rather of the idea that it is unfair if some are worse off than others due to bad luck. The bad-luck-neutralizing view also coheres quite well with the way egalitarians are often more exercised by the unfairness of people being worse off due to circumstances they are not responsible for and a frequent concern with the badness of inequality. However, Segall (2010) points out a difficulty with this view. If someone who is better off suffered bad luck that reduced them to a level of advantage equal to others, then neutralizing their bad luck would not in this instance be a legitimate luck egalitarian goal. This is because he believes that luck egalitarians do not think equalities are unjust, only inequalities.

Bad-luck-neutralization may provide some support for distributive equality, but Hurley makes it clear that we need a stronger case for equality than this alone can provide. Hurley's argument is a challenge to egalitarians who think distributive equality can be just presumed, indeed, to the presumption of any sort of equality. So I now intend to take up the challenge of making the case for distributive equality more solid. However, I want to redefine the task

78

somewhat. Rather than saying luck egalitarians have a number of reasons for believing equality ought to be the default position, I think it better to say they have reasons for believing that distributive equality is a requirement of justice. This is a small, but I think important change in emphasis. I am not arguing for a default position, but for equality.

Chapter 4:
Equality

The presumption of equality

Hurley's arguments show that a principle of distributive equality cannot be presumed. The impression that it is presumed perhaps comes from the observation that much philosophical writing on egalitarianism consists of egalitarians of one stripe defending their view against egalitarians of another stripe and so, understandably, not finding it necessary to argue for what ultimately grounds equality. Some however, such as R. S. Peters (1966) and Kevin Harris (1997), explicitly take equality as a presumptive principle. Peters argued for the presumption of equality as he believed the search for positive grounds for treating people equally was futile. He therefore argued that the problem of how to treat people is better stated as a demand to provide reasons for treating people differently than as a demand for reasons to treat them equally. This is consistent with practical reasoning in general where choices between alternative courses of action are often justified on the basis of relevant differences between the alternatives. In the same way, if the unequal treatment of two people is to be fair, this would need to be on the basis of some relevant difference between them. In arguing this way, Peters was trying to place the onus of justification on those who think people should be treated differently to provide morally relevant reasons why this should be so. If we were to go along with Peters' view, luck egalitarianism could perhaps be described as a position that presumes that equality should generally pertain, and that the choices people make provide the only morally relevant reason for unequal treatment.

The problem with this is that a presumptive position is weak. Derek Browne (Browne, 1975) argues that at best it only establishes a burden of proof. There is no presumption of equal treatment in advance of any reasons; just a tacit reliance on a background reason for treating people as persons, or humanely, or with compassion. It also amounts to the claim that there are no good reasons for treating persons unequally, a weaker claim than asserting that persons should be treated equally. In fact, the claim that there are no morally relevant differences between people which justify unequal treatment seems quite implausible (Kane, 1996). While we may be confident that reasons of birth, class, ethnicity and sex do not warrant distributive inequality, they may well justify some sorts of unequal treatment under some circumstances (for example, measures to address current inequalities may well be based on such grounds) and there remains the possibility that arguments may be found to support those grounds or that other legitimate grounds can be found (Cupit, 2000).

However, presumptions give way once stronger arguments are on the board and there are, contrary to Peters' scepticism, stronger arguments in support of equality. Dworkin (1985) thinks that distributive equality is the principal implication of moral equality as it is the best way to instantiate moral equality. Luck egalitarians claim that it is unfair for some to be worse off than others when luck, rather than the choices they make, is allowed to influence their distributive shares. In his defence, Peters focuses on a slightly different problem to the one I am interested in. His focus is on the problem of treating people equally. However, the problem for egalitarianism of why or how to treat people equally is derivative of the deeper problem of why or how to treat them as equals. Seeing this, Dworkin points out that sometimes this may best be accomplished by treating them equally, but not always. Distributive equality, and indeed educational equality, is grounded in the more fundamental requirement to treat people as equals. Treating people equally is not the fundamental egalitarian principle, it is rather that people ought to be treated *as* equals (Dworkin, 1977, p. 273). This point is perhaps doubly important for luck egalitarianism because beliefs about the significance of luck and choice, as well as being based on their moral relevance or irrelevance, also seem to follow from the premise of moral equality.

This chapter is therefore about what grounds distributive equality as a matter of justice. It first looks at a substantial challenge from libertarians such as Nozick, touched on earlier. In responding to this challenge, an important, although instrumental, reason for equality is put forward. I then look at two other ways of grounding equality. The first takes the badness of inequality as a reason in favour of equality, while the second defends distributive equality directly on the grounds that distributive equality is the expression of the equal moral worth of persons. This proposition must itself be defended and not presumed. Along the way some alternative distributive principles, priority and sufficiency are considered. In all this, there are no knock dead arguments. Rather the idea is to build an egalitarian view that is both plausible and coherent. The best argument against nonegalitarian positions is to put forward a more plausible egalitarian alternative.

Nozick's libertarian challenge

The idea that distributive equality should be presumed is sharply attacked by Nozick, and other libertarians, and not because he rejects some idea of moral equality.

> Writers note that in a given country the wealthiest *n* percent of the population holds more than that percentage of the wealth, and the poorest *n* percent holds less; that to get to the wealth of the top *n* percent from the poorest, one must look at the bottom *p* percent (where *p* is vastly greater than *n*), and so forth. They then proceed immediately to discuss how this might be altered. On the entitlement conception of justice in holdings, one *cannot* decide whether the state must do something to alter

the situation merely by looking at a distributional profile or at facts such as these. It depends upon how the distribution came about. Some processes yielding these results would be legitimate, and the various parties would be entitled to their respective holdings. If these distributional facts *did* arise by a legitimate process, then they themselves are legitimate (Nozick, 1974, p. 232).

For Nozick then, any presumption of equality there may be about holdings is overridden by people's entitlements or rights and how a distribution came about. Egalitarians are mistaken to presume on the basis of distributional facts that an unequal distribution must be unjust. Goods do not normally exist in the world unattached; they tend to come with claims upon them. Any redistributive measures an egalitarian might desire in order to bring about, or maintain, their 'patterned' distribution could infringe upon legitimate already existing entitlements or unjustly limit individual freedom by preventing individuals from making voluntary transactions which might disrupt that pattern. The crux of the argument made by libertarians such as Nozick is thus that patterned distributions, such as equality, can only be maintained at the cost of a degree of state coercion that sharply conflicts with the value of freedom. So, the argument goes, those who value freedom must reject distributive equality, or indeed any other patterned distribution.

Nozick argues that entitlements are determined historically and the justice of any distribution depends on how it came about rather than its pattern. He therefore eschews all patterned distributions and claims instead that a distribution is just as long as the initial acquisition of holdings was legitimate and all subsequent distributions are the result of legitimate transfers (such as the voluntary exchanging or gifting of private property, without fraud or intimidation). If either of these two principles is violated there is a further principle of rectification. Nozick's position is also based on a belief that people are entitled to their natural assets and to any holdings that flow from possession of those natural assets. This is because a person is inseparable from their natural assets and therefore owns their natural assets in the same way that they own themselves (Cohen, 1995). No one is a natural slave and no one has ownership over someone else or any part of them. So people are entitled to what flows from the use of their natural assets because, if people are entitled to something, they are entitled to all that flows from it by legitimate steps. In this Nozick is drawing on the familiar Lockean principles of self-ownership and that a person can come to own something in the world by mixing their labour with it.

These arguments are likely to be most effective against resource based versions of egalitarianism, which luck egalitarianism need not be, and do not contest the idea of the moral equality of persons. Indeed, this is also presumed by Nozick who thinks that each person is equally inviolable and is treated as an equal when their rights and self-ownership are not violated (Sen, 1992). However, Nozick offers a challenge that any egalitarian theory

82

must respond to. Of particular challenge to luck egalitarianism is his claim that people are entitled to all that flows from their holdings and abilities, and that any restriction on this unjustly violates an individual's liberty. This is the claim that his Wilt Chamberlain argument, most famously, is intended to support.

One of the most comprehensive responses to Nozick's libertarianism comes from Cohen (1995) who advances a number of telling points. One is that a distribution of holdings correlates with a distribution of freedom, as the resources that a person can command has a major influence on the sort of life they can choose to lead. It is true that private property, and the ability to do with one's property what one will, has some bearing on one's freedom. But it is also true that one person's ownership of a good is a constraint on everyone else's freedom as it means that others are not free to use that good. If each person's freedom matters equally, and Nozick seems to think it does, it is hard to see why we should prefer the freedom of certain privileged property owners over the freedom of everyone else. On Cohen's account then, a patterned distribution is necessary to ensure the freedom of all, and in particular, the freedom of all those who will be disadvantaged by an unpatterned distribution. Rather than being in conflict with freedom, distributive equality is a necessary condition for maximising *aggregate* freedom. This is an interesting insight. One mistaken response to libertarian or neoliberal arguments is to reject freedom as illusory or of little importance. Cohen shows us that equality is not just compatible with freedom; it is a necessary precondition for freedom. This idea, that freedom is more than just the absence of constraints but also requires that people have the resources and capacities to act upon their choices, has become a familiar refrain in egalitarian writing (e. g. Sen, 2010; Van Parijs, 1995). Note too how it also constitutes a non-presumptive argument in favour of distributive equality, albeit an instrumental one based on the value of freedom.

Nozick's first principle of justice in acquisition is also questionable. It is often impossible in practice to tell whether something was initially acquired justly, as the origins of ownership are often lost in history. This principle therefore looks like an invitation to assume that current holdings rest on legitimate foundations. More importantly, Cohen points out that Nozick just assumes that whatever is in the world is there for the taking. But it is a dubious assumption that we should view the world as initially unowned and ripe for appropriation as private property, and an assumption that Nozick provides no argument for. Cohen argues that there is no reason to believe that the world should not be viewed as collectively owned, or held in guardianship, or actually unownable. The claim that individuals should be entitled to expropriate parts of the world for their private use does not follow from the idea that they own themselves.

Nozick's second principle of justice in transfer, that "whatever arises from a just situation by just steps is itself just" (1974, p. 151), has considerable intuitive appeal. Indeed such is its

appeal that Cohen thinks Nozick and other libertarians take it as axiomatic. Cohen argues that its appeal rests partly on the plausible assumption that injustice is in some way a defect, and it is hard to see how such a defect could come about by adding justice to justice. I would suggest that its appeal also rests on analogy with the way in which deductive logic yields valid conclusions. But there are reasons to be cautious with the beguiling idea that the just actions of individuals must result in just outcomes in the same way that deductive inferences are truth preserving, particularly when we are thinking of a large number of individually just actions. For one thing, rational agents do not always have to go where the application of logic would take them either. Peter Railton (2003) notes that deductive logic, despite its truth preserving property, does not tell us what it is rational to believe. It only tells us which propositions follow from other propositions. This is useful but does not entail that it is always rational to believe valid inferences without some further, non-logical, principle such as that one ought to always rationally believe the logical implications of one's current beliefs. But as Railton points out, this is not an entirely plausible principle as it depends so much on the nature and validity of our beliefs, about which some modesty ought to be held.

In similar fashion, there is good reason to doubt that we are rationally bound to accept all the consequences of just steps, or that just steps always preserve justice and inevitably result in just situations. Cohen argues that just steps need not be justice preserving for many reasons. Injustice could arise in a situation by accident, or due to lack of relevant knowledge on the part of agents, or due to the way actions can combine unpredictably to produce unforeseen outcomes. Agents always act within circumstances more complex than they can know and it is rare for the actions of individuals to not have consequences beyond them which affect others. Consider how individual drivers, each making a perfectly legitimate decision to drive to work, can result in hopeless traffic jams which no one chose. Or, adapting Nozick's Wilt Chamberlain example, it is doubtful that individuals voluntarily handing over their money for Microsoft products leads to entirely non-problematic consequences. There are good reasons why we might want to impose some restrictions on the consequences; Bill Gates becoming so wealthy that he has excessive and democracy undermining influence is one. This is a consequence which also affects those who have bought nothing, and a consequence which it would be wrong to suggest was implicitly endorsed by all those individuals deciding to buy Microsoft products. Or consider a person who legitimately decides to leave his wealth to his cat. This may be odd, but not unjust. Now consider a large number of people doing this. It is quite unclear that there is nothing wrong with a situation where a large number of domestic pets come to have a great deal of wealth at their disposal, mediated no doubt by highly paid teams of executors. Or consider a vicious criminal, justly sentenced to a prison term. There is no reason to believe that this, let us

stipulate, just act cannot have unjust consequences. For example, the criminal's family may then be without a breadwinner, husband and father. So as initially appealing as the idea may be, it does not seem to be correct that individually just steps must result in just situations.

We can reject the initially plausible idea that adding just steps to a just situation results in similarly just outcomes then. Nonetheless, there is a nagging feeling that Nozick and libertarians are right to think that we should, to some extent at least, respect the voluntary choices of free and equal adults. Luck egalitarians agree, but reject the idea that all outcomes of voluntary choices are legitimate or that freedom is just a matter of the absence of overt coercion. This idea will be pursued more in the next chapter. For now though we have another argument in favour of distributive equality; freedom, properly construed, requires distributive equality in order to be enjoyed by all. One could argue that freedom is something that should be enjoyed only by some and not others, but this does not look a promising line to pursue. Indeed, it is generally now accepted that freedom is a basic human value or right. Note however, this is an instrumental argument in favour of equality. Equality is valuable because it promotes freedom, but this does not imply equality is good in itself. If one did not value freedom for all, then one may not be moved by this argument at all.

The badness of inequality

Jeremy Bentham declared that "All inequality is a source of evil – the inferior loses more in the account of happiness than by the superior is gained" (1822/1989, p. 319). Many people live difficult and desperate lives in poverty, while others live in privileged luxury. Little reflection is needed to think that this requires some explanation and justification. Various spurious grounds have been, and are, alleged to justify inequality. These grounds often reflect the interests of the advantaged in maintaining their privileged position. So it may be that the badness of inequality provides motivation for the presumptive position. Whatever the truth of that, the perceived iniquities of inequality, and the undeniable suffering it often involves, certainly play a part in motivating egalitarianism.

Larry Temkin's *Inequality* (1993) focuses on understanding when one situation is worse, because more unequal, than another. He is frequently cited for the maxim that it is unjust and in itself bad if some are worse off than others due to no fault or choice of their own. Temkin says this largely because he believes equality is a state of intrinsic comparative fairness and this is logically equivalent to believing that inequality is a state of intrinsic comparative unfairness. Others, however, suggest that a belief in the badness of inequality perhaps captures the egalitarian's concern better than the claim that equality is valuable in and of itself (Parfit, 2002). Ingmar Persson (2003) maintains that the intrinsic value of equality is neutral and that its value resides in it entailing the absence of the intrinsic

85

badness of unjust inequality. He believes inequality is intrinsically bad because it is unjust for people to be worse off than others if they have not chosen or deserved that situation, and this is rarely the case. But this position may be hard to maintain without a positive account of equality. A lesson we took from Hurley is that unchosen equality seems no different from unchosen inequality in terms of its non-voluntariness, and undeserved equality seems no different from undeserved inequality in terms of its undeservingness. Nevertheless, the badness of inequality, a focus on the least well-off, and emphasis on inequality being something to prevent, eliminate or ameliorate is common in egalitarian literature and worth further consideration.

An insightful analysis of what we find wrong with inequality is made by Thomas Scanlon (2003). He writes that the offense we find in inequality is a potent driver of egalitarian thinking and it is the elimination of inequality, rather than the pursuit of equality, which is often of most political significance and underpins much philosophical thinking about equality. He suggests that, while the principle that each person's claims are owed equal respect and consideration is an important moral advance in our thinking, it is actually the negative aspects of inequality that may be dominant in our thinking about equality. Scanlon identifies five principle objections to inequality and points out that values which are not necessarily egalitarian in nature are behind some of them and so, for a true appreciation of the force of the egalitarian position, we need to be aware that it is calling on these other values. If Scanlon is correct then most egalitarians are value pluralists. This is plausible, although it's worth noting that Ronald Dworkin (2011) argues for the unity of value.

Firstly, Scanlon claims we are strongly motivated to alleviate suffering and severe deprivation. This he characterizes as a humanitarian objection to inequality. If equality plays any part in this objection it could only be doing so instrumentally; a state of equality is likely to involve less or no suffering. We are often moved then, not by the comparative levels of well-being of the worse-off and the better-off, but by the poor absolute level of the worse-off and their suffering. The claims of the worse-off thus have an urgency that many consider entitles them to priority in our moral judgements. While Scanlon rightly calls this a humanitarian objection, it could also be described as an objection based on the value of well-being; it is better in itself if people are better off, and people suffer when their well-being falls below a certain level. Seeing the objection to inequality in this way leaves open the possibility of extending it beyond a concern with the well-being of a single species and beyond a solely visceral reaction to suffering. Scanlon sees further evidence of the objection to suffering in the observation that we are not much concerned by differences in well-being between the rich and the super-rich. This objection gives out once everyone has plenty and no one is in any sense poor or suffering. The humanitarian concern may then be driven by sentiments such as compassion and our ability to empathise with others (Crisp, 2003). If our

empathy for the plight of others is blocked, or if our sentiments are not piqued, then any humanitarian concern can leak away. So while this objection no doubt motivates some egalitarian concern, it is a less than solid foundation for a value to do with justice. The demands of justice should not be hostage to fickle sentiments and although it is certainly the case that we do not care about differences in well-being between the rich and the super-rich, that does not mean there is not any question to ask about the justice of that situation.

Scanlon secondly notes that egalitarians object to people being treated as inferior or made to feel inferior, or for some to have attitudes of superiority over others. Social practices which are based on a ranking of people are objectionable for this reason. Examples of such practices are when a few enjoy privileges and perquisites based on their alleged superior rank and demand expressions of deference from those thought to be inferior in rank. This objection is strongly egalitarian in character. It expresses abhorrence to ranking people in such a way as to stigmatize those of alleged lower status, or elevate those of alleged higher status. Thinking that ranking is intrinsically objectionable implies a belief that people are of equal rank i.e. of equal moral status. Ranking is also instrumentally harmful as people unfairly stigmatised by such ranking suffer psychologically from feeling their lives are not being accorded their true value, that they are not being recognised as truly equal citizens. The lower class serf or slave or minimum wage worker suffers from knowing less value is placed on their life. There are echoes in this objection of Rawls' idea of the social bases of self-respect. He contended that when self-respect is lacking we feel that our ends are not worth pursuing and value is drained from all we do. For people to believe they are free and equal moral persons, their self-esteem must be supported and confirmed by the prevailing social norms and social institutions. This objection is at heart about the equal moral worth of persons, so objecting to inequality on these grounds is equivalent to claims as to the value of equality. Distributive inequality involves a ranking of people. The poor are stigmatized and the rich lionised. Distributive equality therefore seems a necessary condition for a society that does not systemically treat some as inferior to others.

The third objection is that inequalities give some people an unacceptable degree of power and control over the lives of others. Scanlon points out that economic power enables some to shape the lives of others by controlling the nature of employment opportunities, deciding what is to be produced and often making decisions over the physical environment of towns and cities and in that way influencing the sorts of lives that can be lived. Economic advantage can also be translated into political power. This concern underlies measures that aim to provide transparency around the funding of political parties although there is also the less easily countered problem of the rich having the ear of politicians in ways others do not. Scanlon doesn't spell out what he sees as the values underlying this objection but

claims that this objection does not appear to be egalitarian in nature. It looks, though, that it sits well with luck egalitarianism as it can be seen as an objection to limiting the choices people have or their freedom to live according to their choices. Perhaps there is also something of a humanitarian concern, the unacceptability of some types of domination, the most extreme examples of which we would count as oppression. But it seems to me that this objection is also, at least weakly, egalitarian. If someone exercises power and control over another, this is to treat them as inferior, a thing to be manipulated and used, rather than a person to be treated as an equal and an end in their own right. The exercise of power and control is permissible in many circumstances, for example by a teacher in appropriate ways that encourage learning. Power and control is here exercised for the benefit of another. But the power and control that comes to some merely because they have more money does not look like this. It is often exercised to preserve their position and further their own ends, and at a cost to others.

Fourthly, Scanlon says inequalities are objectionable if they undermine the fairness of important processes and public institutions. So, for example, if some are able to get more favourable treatment from the courts due to their greater resources, this undermines the fairness and integrity of the justice system. If some are denied access to public offices due to a lack of resources this would be objectionable. This objection then is allied to the notion of equality of opportunity being a precondition for procedural fairness. Scanlon suggests this objection is only weakly egalitarian in nature as equality of opportunity can be compatible with large inequalities in outcome, provided they were the outcome of a fair process. This is in accord with the earlier argument that there are reasons to be sceptical that fair processes must result in fair outcomes at all. However, as Rawls argued, sometimes a fair process does define a fair outcome if we cannot independently say what a fair outcome would be. This is the basis of lottery procedures for determining fair outcomes.

Scanlon's last objection to inequality is that procedural fairness sometimes requires equality of outcomes. This is the case when dividing the benefits accruing from some co-operative enterprise where all participants made roughly equal contributions in effort. It is arguable that our society is a co-operative enterprise in which the citizens are equal participants and hence have an equal claim on the benefits they collectively produce. This fairness-based objection relies on the widely held belief that when we have benefits and burdens to distribute, without good moral reasons to the contrary, a fair distribution is an equal distribution. This objection is egalitarian in nature, but partly depends for its force on participants in a co-operative venture having *prima facie* equal claims to any benefit produced; *if* people have an equal claim then a fair share is an equal share. But the equal claim of each citizen to an equal share would appear to be based on something like the

equal moral status of each citizen. So a claim to equal shares relies on the independent justification of this more fundamental claim.

There is another objection to inequality that Scanlon does not mention, related perhaps to his third and fifth objections. The focus of the third objection is the unacceptability of some being able to exercise unreasonable or excessive power and control over others, to be able to dominate them or oppress them. The fifth focuses on people not getting their fair share. But it is particularly objectionable when those who are better off have achieved that position at the expense of others. The point here is not just to do with persons having their fair shares, but with the fact that in order for some to have more than others, the better-off must deliberately exploit others, or wilfully ignore that they are depriving others of their fair share, or convince themselves that the worse-off have chosen or deserved their position. This objection depends on the fact that the economy is, to a reasonable approximation, a zero sum game and focuses on the bad faith of the better-off, profiting only because others are suffering.

One point to take from Scanlon's analysis is that the objections to inequality that are strongly egalitarian in nature, the second and fifth objections, are not at heart about the badness of inequality. They depend for their force on a belief that equality is intrinsically good or fair and thus that inequality is bad or unfair. If someone did not believe that persons are moral equals or that (absent suitable conditions) equal shares are fair shares, they may not feel any great force in either objection.

A second point, to restate the obvious, is that we have diverse reasons for objecting to inequality, some of which are not to do with the value of equality. It is important to be very clear about the pluralist nature of our objections to inequality, and indeed about the pluralist nature of egalitarianism.[30] It is quite possible to object to inequality but deny that equality has any intrinsic value at all. It can be argued that our humanitarian concerns, the importance of public institutions free of corruption and bias, and the value of well-being, or disvalue of being badly off, completely explain the badness of inequality. Once we have said this there is nothing further to be said about inequality. So nonegalitarians can agree that we should have sound public institutions and that we should eliminate poverty, suffering, deprivation and their stigmatizing effects. But they need not think that this entails equality or that equality is in itself valuable.

There is one more objection to inequality that has come to prominence recently and is important to note. There is, rather strikingly, some considerable empirical evidence that inequality (generally understood in this context as economic or income inequality, and so a

---

[30] The pluralist nature of egalitarianism is discussed further in chapter 7. It has a number of significant consequences, one of which I am foreshadowing here.

type of distributive inequality) has detrimental effects on all the members of a society. Richard Wilkinson and Kate Pickett (2009) have collected a great deal of data from a range of rich countries showing that inequality is strongly correlated with poor social and economic outcomes in areas such as teenage pregnancy, obesity, violence, physical and mental health, life expectancy, drug abuse, imprisonment, social mobility, education and in the degree to which fellow citizens trust each other. Max Rashbrooke (2013) has similarly gathered evidence that looks largely at the New Zealand situation. That inequality is bad for people over a range of indicators will be of no surprise to those claiming that inequality is intrinsically bad. If a society does not treat all its citizens as equals then the negative consequences noted by Wilkinson and Pickett and Rashbrooke seem perfectly intelligible and in keeping with the objections noted by Scanlon. The surprising thing may be the extent of the negative outcomes and how they seem to be related primarily to inequalities and not poverty, so that even the well-off are adversely affected. Wilkinson and Pickett further claim that the relationship is causal, that is, it is inequality causing these poor social outcomes and they are not merely observing correlations. We might also note that some, such as Bowles and Gintis (1998), argue that inequality is also economically inefficient. It involves supervisory costs, for example, and because workers are not fairly remunerated there are disincentives to them working hard and thus there are productivity costs.

However, the case against inequality does not rest on these negative consequences; at least, the case I am building does not. That equality may be instrumentally valuable is also clear in Scanlon's diverse objections to inequality. But my claim is that distributive equality is a fundamental requirement of justice, the embodiment of the claim that people are of equal moral worth, and this claim holds regardless of any social or economic benefits. The negative consequences of inequality certainly provide further motivation for pursuing equality. If various negative social outcomes can be ameliorated by bringing about more equal economic conditions, then that provides a strong pragmatic reason to pursue that goal, one that nonegalitarians could agree with too. It is extremely important to note, for instance, that inequalities in educational achievement are causally related to economic inequalities. This suggests that improvements in educational outcomes are strongly dependent on wider social, political and economic conditions and attempts at addressing the long tail of underachievement in New Zealand that ignore that fact are not likely to be particularly successful. But the case against inequality being made here does not depend on these negative consequences because, even without them, if people were unaffected in these social, physical and economic ways, it would still be the case that inequality, unless vindicated by suitable conditions of choice, is simply unjust. The principled case for equality, and against inequality, is about fairness and it remains unfair if some are worse off than

others due to no choice of theirs, even if there are no outcomes of the sort identified by Wilson and Pickett.

Priority and sufficiency

The attempt to ground egalitarianism in the badness of inequality points out two possible paths forward. The first involves taking equality as only instrumentally valuable because what really matters is well-being, improving the lot of the least advantaged or mitigating what is bad about inequality. The other is to ground the fairness of distributive equality firmly in the idea of the equal moral worth of persons. It is the second course that an egalitarian ought to pursue as the first leads to principles of priority or sufficiency (sometimes called adequacy) which, I suggest, are weaker principles and ought not to be thought of as fully egalitarian, if egalitarian at all. These principles have gained some currency, particularly in educational thinking.[31] There may be some pragmatic reasons for this. They can seem more politically palatable, practically feasible and perhaps easier to justify – who doesn't want to eliminate the evils of poverty? It may be significant too that these principles appear to demand much less, or nothing, of the better-off or indeed offer any great challenge to their greater advantages. The focus is on the least advantaged and elevating them as much as possible (but what constrains that we might wonder?) or ensuring they have enough. This may also contribute to the pragmatic appeal of priority and sufficiency as distributive principles. So it is worth examining these principles a little more.

Prioritarianism and sufficientarianism are closely allied to egalitarianism and some say they are varieties of egalitarianism.[32] Arneson (2004, 2011), for example, writes that luck egalitarianism comes in three versions. There is a version, egalitarian, that says we should all be equally well off in some respect; there is a version, prioritarian, that says that it matters more that we benefit the least well-off; and there is a version, sufficientarian, that says all should have sufficient for a decent or good enough life. But this view may conflate equality, priority and sufficiency as the discussion of the diversity of our objections to inequality indicates that these principles do not spring from the same fundamental values. Prioritarianism and sufficientarianism are grounded more in our humanitarian concerns and a belief that it is the well-being of persons that matters most. Parfit (2002) has pointed out that a belief in equality is not the same as a belief in benefitting the least well-off, although the two beliefs may often coincide in their judgement of a case. Similarly, believing that people should have sufficient may sometimes coincide with a desire for greater equality, but is quite different from believing in equality, and actually permits an unlimited degree of

---

[31] See for example Anderson (2007), Giesinger (2011), Gutmann (1987), Satz (2007) and Schouten (2012b).
[32] The key article for prioritarianism is Parfit (2002). For sufficientarianism see particularly Harry Frankfurt's seminal paper *Equality as a Moral Ideal* (1987), Crisp (2003) and Casal (2007).

inequality. Arneson's taxonomy is perhaps better characterised as describing different conceptions of distributive justice to which a luck/choice principle may be applied. But we should resist calling them all luck egalitarian, or indeed egalitarian.

However, it is not clear that sufficiency and priority are compelling alternative principles of distributive justice either. For one thing, prioritarians and sufficientarians do not think it matters how people fare relative to each other; prioritarianism tells us to identify and give priority to the least well-off and sufficientarianism tells us that each person's distributive share should be above some threshold value. Judgements about what each person should get are based largely on information to do with the individual alone. But how we should distribute the social product is essentially comparative in nature. This is because what constitutes a fair share can only be evaluated in the light of what the total product is and what each person receives. This point was made by Joel Feinberg who astutely observed that, when we are thinking about how we should distribute some divisible but limited good or chore, "*how much will be left for the others* is always pertinent to the question of how much it would be just for any particular individual to get"(his emphasis, 1974, p. 299). Equality is an essentially comparative value, so would seem suited to this. But sufficiency principles, in particular, are not comparative in nature. They speak to some absolute entitlement of the individual (so do rights and deserts, Feinberg notes), a criterion, not a comparison, by which we determine a person's entitlement. Because the reference point is an objective criterion, what a person should get is, seemingly, independent of what others receive. If this is right, then applying a sufficiency principle to distributive justice would be like dividing up a pie, one piece at a time, with no regard for how many people are involved and how big the pie is. At the risk of stretching the analogy, a priority principle would be like identifying who has the smallest piece of pie and resolving to bake more to increase their share, ignoring the fact that if someone has a smaller piece it is because others have bigger pieces.

Equality is a quite distinct value from priority and sufficiency then. It is not a concern for the well-being of the least well-off alone, or that people should have enough, but for fairness between persons. For prioritarians and sufficientarians, equality is only of instrumental value; more equality will generally promote the interests of the least well-off or make it more likely that people have sufficient for a good life. Egalitarians can certainly agree that these goals are admirable and worth pursuing. Their committed pursuit would certainly make our society a better place than it currently is and improve the lot of many. Harry Frankfurt claims that "If everyone had enough, it would be of no moral consequence whether some had more than others"(1987, p. 21). Egalitarians do not share this intuition about the limits of our moral concern. They counter that questions of fairness do not end once basic needs are satisfied or the position of the least well-off has been maximized or

everyone has enough for a decent life. Under these circumstances people can still be dominated or exploited by the very well off, democratic processes can be subverted and stigmatizing attitudes can still be displayed. Egalitarians may even agree that policies to maximize the position of the least advantaged or ensure that everyone has enough are sensible to pursue in practice, and maybe even the best we can do all-things-considered given certain facts about human nature and how the world is. But it remains for egalitarians an open question whether such distributions are through and through just. Lawrence Crocker (1977) makes the apposite observation that a concern to maximize the positions of the least well-off does not render a desire for a more equal distribution irrational as we have a number of reasons for favouring equality beyond just the well-being of the worst-off.[33] He picks out the value of solidarity and argues that people also value being part of the team, all in the same boat together sharing difficulties and co-operating with their fellows.

On sufficiency as a distributive principle, Anne Phillips (1999) notes that definitions of what is sufficient seem to be unavoidably related to what the best-off and other members of a society have. What others have determines to a large extent what is needed to live in that society. Try telling teenagers today that a smart phone is not a basic need. Sufficiency thresholds therefore vary with the degree of inequality in a society and hence sufficiency is not a logically distinct concept from equality. In a similar vein, Jonathan Kozol (1991) makes a scathing observation of a problem with sufficiency arguments in education. He points out that guaranteeing each child a sufficient education is equivalent to guaranteeing them an equal minimum, a minimum that tends to be defined by what the rich deem is sufficient for the poor and leads one to the question of sufficient for what. Kozol answers, perhaps a little (but only a little) cynically, presumably not sufficient for those at the level of sufficiency to question that they are less well off educationally than others due to no fault of their own, but sufficient to serve the needs of the economy for some cheap and dispensable labour rather than compete with the children of the advantaged on equal terms.

Temkin sums up well some of the issues here for egalitarians:

> the ideal of equality expresses an important and distinctive commitment among the pantheon of moral ideals. The commitment is not just to reduce suffering, display compassion, see that everyone has "enough," or benefit the worst-off. The commitment is to comparative *fairness*. It is *unfair* for some equally deserving people to be worse off than others through no fault or choice of their own. That is the

---

[33] Crocker's target is Rawls' difference principle rather than prioritarian principles in general. But the difference principle is an example of a prioritarian principle because it focuses on the position of the least well-off and permits inequalities provided these bring about greater advantage for the least-advantaged than they would enjoy under strict equality.

93

fundamental insight of egalitarianism ... an insight that I continue to believe should not
be obscured or forsaken (2003b, p.151).

Sufficiency and priority are ultimately slighter values that speak to only some of our moral concerns about how goods are distributed. They are rooted in humanitarian concerns and, perhaps in particular, compassion for the suffering of the poor. Phillips (1999) points out that compassion for the poor is an inadequate expression for those who are equals. The question of how we ought to distribute the social product is a matter of justice, not compassionate beneficence. Equality is a thicker value that encompasses our humanitarian concern to help the least well-off, but also speaks to wider concerns about what constitutes a just society and what it is to treat people as moral equals. Humanity dictates that we alleviate poverty and suffering and, as I stated earlier, it is implicit within a principle of equality that the interests of the least advantaged will often take priority, for reasons such as the greater moral urgency of their claims and diminishing marginal utility (Hirose, 2009, 2011; Nagel, 1991a). But equality demands more; that people be treated in accordance with their equal moral status and this means more than merely having enough or as much as the better-off will allow. Equality is a value that expresses our deepest convictions about what each person is owed, about the value of each human life and about what is fair.

Equal moral status

Some writers have distinguished between equality as it is invoked in connection with the distribution of certain goods, some of which will almost certainly give higher status or prestige to those who are more favoured, and equality as it applies to the respect which is owed to persons irrespective of their social position. Equality of the first kind is defined by the second principle of justice ... But equality of the second kind is fundamental (Rawls, 1971, p. 511).

The claim has been that justice requires an equal distribution of some substantive good such as education. As Rawls states, this reflects, or is derivative of, a deeper principle of equal respect for persons or, what I take to be much the same thing, the equal moral worth or status of persons. A reason for thinking this is that distributive shares have a profound influence on the sort of life a person can choose to live and, contingently but nevertheless strongly, their social standing; how they are viewed by others, how they view others and how they view themselves. Luck egalitarians argue that respecting the equal moral status of persons requires distributive shares to be insensitive to a person's luck, but sensitive to their choices. This also depends partly on the idea of moral equality. I have also said that distributive equality is a necessary, but not sufficient, condition for treating people as moral equals. It is the way a society makes good on the claim citizens have to equal consideration of their interests and is the embodiment of the abstract claim of equal moral worth. This

claim may be contingent too. If there are societies where people are accorded equal moral status, equal respect, without distributive equality, then distributive equality may not be necessary. Sadly perhaps, history suggests there is little possibility of such a society and, as our society currently is, it stretches credibility to suggest that equal respect is compatible with distributive inequality. The claim is also unlikely to be the result of some deductive argument and is therefore a defeasible, but as I will argue, well-founded claim.

The idea that each person counts equally, regardless of many differences, represents significant moral progress – even if we struggle to make this idea a reality. It is the idea that, I suggest, underpins claims of educational equality; each child counts equally. A good deal of egalitarian thinking takes moral equality as its working assumption. But the claim is sometimes stronger than that. Sen (1992) famously argues that the idea that the interests of each person in a community matter equally is fundamental to *all* plausible political theories. We saw earlier how libertarians such as Nozick can agree that everyone counts equally; he just denies that this implies anything for the distribution of goods. We also view those who deny the moral equality of persons, say, white power racists or neo-Nazis, as so self-evidently and abhorrently mistaken as to be outside civilized discourse (Arneson, 1999). The opprobrium heaped on those with such views is also, slowly, being directed towards racists in general, misogynists, homophobes and others who think some groups or individuals count for less. Dworkin similarly maintains that moral equality constitutes "a kind of plateau in political argument" (1983, p.25) which requires governments to treat their citizens with equal concern and respect.[34] If Sen and Dworkin are correct, then reasonable political theories disagree, not about the moral equality of persons, but in the way they work out what it means to treat people as equals. Different theories of justice can be viewed as competing interpretations of moral equality which seek to find some way of giving equal weight to each person's point of view (Nagel, 1991b). The distinctiveness of egalitarianism therefore lies partly in the fact that it more explicitly examines the implications of a strong belief in the moral equality of persons and that it takes those implications to be principally distributive.[35]

Unfortunately, claiming that distributive equality, or educational equality, is derivative of moral equality only shifts the point at which the burden of justification lies. The claim for moral equality is itself in need of justification and should be the conclusion of a moral argument, not the precondition for moral argument (I. Carter, 2011; Kane, 1996; Nathan, 2011). At one time, perhaps, there was little need to justify the claim because moral equality was underwritten by religious beliefs. But as Louis Pojman (1992, 1997) points out, this is no longer credible in an increasingly secular world where naturalism is the underlying

---

[34] Kymlicka (2002) refers to this as the *egalitarian plateau*. Eric Rakowski makes the bald claim that "No one disputes that a just state treats its citizens as equals" (1991, p. 19).

[35] This claim is somewhat contentious and will be defended further in Chapter 6.

assumption of most philosophers. And in view of the fact that people are so patently unequal in almost every attribute or capacity you care to name, moral equality may be hard to justify. This was the pessimistic judgement made by Peters in support of the presumption of equality. He thought the search for positive grounds for treating people equally was futile because people are so manifestly different and any suggested shared characteristic, such as the capacity to suffer or the capacity to reason, is incapable of explaining in itself why people are owed any sort of treatment, let alone equal treatment.

A surprisingly small number of writers have looked at this problem. But it is important because it is likely to have significant implications for how we interpret treatment as an equal. Ian Carter (2011) thinks that the small number of possible bases of equality places constraints on what it is that we ought to distribute equally. This is highly pertinent for education. Education is a good distributed to children whose claim to an equally good education is highly unlikely to be on the basis of their contribution to the social product, although arguably perhaps on their future contribution. Children are often thought to be of lesser status than adults and are not granted the full rights of citizenship. In addition, children differ widely across a range of characteristics that have a bearing on their educability. In particular, they differ (for whatever reason) in various cognitive capacities, capacities that some think relevant to moral status as they are sometimes invoked to justify the lesser moral status of non-human animals. So if educational equality is to have some force as an educational ideal, we need to be clear about its ultimate grounding.

Efforts to justify moral equality have tended to focus on trying to identify some property, quality or capacity that people possess by virtue of which they can be said to be equals. An early, and very influential, proposal was made by Kant:

> But a human being regarded as a *person*, that is, as the subject of a morally practical reason, is exalted above any price; for as a person (*homo noumenon*) he is not to be valued merely as a mere means to the ends of others or even to his own ends, but as an end in himself, that is, he possesses a *dignity* (an absolute inner worth) by which he exacts *respect* for himself from all other rational beings in the world. He can measure himself with every other being of this kind and value himself on a footing of equality with them (Kant, 1797/1996, 6:435).

So for Kant all rational beings are to be treated as ends in themselves and on an equal basis. It is the capacity for rational agency that renders us equals, a capacity human beings have, but other animals do not. If we were to discover aliens with this capacity, if computers were to gain rational agency, then they would have to be granted personhood too. We might wonder though; what about new born babies, the mentally ill, the severely cognitively impaired or those temporarily incapacitated by drugs or head trauma? Such cases seem to

96

involve a diminution or absence of rational agency; are such persons then to be considered less than equal, outside the circle of equal respect and concern? It could be suggested that the moral relevance of rational agency is not strictly time dependent, it is enough that a person had, has, or will have rational agency.[36] This seems reasonable; equality is often considered relative to a complete life rather than at a moment in time (McKerlie, 1989). But then we might wonder; if rational agency has such morally significant, status conferring power, why are those with greater rational agency not of greater status? It is painfully obvious that, for whatever reason, all are not equally rational – if by rational we mean something like capable of formulating valuable ends and working out reasonable ways of achieving those ends. It is not clear that all people even have an equal capacity or potential for rationality. The conclusion from this should be that people are of unequal moral status.

It might be objected that Kant's account is somewhat subtler than is suggested by this; that by rational agency Kant means more a person's free will as an autonomous chooser, their bare ability to set and choose their own ends, rather than some more intellectually (or even affectively) loaded capacity. To this, Arneson (1999) points out that it is no clearer that this capacity is one that persons either possess or not, in some way that does not also admit of degrees in an equality undermining way. Carter (2011) points out the further difficulty that for Kant our rational agency is based on "the free will that we each possess as a noumenal being" (p.544). This however looks problematic. It rests on the assumption of a noumenal self, a metaphysical proposition that few now are prepared to accept.

It seems highly likely that rational agency, the ability to make autonomous choices about our ends, is an important and morally significant feature of beings like us. But exactly how it can, or should, be related to moral status is fraught with, perhaps insurmountable, difficulties. Rawls (1971, pp.504-512) suggested that moral equality is based on possession of some *range property*. A range property is some variable (or scalar) property possessed by everyone. But it is enough for conferring equal moral status that the property is possessed. Variation above some minimum capacity, some threshold, does not matter. Rawls thought that our equal moral status is based on our being (or potentially being) moral persons; capable of having a conception of the good and capable of having a sense of justice. This

---

[36] Peter Vallentyne (2007) suggests this idea about time, but in relation to the capacity for well-being rather than for rational agency. This idea could also be used to explain why children can be considered equal in moral status to adults. They may not be equal as regards their citizenship, but as future rational agents they are owed equal respect and consideration of their interests. The case of the severely cognitively impaired, for example anencephalics, is not helped by this though. Two possibilities present themselves for this group. Firstly, Jeff McMahan (1996) points out that we have strong nonegalitarian reasons, such as beneficence and respecting family relationships, to do the best we can for such cases. Secondly, it can be argued by luck egalitarians that the grotesque bad luck suffered by someone who is born so far from the species norm does not place them beyond egalitarian moral concern at all, although other moral reasons may limit what should be done for them all things considered.

97

certainly seems like the sort of property that could be relevant to moral status and, given how people differ so widely for any given property, the idea of a range property looks promising. However, a couple of problems present themselves, not just for Rawls suggestion of moral personality as the appropriate range property, but for any range property.

Firstly, Carter (2011) points out that we must be given reasons why the range property itself should be thought morally relevant. The range property seemingly gains its relevance because of certain capacities on which it is itself based, such as having a sense of justice, and these capacities themselves can vary. So we need arguments why this does not matter for the range property, why these other capacities are not themselves what matter fundamentally, and why they give the range property its moral relevance. Secondly, Arneson (1999) argues that there are grave difficulties for any property that has a threshold for the conferment of equal status.[37] Thresholds seem problematic because for any threshold suggested, whether for moral personality or rational agency or some other capacity, it will always be possible to question why a difference in capacity that places someone just below the threshold has the force to make them of lesser status, while an equal difference above the threshold is not morally relevant. If the property suggested has the sort of moral weight that anything proposed as a status conferring property must have, then it seems odd to claim that differences above a threshold do not have the same relevance to moral status that the, presumably, small difference across the threshold does. Arneson also notes that the stipulating of any threshold, even if it is a thick threshold, is likely to be arbitrary and thus emphasises again the concern about the alleged differing moral relevance of variations above and below the threshold. Rawls gave the example of points within a circle all being equally within a circle. But it is not obvious that rational agency or moral personality (or almost any human trait of moral weight) can be seen in this way; they look more like variables that lie along a linear continuum.

The search for some all or nothing property that can ground moral status looks daunting; we differ so vastly. It seems unlikely that there is some essential, morally significant property we all have, that does not vary across individuals in a way that undermines its credibility as a basis for calling persons equals. In his characteristically insightful, and influential, paper *The Idea of Equality* (1973), Bernard Williams suggests we are equals because of our common humanity. But he then notes that, while it is by no means trivial to be reminded of our common capacities, in particular those for pain and affection, our humanity is probably insufficient for grounding equality. This comes back to the difficulty of finding any morally relevant property that people possess in equal measure. Williams contends that capacities like intelligence, sympathetic understanding and resoluteness

---

[37] See also Nathan (2011) on this problem

appear related to a moral capacity, but that moral worth cannot depend on natural capacities. This is because it is absurd that moral worth should depend on natural capacities unequally and fortuitously distributed. This is an observation that luck egalitarians can only heartily endorse. It is the same reason why they claim distributive shares cannot depend on natural assets, a reason that we see ultimately depends on this deeper claim about the link between moral status and luck. Christopher Nathan (2011) observes that it could be objected that the variations in abilities we observe in the world are not due to any differences in natural capacities, but are because of differences in circumstances. This is no doubt true, to some possibly quite large extent. But it stretches credibility to suggest we are all equally endowed in our natural capacities, this seems quite fantastical for physical capacities and really no less so for cognitive capacities. Nathan points out too that if we insist on basing equality on some natural capacities then this makes our moral status depend on empirical claims that are both contestable and likely, at best, to support the claim that we are only more or less equal. Besides, Williams observes, natural capacities cannot themselves be the bearers of moral worth since those that have them to a greater degree are as gifted for vice as for virtue.

To Williams' scepticism that our humanity is an adequate basis of equality we can add the argument of speciesism, so cogently championed by Peter Singer (1993).[38] We do not think membership of a sex or race or ethnicity relevant to moral status, and this should make us hesitate before thinking membership of Homo sapiens is any more relevant. And if we do want to argue its significance, then the search for a reason lands us in all the difficulties already noted. Geoffrey Cupit (2000) makes the point that, while it is good to be reminded of our similarities, our common humanity, this cannot be what makes us equal:

> All carrots are carrots, and all books are books: but that is no reason to suppose that there is, therefore, a significant sense in which all carrots are equal, or all books are equal. Similarity is not to be equated with equality (Cupit, 2000, pp.108-109).

Cupit makes another point. The basis of the egalitarian claim about moral status must be consistent with people not being morally equal in all ways. Cupit calls our attention to the fact that it would be risible to suggest that Mandela and Hitler are equally morally worthy. Claims of equal moral worth cannot conflict with us being able to make sensible judgements about the relative moral merits of individuals in some dimensions.

Because of the difficulties we have observed, writers are often inclined to share Peters' scepticism that there are positive reasons supporting equality. It seems intuitively right that we must share some relevant property or attributes, but the search has proved

---

[38] Arneson (1999) and Vallentyne (2007) both deal thoughtfully with some of the issues raised about moral status by Peter Singer's work.

disappointing, although suggestive nonetheless. There are, however, two further attempts I find interesting. Cupit argues that people should be treated as equals because of the separateness of lives, because they are *individuals*.[39] He notes the history in political philosophy of claiming the "equality of men by nature" (Locke & Macpherson, 1690/1980), normally understood to mean that no man has natural authority over any other. Cupit argues that recognizing each individual's sovereignty is how due respect is shown for the fact that we are separate and independent beings with our own lives to lead, our own solitary deaths, our own discrete bodies and, perhaps most significantly when we think about properties like rational agency, our own distinct and separate consciousnesses. This is an idea that Cupit takes pains to stress is about the value and dignity of each individual, not their atomistic inconsequentiality. Cupit thinks this justifies treatment as an equal because being separate individuals means that it is inappropriate to rank people in terms of ends that are not their own, or in terms of the roles they must adopt or to treat them as a means to serve the ends of others. Respecting the separateness of lives makes comparisons and rankings odious, as each person is a unique world unto themselves. Each individual is therefore, in a sense, of incomparable worth, and this is best expressed by the injunction to treat persons as equals.

Ian Carter (2011) offers something quite different. Intriguingly though, it shares with Cupit the idea that treating someone as an equal involves in some way ignoring, or the irrelevance of, the differences between people so troublesome to attempts to base equality on a common property. Carter argues that, out of respect for human dignity, we are required to avoid looking behind an individual's exterior, to ignore differences in capacities and, when we cannot, to refuse to let them influence our treatment of people. Beings possess dignity, just as agents. Respecting this, according to Carter, involves taking people as they are, treating them as ends in themselves with no evaluation of their agential capacities. Carter calls respecting individuals in this way treating them as opaque. They should not be treated as opaque regarding their having agential capacities, that is necessary to see them as agents at all, but as regards measuring their agential capacities. Carter is thus employing Rawls' notion of a range property with its threshold for moral personality. He also notes that opacity respect is particularly apt for guiding relations between citizens in

---

[39] The separateness of lives is an important moral concept that has been explored by others, for example, Parfit (1984, p.330). Parfit uses the idea for egalitarian purposes too, but he notes that Nozick (1974) uses it with inegalitarian consequences. Nozick emphasises more that the separateness of persons limits the claims we can have on others, it not being right for a state to sacrifice the interests of one person or group for the sake of another. The separateness of lives is also used as an argument in favour of egalitarianism and against utilitarianism. Utilitarianism is not overly concerned with distribution; it notoriously recommends maximizing aggregate utility with little regard for how it is distributed. But the separateness of lives means that the distribution of utility is important. It makes a difference if each life is considered separately whether 10 units of utility are experienced by one person or shared equally by 10.

the public sphere and for how public institutions ought to treat citizens. In this way, the requirement of opacity respect is equivalent to treating citizens as equals as governments should treat all as agents, without probing further into their capacities. Because opacity respect involves recognizing that agents possess a range property which must be above some threshold, I am not sure that Carter's suggestion entirely avoids the criticisms made earlier. However, the idea that respecting individuals involves a certain opacity is a thought provoking contribution.

Equal value, equal status

I now want to suggest a slightly different approach to justifying moral equality. It is by no means an argument; it is more tentative and suggestive than that, a sketch of a possible argument. But it takes findings from the preceding discussion, some evocative ideas from the work of Dworkin and Nagel in particular, and points to where I think the best chance of justifying moral equality lies. I suspect too that the claim that persons are equals is near to being a fundamental moral claim, more or less in Cohen's (2008) sense met earlier. Deductive arguments, facts and reasons are likely to prove elusive and we can at best indicate plausible reasons and coherence with our other moral beliefs, intuitions and practices. When offering explanations and justifications for deep moral claims it is the case that reasons eventually give out and there is nothing further we can say except to appeal to further examples and intuitions. I do not think that the claim of moral equality is quite of that nature, like the claim that it is wrong to harm babies for pleasure, but it is asymptotically approaching that line. As we see with neo-Nazis and white supremacists, it is not our failure to find reasons to persuade them of their error that we find troubling, but that they deny the moral equality of some persons at all.[40]

Ronald Dworkin (2000) briefly discusses what he believes are two fundamental principles of ethical individualism. The first principle says that each human life is of equal importance. It does not say that human beings are the same or in equal possession of anything (rationality for instance), nor that all the lives they create are equally valuable. Rather, it says that it is important from an objective point of view that human lives are successful, that they go as well as possible, and this is equally important for each life. This principle is an assertion of the equal moral worth of each person on the basis of the equal importance or value of lives. It is primarily on the basis of this principle that Dworkin thinks people should be treated as equals.

---

[40] Christopher Nathan's (2011) paper is an excellent discussion of why moral equality is not fundamental and requires justification.

Dworkin's second principle is also worth noting here, although it is perhaps more relevant to the importance of choice for luck egalitarians: each person has a special and final responsibility for the success of their own life. Dworkin writes that, while from an objective standpoint we can acknowledge the equal importance of each life, and why we ought therefore to be concerned with the well-being of others, from the subjective standpoint we each have our own separate lives to lead. This was a point we saw was significant for Cupit too. This second fact about lives offers a justification to the idea that, while we owe our fellows equal consideration due to the equal importance of their lives, there is a limitation on what justice can demand of us. Further, the exercise of some partiality in our daily lives is not only permissible, but also entirely reasonable. Self interest is not just rational, within appropriate limits; Dworkin is also saying that to some extent it is required. We would look askance at someone who helps everyone else while ignoring the needs of his or her own family. It is entirely reasonable to show partiality to your own family, just because they are *your* family. The first principle in its turn though, places a limit on how much rein can be given to our self interest. We must take into account the interest of others and when designing our public institutions each person's interests ought to be given equal consideration.

Thomas Nagel (1991a) comes at things a little differently, but expresses something very similar. He claims that we each have the ability to think about the world in abstraction from our particular place in it and who we are – to adopt what he calls an *impersonal* standpoint. From this position we can see that everyone's life matters equally. There are no VIPs from the impersonal standpoint, or rather, we are all VIPs. Nagel writes that this is not to say "that some people may not be more important in virtue of their greater value for others" but only that at the most fundamental level "for a given quantity of whatever it is that's good or bad - suffering or happiness or fulfilment or frustration - its intrinsic impersonal value doesn't depend on whose it is" (1991a, p.11). There are echoes in this of the illustrious utilitarian philosopher Henry Sidgwick's (1907) statement that "the good of any one individual is of no more importance, from the point of view (if I may say so) of the Universe, than the good of any other" (p.382). From the cold perspective of the cosmos, there appears to be no reason for picking out any one life as more special or valuable than any other. Maybe this is more a principle of not wasting the finite and cosmologically flukish thing that is a conscious life. But, cosmic flukes or not, we are all faced with the unasked for task of making our way in the world as best we can, and no one's task would appear any more innately important than anyone else's. The impersonal standpoint posited by Nagel is, it seems to me, similarly motivated to Dworkin's first principle and expresses essentially the same idea; the equal importance and value of each life, a property that objectively does not vary across lives and gives flesh to the claim of equal moral status.

102

Corresponding, perhaps, to Dworkin's second principle Nagel also describes us as occupying a *personal* standpoint. From this perspective "each person, with his particular concerns and attachments, is extremely important to himself, and is situated at the center of a set of concentric circles of rapidly diminishing identification with others" (1991a, p.14). Our own lives and concerns are intrinsically and inescapably valuable to us and feel to us, subjectively, more valuable than anyone else's. Nagel makes much of the tension between the two standpoints and sees the task of reconciling or combining them as perhaps the central task of political philosophy, by no means an easy or perhaps even possible one. In this way I think he anticipates some of the difficulties we find in the luck egalitarian account of justice, the tension between holding that persons are subject to the vagaries of luck, cosmic and otherwise, but at the same time are appropriately held responsible, to at least some extent, for their choices. But this problem will exist for any account of what it is to treat people as equals, while also having regard for the central importance that each person accords their own life.

I think the insights encapsulated by Dworkin's two principles of ethical individualism and Nagel's two standpoints play a large role in grounding egalitarianism and in particular luck egalitarianism. There is firstly the claim that each human life is of equal value or importance and this is a substantive justification for claiming that each person is of equal moral status. A corollary of this is that governments, to be legitimate, to be acting justly, ought to treat citizens as equals. Each citizen counts equally and is entitled to have their interests weighed equally against everybody else's interests. Public institutions must be organized so that they accord each person, not equal treatment, although this will sometimes be the case, but treatment as an equal. Luck egalitarians are drawn to the further corollary that, as each life is of equal importance, it matters that people's life chances are not unduly subject to luck, subject to the playing out of arbitrary factors which reflect nothing more than good or bad luck, rather than their equal moral status. This suggests that well-being, important in its own right, is also some sort of measure or indicator of the value being accorded someone. Distributive equality reflects the equal moral status of each person, the objectively equal importance that each human life goes well. Similarly, educational equality is an expression of the equal moral status of each child, that it is equally important that each young life is given the means for living as well as possible.

Secondly, and sometimes in inevitable conflict with the first claim, Dworkin and Nagel assert that we each have our own separate lives to lead for which we have a special responsibility, just because they are ours. This gives rise to a principle of responsibility, that it is appropriate for people, under suitable conditions and to some extent, to bear the consequences of their freely made choices. This allows them to live their lives as they see fit; but more on this in the next chapter.

Conclusion

Equality is of instrumental value; it promotes the freedom of the individual, the interests of the least advantaged and the health of a society. But many egalitarians think equality is more than of just instrumental value. They believe equality is a good in itself. This is hard to justify, but the attempt is important for anyone who wants to make strong claims about distributive equality or educational equality. One reason for thinking that equality is intrinsically valuable, emphasised by luck egalitarians in particular, is fairness based; it is unfair when some are worse off than others due to no choices they have made. This reason depends on other claims about luck, discussed in the last chapter, and claims about choice, the focus of the next chapter. A second reason has been the focus of this chapter; the moral equality of persons is instantiated when people have an equal share of the benefits and burdens of social co-operation. The fairness reason also gains weight from the equal moral status of persons. On this basis too, egalitarians can argue that other distributive principles – such as priority, sufficiency or libertarian principles – fail because they do not adequately embody the idea of moral equality, they fail to give equal weight to each person's point of view. A lot hinges then on the difficult task of giving reasons why we should think persons are moral equals (certainly if we accept that the principle of sufficient reason is to some extent operative here).

I propose that there is a property, the intrinsic value of a life, which is the basis of the claim to moral equality. Each individual life, because separate, can only have value for its own sake for the person whose life it is. This value cannot be experienced by another person and so is opaque by nature. We can only assume, on the basis of our own interior experience and what we are told, that others value their lives in the same way and to the same degree that we do ours. We have no way of determining that one person's life possesses more or less value for them than another's. There is no reason to believe that, because people differ in terms of their rationality, intelligence, empathy, moral personality, strength, athleticism, or any other capacity, then as a consequence, their lives hold any more or less value for them than another's. So in the absence of any evidence to the contrary, and from the objective point of view of Nagel's impersonal standpoint, the only reasonable conclusion to draw is that individual lives are of equal value and this forms the basis of equality.

We can judge people on their contribution to the world and we can assess them morally on what they do. So Hitler is the monster to Mandela's saint. But we have no reason to think that the value they placed on their respective lives was any different. Their moral differences give us good reason for treating them differently and the value of their contributions to the world is excruciatingly and tragically different. But underlying this we can still say their lives were of equal value, so it is a matter of the most profound regret that

104

Hitler's life was so warped and wasted and a matter of celebration that Mandela's was lived so well. The value of a life also tells against a death sentence for even the most heinous criminal, and indeed, long incarceration.

When there is some evidence that people do not accord their life much value, as with those who are suicidal, we discount their judgement as profoundly mistaken. There are those who think their lives are of greater import than others. We regard them with disgust for their egotistic failure to recognize the proper status of others. This idea implies, though, that some can come, perhaps reasonably, to find little value in their life. The debate over euthanasia is perhaps difficult because, although we can objectively recognize the suffering of others, we cannot feel it and struggle to empathise with those whose life has become a burden of little value. Of course, this conception also implies that those without the capacity to value their lives may not be equals. This will apply, however, only to the most severely cognitively impaired, and I have already said why we have good reason to include them within the circle of moral concern. If non-human animals find value in their lives, then maybe they should be counted as equals too. However, it seems likely that they lack the awareness for this and hence we *may* be right that they are not of equal moral status with persons.

I also suggest that moral equality based on the equal value of a life looks a good candidate for the entailment of distributive equality (understood in what follows as being equally well off in terms of some substantive good such as well-being, resources or education). Thomas Christiano (2007) asserts that the distribution of advantages and disadvantages must reflect the equal moral status of persons and not arbitrary features of their condition. Luck egalitarians interpret this as meaning that distribution should not reflect a person's luck, but it can permissibly reflect some of their choices. For Christiano the egalitarian principle is stronger than just being a good making property of states of affairs, as some egalitarians hold, it gives us the condition for what people are due as a matter of justice. So any fundamental egalitarian principle should plausibly link to a distributive principle that tells us what people are due as a matter of egalitarian justice. A person's distributive shares are a measure of how much their society values them, relative to others. When some have limited lives of poverty and deprivation, this is a concrete demonstration that their lives are not being valued. When some enjoy advantages above the rest, this shows that their lives are being valued more than others.

Now consider the following argument:

1. Persons are of equal moral status because each person's life is of equal value.

2. Distributive equality embodies the equal moral status of persons because the value being accorded a person's life (relative to others) is shown by how well off they are (relative to others).

3. Inequalities are only permissible if they have flowed from a person's genuine choices, for which they can properly be held responsible.

∴ 4. Persons ought to be equally well off, unless inequalities are vindicated by suitable conditions of choice.

The argument is valid, I believe, and this chapter has defended the first premise. The second premise is, at least, contingently true. It is therefore to the defence of the third premise that I now turn.

Chapter 5:
Choice and Responsibility I

"There's small choice in rotten apples"

— William Shakespeare, *The Taming of the Shrew*

While the place of luck in an egalitarian theory is not surprising, but still a little problematic, the place of choice and responsibility is surprising, and more problematic. Indicative of this, some of the most trenchant critics of luck egalitarianism are other egalitarians. Elizabeth Anderson (1999) and Samuel Scheffler (2003), for example, argue that it is implausible that choice should have the kind of moral significance that luck egalitarianism claims it does. Care is needed here. It is tempting to take a black or white stance on the moral status of choice and responsibility. Zofia Stemplowska (2009) points out that the debate within egalitarianism is often carried out as if there are only two positions that one can take. On the one hand there is the view that inequality is permissible if it involved choice, under suitable conditions, and on the other hand there is the view that choice is only of marginal significance at best. She argues that holding either position can have implausible and unpalatable implications and we need to recognise what is right about both positions, a politically perilous and awkward thing to do, but philosophically legitimate. Stemplowska also adds that neither side has a monopoly on the relevance of choice to egalitarian justice and that what is required is a more nuanced appreciation of choice and responsibility. I would add too that the views of both luck egalitarians and their critics are complex and not always as much at odds with each other as sometimes appears.

The aim of the next two chapters then, is partly to make a modest contribution to a more nuanced appreciation of choice and responsibility. But it is also to argue that choice has the sort of moral significance that, despite caveats and qualifications, means it must be incorporated within any plausible theory of distributive justice, or at the very least, carefully accounted for. This chapter will focus largely on cases and intuitions around choice and responsibility.

Conflicting intuitions

First we should consider the sort of intuitions that motivate conflicting beliefs about the moral significance of choice. I begin with those that seem to support a belief in the importance of choice and responsibility.

The typical sort of situation (e.g. Kymlicka, 2002, p. 72) which provides support is to imagine two people, let's call them Amber and Brittany, starting from initial positions of equality in all the ways that might be thought relevant; talents, abilities, social circumstances, available options, rationality, knowledge of the world, etc. They differ only in their preferences for how they want to live and these preferences are ones they have consciously cultivated or consciously endorse. Now Amber thinks that work/life balance is important and chooses a life of relative leisure; she likes to potter in her garden and do some part-time work. Brittany, on the other hand, thinks hard work is what life is all about and chooses a life of somewhat greater toil. She likes gardening too and works hard to build up a profitable gardening business. Inevitably, Brittany accumulates more resources than Amber.

There are two ways to look at this, and in neither case do luck egalitarians see any injustice. It is possible that they are both quite content with how things go and see no inequality in their respective conditions; Brittany's greater resources are simply fair compensation for the disutility of her greater toil. More likely though, there will be some significant differences in the quality of their lives and luck egalitarians say that this also is not unjust as we treat people as equals when we treat them as being responsible for their choices and that means sometimes bearing the costs or enjoying the benefits that flow from those choices. Either way, there is no reasonable requirement on society to equalize Amber and Brittany's positions and nor does either of them have any egalitarian claim against the other. As well, if Brittany takes a gamble not to insure against foreseeable adverse events and she has a poor season, then she also would have no claim against Amber for her bad luck, as matter of justice (she may on humanitarian grounds).

There are a number of difficulties with cases like Amber and Brittany's though, the reduction of the complexities of a society of mutually interdependent citizens with all sorts of reciprocal obligations and inter-relationships to just two people being one of them. Our intuitions about the case could be quite different if, for instance, we were told that Amber is actually Brittany's mother. Another difficulty though, is that there may be factors other than Amber and Brittany's choices that are influencing our intuition that the inequality is permissible. Two possibilities are: (i) we believe it would be unjust for Brittany to subsidize Amber because we think Brittany is entitled to the fruits of her labour (Stemplowska, 2009) and (ii) we believe the inequality is permissible because we are making moral judgements, not about the values associated with choice, but instead about the relative virtues of indolence versus industry, or that effort deserves reward, or on the relative merits of particular ways of life. Both these objections can be countered by offering examples that avoid these difficulties, which I will shortly do. But I also want to press that, while these factors may be influencing our intuitions, they need not be, and they need not undermine

the validity of other reasons for thinking that choice has distributive significance. The idea that person's are entitled to the fruits of their labour is significant for both libertarians and Marxists. But this does not mean that luck egalitarians are appealing to any such principle. Indeed, Cohen (1995) cogently argues that egalitarians need *not* endorse a principle of self-ownership and entitlement to whatever flows from one's labours.

One thing that grounds the judgement that any resulting inequality of condition between Amber and Brittany, as a result of their choices, is permissible is an observation about how things go in the world. The material circumstances of our existence are such that we must work simply to survive, let alone further our life projects. But we can also, to some extent, choose the degree to which we will toil. So given that Amber and Brittany made their choices from positions of substantive equality, with some minimal understanding of how the world works and a reasonable appreciation of the consequences of their choices, then if Amber subsequently struggles to support her lifestyle, while Brittany flourishes, then Amber can have no call on Brittany's resources. It would be unjust to expect Brittany to subsidize Amber's deliberately chosen way of life because, in general, we have a quite firm conviction that it is unjust for persons to have to shoulder the consequences of the voluntary choices of others (De-Shalit & Wolff, 2011, p. 225). This can be defended by appeal to the separateness and finitude of lives. There can be obligations of friendship or family or humanity and Brittany could certainly choose to help Amber. But there is no demand of egalitarian justice on her to do so. This has nothing to do with moralizing judgements and believing people are entitled to the fruits of their labour. It is rather a belief that, given benign initial conditions, we can reasonably expect Amber and Brittany to accept some responsibility for their own lives and that includes bearing, to some extent at least, the consequences of those choices. There also need be no implication that a choice is in some way wrong, mistaken or imprudent. Take the case of people who work hard and stint on themselves, making sacrifices in their own lives, in order to provide their children with every advantage and leave something to them. It is implausible to suggest that their choice to do this for their children should be subsidised by others. The life they have chosen is one of sacrifice, and we should in general respect their choice.

The view that it is choice that is the most salient feature of the case is reinforced if we imagine Amber and Brittany as children being given weekly pocket money to do with as they please, which could include saving some. At the end of a year Amber has spent all her money on all the normal sort of stuff children like while Brittany has spent only some and put the rest in an interest bearing account. It would be odd to suggest that Amber has a legitimate claim for egalitarian redistribution against Brittany or anyone else. Importantly, from an educational perspective, this also demonstrates that choice has significance for children, albeit no doubt in restricted circumstances. It seems of little relevance to the

109

judgement that Amber and Brittany should live with the consequences of their choices that they are not adults. Being entitled to the fruits of one's labour is not applicable here either; although we might still be suspicious that moralizing judgements about thriftiness versus profligacy may be playing a part.

It could be said that inequalities which are the outcome of a person's voluntary choices are unobjectionable, but that's not quite right. For egalitarians there is something objectionable about all inequalities, that is, all inequalities in whatever it is that is thought to matter. Nevertheless, luck egalitarians argue that inequality is sometimes permissible when it flows from the choices of a person under certain conditions. Anderson (1999) objects that this entails luck egalitarians abandoning the imprudent or the negligent to abject poverty when that is the result of their poor choices (the *abandonment objection*). This need not be so. For one thing, the legitimating force of choice depends on how favourable the background conditions are for the chooser. It was for this reason that it was stipulated that Amber and Brittany were choosing from conditions of fair initial equality. Secondly, there will be limits on the extent of the inequalities between persons that choice can legitimate. Luck egalitarians are not obliged to adopt the far-fetched view that choice licences unlimited inequality. Thirdly, extreme inequality may well trigger a need for humanitarian assistance, whether chosen or not. Situations that require rescue and the satisfaction of basic needs are morally distinct from what is required as a matter of egalitarian distributive justice (Tan, 2008). However, even in some cases of emergency rescue, choice may still have some significance. Stemplowska (2009) gives us the example of an incompetent mountain climber, of sound mind and responsible for her behaviour, but who continually goes climbing ill-prepared and uninsured. Each time she gets into life-threatening trouble she gets on the radio to Mountain Rescue who fly in a helicopter under difficult circumstances, at considerable risk to the rescuers, and at considerable cost. Any judgement that we must continue to rescue her free of charge each time she gets into trouble, as a matter of egalitarian justice, will start to look pretty thin after the first few rescues. While we still might not abandon her, we may well be justified in expecting her to pay some of the costs of rescue. If she is unable to do this, and unwilling or unable to take insurance that can mitigate the rescue costs, then the situation is starting to look like one of egalitarian *in*justice as others are bearing the costs of her choices. The only reason for continued rescue would seem to rest on some notion of the infinite value of human lives and that charity knows no bounds. This is implausible, or at least, extremely impractical. So, most

importantly here, the existence of extreme cases that choice may not legitimate does not imply that *all* inequality that is the result of choice is impermissible.[41]

As noted above, the example of Amber and Brittany builds a lot into the initial conditions and much of the force of this example depends on their choices being made against a background of substantive initial equality. This has the interesting implication that equality has precedence over choice and reflects an underlying intuition that choice from unequal positions does not have the same legitimating force. For one thing it would call into question the genuineness of Amber and Brittany's choices. Duress is an extreme instance of this but in general when people's circumstances are constrained they adapt their preferences and choices to those circumstances. For another thing, people do not have equal opportunities to live the lives they want if they lack options that others have. But for Amber and Brittany both ways of life, and others, are taken as genuinely open options. The significance of choice is seriously undermined if individuals do not have equal option sets open to them. Imagine if one's choices are limited, not unrealistically, to working for a subsistence pittance on minimum wages, living on an inadequate benefit or starving. In such a case it is disingenuous to say that the absence of coercion, legal or otherwise, full knowledge of one's situation and options, is enough to constitute equal opportunities. The need for a proviso that the structure of options open to individuals ought to be equally valuable, not necessarily the same, explains partly the problem with any claim that our society and education system are meritocratic. When the options open to people are not substantively equal – and when the structure of society is such that some people inevitably and predictably have fewer options than others – then the claim that people have merited their positions in society is quite fallacious and dishonest. This point is also significant for another reason. The insistence that choice can only have distributive significance when exercised against a background of equal options and some substantive equality of condition marks the crucial difference between the treatment of choice in luck egalitarianism and that in typical right-wing positions (De-Shalit & Wolff, 2011; Stemplowska, 2009).

We may also think it significant the extent to which any inequality may be reversible. People may think that Amber can just get a full-time job and help herself. A belief in the ideal of personal liberty carries with it an understanding that people can change their minds about their life paths and should be able to revise their life plans in the light of experience. If choices they make have foreseeably irreversible consequences this might affect our judgement about the acceptability of any subsequent inequality, perhaps by calling into question the rationality of the agent or just by causing us to note that even sensible people

---

[41] The following section has a much fuller response to the abandonment objection. Here I have only sketched a response.

111

do not always make good decisions. It is an inescapable and mundane fact that people do make mistakes and we may not think it right to abandon people to the particularly dire consequences of choices they may subsequently come to regret. It seems unjust if people have to pay too heavy a price for a mistake. Making choices that are irreversibly damaging can look irrational, although not always so. We do think people should be free to engage in all sorts of risky activities, such as smoking and sky diving. But again, this question about reversibility does not imply that *all* inequality that is the result of choice is impermissible. It again emphasises rather that there are limits on permissible inequality.

There can be cases of chosen inequality which are not open to the sort of doubts that the case of Amber and Brittany presents, although our judgements about whether someone is actually relevantly worse off may be muddied. So imagine Jared and Jeremy, two people living similarly impoverished lives. They live on the streets with their few possessions kept in a rubbish bag, their clothing is ragged and dirty, they both could do with a shower and they frequently depend on charity and begging to get enough to eat. But how they came to be living these very similar lives is quite different. Jared has arrived at this state because, unluckily for him, he suffers from a mental disorder that makes it difficult for him to get on with others, hold down a job and just cope with ordinary life. He has come to this position due to cracks in our social welfare systems and sense of community, but also, more pertinently because we are generally extremely reluctant, for good historical and moral reasons, to force people to take treatment or do things against their will, even when they are obviously troubled. So Jared has reached his current state with no particular negligence or malice on anyone's part. Jeremy, however, is quite different. He is in the grip of profound and passionately held religious beliefs that it is good to live simply and ascetically and rely on the occasional kindness of strangers. He has freely chosen this way of life. Now, if he has chosen this way of life voluntarily, in full knowledge of the consequences, with the option of changing his mind about his chosen way of life (his choice is not irrevocable), then his situation is not one of unjust inequality. Perhaps it could be said that Jeremy is not badly off at all, that his level of well-being is actually quite high. But this could only be on the ground that he is living the sort of life he wants to lead and that the ability to choose how to live is an important constituent of well-being. Whatever the case, the most relevant feature is that his state is chosen. Jared's position, by contrast, is unjust at least partly because it is unchosen. The solution to his situation is not easy but nonetheless he has not chosen this life and if he could help himself we can imagine he probably would. The morally relevant difference between their states is that Jeremy consciously chose to be that way while Jared did not, indeed he probably could not, and this makes all the difference from the standpoint of justice.

These are some of the intuitions and beliefs that give us reason for thinking that choice has significance for distributive justice. Now to some that indicate the insignificance of choice.

One, Anderson's abandonment objection, has been touched on. It was countered by the argument that it implies, not that choice is irrelevant to distributive justice, but that it does not have unlimited scope for legitimating all inequalities that an agent may be responsible for and that other values also have relevance (I expand this argument in the next section). However, Stemplowska (2009) points to another powerful argument of Anderson's to do with the problem of the vulnerability of dependent caretakers. It is exemplified by those people, typically women, who choose (we will assume) to forego fulltime paid employment in order to care for children, the aged or the infirm. The problem is that as they have chosen to do this, then any subsequent inequality in their condition would appear to be permissible according to luck egalitarians. This problem is exacerbated by many caretakers not being merely worse off in material terms, but almost invariably dependent, and vulnerable because of that, on state welfare provisions or other wage earners. But surely, the argument goes, an egalitarian ought to decry a situation where those who care for others are placed in circumstances where they are vulnerable because of their dependence on others and poorly off. We are all born needing care, require care at many other times during our lives, and often live our final days needing care. A principle that suggests it may be permissible for carers to be worse off than others appears to permit injustice. To cite people's choices as legitimating such situations appears not only irrelevant but almost perverse as it ignores the social structures and attitudes that bring about these situations.

Stemplowska adds that there are many other cases which have this structure and gives as an example the case of a homosexual who chooses to live an openly homosexual life and is consequently subject to homophobic abuse. Such treatment is unjust no matter that it was a foreseeable consequence of choice. To this we could also add cases where people are significantly worse off as a result of choices to aid those in need of rescue. Imagine the rescuer of a drowning child getting pneumonia because of the cold water and being off work for months while he recovers, but having no claim to assistance himself because he chose to help the drowning child. The educational context offers us a setting where it is not clear why the choices of children should have much relevance at all to what is just as an adult. A youthful Jimmy chooses to skip a few classes, does poorly in some tests, gets discouraged and chooses to skip more classes. He eventually leaves school with few skills, few prospects and a negative attitude to learning. The adult Jimmy is poorly off, allegedly, due to his poor choices as a child. But it is far from obvious why we should believe that the ill thought out choices of a child can legitimate the substantial inequalities of the adult world. This sort of claim can only look facile when we consider the array of social forces and the social

113

circumstances within which a child make its choices and which to a substantial degree shape those choices and the world into which the child arrives as an adult. As Stemplowska points out, choice just seems irrelevant to justice in cases like these.

There are many cases like these where claims about the permissibility of inequalities for which people are, at least partly, responsible appear wrong or irrelevant. To such cases a luck egalitarian can only agree that choice is not what is of most moral salience. However, this does not mean that all, or even a majority, of inequalities are like this. Such cases, I will repeatedly urge, suggest rather that there are limits on what choice can legitimate, limits that require much more careful consideration. They also serve as a reminder that there are some injustices that have little to do with egalitarian distributive justice. Being subject to homophobic abuse may have distributive consequences, but it is not strictly a matter of *distributive* injustice. Not all injustice is distributive in nature or an affront to equality. Luck egalitarianism is a theory of distributive justice and makes no claim to exhausting what is required as a matter of justice all things considered, or of morality, all things considered.

A somewhat political point is now called for. The foregoing has invested much more in trying to motivate a belief in the significance of choice for egalitarian justice than it has in the counter position. This may be seen as a weakness or bias in the argument. I would urge though, that it reflects more the difficulties that left-leaning egalitarians may have with accepting the, frequently, right-wing arguments for choice and responsibility. Egalitarians, social theorists, critics of the status quo and left-wing thinkers in general may well think it obvious that the social systems and cultural forces that an agent acts within are such that choice is often swamped as a major influence on outcomes. From this they may conclude, falsely, that choice has at best only marginal significance. It can seem so blindingly obvious that injustice is sometimes to do with social structures and social norms that it is very easy to dismiss other perspectives.

There are certainly a great many cases of injustice which are unjust despite even genuine and deliberate choice being present and a good egalitarian theory should not suggest otherwise. Luck egalitarians should clearly, and without embarrassment, acknowledge this. But it would be a mistake to ignore intuitions and cases which suggest that choice does have moral significance. Many have strong intuitions about the significance of choice and this datum needs to be accounted for. This is not to suggest that principles of justice can be settled by majority vote, but that it is an error to dismiss this as just so many mistaken individuals arguing out of self-interest and trying to rationalize the injustices of the status quo, although no doubt this is sometimes true. The point that is being emphasised is that from the counter examples it does not follow that choice is never relevant or even relatively insignificant for distributive justice, just as it does not follow from the other side that choice is always relevant. What this perhaps shows is that we have not quite got the theory right.

114

Reflective equilibrium involves us in altering our principles in line with our considered judgements, and also to review those judgements in line with well-considered principles. Egalitarians are typically of the left and can be intensely uncomfortable with the ideas of choice and responsibility which have become so much a part of right wing rhetoric. But liberal and left-leaning thinkers are risking error if they ignore the fact that many people, often from the right, have genuine and strong intuitions about the moral significance of choice and responsibility. It is also possible that the project to incorporate choice within an egalitarian theory may ultimately undermine the conservative/libertarian position by delineating more clearly what inequalities choice can, and what it cannot, legitimate.

It might be suggested that our choices are culturally conditioned or socially constructed and as such are of little moral significance. This would be an intemperate position to take. We can consciously and deliberately endorse the cultural influences on our choices, or not. But most importantly, it simply stretches credibility to think that culture negates a person's agency or that it renders it improper to ever hold people responsible for outcomes which flow from their choices. It is far more plausible that persons are at least sometimes, and in some circumstances, properly held responsible for some of their choices in an inequality permitting way. Whatever we choose is always within some sort of cultural environment, this is banally true. However, it does not follow from this that choice can never be of moral significance. In fact it would be very foolish for a person to make choices that are not sensitive to and responsive to the cultural and social environment within which they are situated. Other background conditions than just culture will influence judgements as to whether a person's choices are such that they can properly be held responsible for them. Most importantly, perhaps, is whether agents are making choices from positions of relative equality. A preliminary conclusion here should not be that choice and responsibility are not of moral significance, but rather, their significance is to some extent context dependent. The background conditions to a person's choices make a big difference as to whether they are fairly held responsible for the consequences of their choices or not.

The formulation of a theory of distributive justice that makes use of choice is often cited as a great strength of luck egalitarianism, and can probably be credited to Ronald Dworkin in the first instance. It has been said that he has "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"(Cohen, 1989, p. 933). It is a service because its incorporation prompts a critical examination of choice and responsibility; luck egalitarianism asks when responsibility can properly be attributed and used to justify unequal consequences, and when it cannot. In so doing, many of the claims of conservatives and libertarians about responsibility are being eroded (Knight and Stemplowska, 2011). Luck egalitarian interest in choice and responsibility would certainly be suspect if it was used in

the same sorts of ways these groups tend to use them. This chapter is partly about showing this is not the case. Rather than dismissing the views of those who trumpet choice and personal responsibility, it may ultimately prove to be better to work on developing a more fine-grained approach to their claims. Luck egalitarianism is thus partly a response to the political successes of neoliberalism and the arguments of libertarians such as Nozick. The move by luck egalitarians to harness the moral significance of choice is clearly not, however, an unalloyed blessing and often meets with hot resistance from those more accustomed to critiquing its place within capitalism, libertarianism, neoliberalism and similar creeds. There are many difficulties with incorporating choice and responsibility within an egalitarian framework, and it is certainly proving to be a difficult and contentious part of the luck egalitarian project. But it is also clear that any thoughtful account of distributive justice cannot ignore them. The intuition that agents should sometimes be held responsible for the consequences of some of their choices is very powerful.

I turn now to the consideration of a strong argument against the significance of choice and responsibility for distributive justice.

The limits of choice and responsibility

This section is a fuller response to the powerful critique of Elizabeth Anderson's (1999) that I only sketched a quick reply to in the last section. Her critique compellingly calls into question the place of choice within an egalitarian theory of distributive justice. Egalitarians assert that equality is the fundamental virtue of a justly governed, fair society and that unjustified inequalities are morally objectionable. But Anderson argues that luck egalitarianism has consequences which are morally objectionable, at odds with its intention to articulate what justice requires. In essence, she challenges the claim that it is not unjust for people to bear the costs of their choices; that we can view with equanimity any outcome that is the result of a person's free choice. Anderson's work has had a substantial impact on egalitarian thinking. It is a subtle and valuable contribution and there is a great deal to agree with. My approach is going to be to accept with her that luck egalitarians cannot regard the abandonment of anyone to an extreme outcome as legitimate. But unlike her, I will conclude that the appropriate luck egalitarian response is to clarify, or modify depending on one's point of view, the claim that outcomes which are the result of a person's voluntary choices are always permissible, from the standpoint of justice. Instead, our understanding of what it is to treat people as equals must include some notion of a minimum standard of well-being below which no one may be allowed to fall. It should not be thought therefore that luck egalitarianism need have any commitment to holding people accountable for the full cost of all their choices, under any circumstances, or indeed, allowing them to enjoy the full benefits of all their choices, under any circumstances. I will argue too that the extent to

which we can view the outcomes of people's choices as morally unobjectionable, using a criterion of responsibility, is smaller than what some luck egalitarians may have been prepared to countenance.

A presupposition in what follows, because Anderson is also an egalitarian, is that we can take it as a given that equality, in some metric such as well-being, must pertain. So I am going to take luck egalitarianism as holding that justice requires distributive equality between persons and that choice functions to tell us when differences in well-being are permissible. Anderson calls into question the part about choice by arguing that individuals could end up in situations which are the outcome of their free choices and which we ought to regard as unjust.

Anderson's objections

Anderson argues that luck egalitarianism fails to express equal respect and concern for all citizens in three main ways. The first is that luck egalitarianism is unduly harsh on those who suffer from bad option luck. That is, it is unduly harsh on those whose deliberate and voluntary choices, choices they could have avoided, turn out badly. Anderson claims that luck egalitarianism involves the negligent, imprudent, risk-taking and caring being left destitute, or worse, by the consequences of their choices and this lamentable result can only be escaped at the cost of paternalism. Secondly, that the claims which the victims of bad brute luck (when they can be correctly identified) have on others are based on stigmatising and disrespectful judgments of inferiority and that luck egalitarianism thus expresses 'contemptuous pity' for them. And thirdly, in emphasising the importance of personal responsibility, it "makes demeaning and intrusive judgments of people's capacities to exercise responsibility" (2007, p.289). I focus here on her first objection. I consider it the one that most seriously threatens the luck egalitarian account of justice as it highlights acute problems with the part played by personal responsibility in luck egalitarianism. I will argue that it is partially successful, but that luck egalitarianism is not dealt a fatal blow by this because it can accept, without any incoherence, that there are limitations on the capacity of responsibility to legitimate inequalities.

Anderson's first objection then, is that luck egalitarianism may involve the abandonment of those who are negligent, imprudent, risk-taking or willing to care for others to states of destitution, (or in some cases death), if this is the result of choices they have freely made that turn sour. The abandonment must arise because, as Anderson sees it, the luck egalitarian cannot justify a safety net for the victims of bad luck[42], only paternalistic reasons

---

[42] By which she means bad option luck, a distinction discussed earlier in chapter 3. Most of her concerns are to do with bad option luck as such bad luck is avoidable or able to be mitigated by choices of the individual.

could do this, according to her, and such reasons are deemed illegitimate as they lie outside the sphere of egalitarian justice. But, "justice does not permit the exploitation or abandonment of anyone, even the imprudent" (p. 298). Shlomi Segall (2007) terms this the *abandonment objection* and defends luck egalitarianism by appealing to values outside the sphere of egalitarian justice. But this strategy is self defeating. To be viable as a theory of distributive justice, luck egalitarianism should be able to stand substantially without recourse to other values. The abandonment objection gains its force because it is difficult to disagree with Anderson's claim that it is not only unjust to abandon anyone to a state of destitution or worse, but that this is also fundamentally inegalitarian. If luck egalitarianism is to be an adequate account of distributive justice, it must be able to account for why we ought not to abandon those who are brought desperately low, even though due to their own voluntary choices, while holding that choice can permit some inequality.

There are, at least, five strategies that we could use to counter the abandonment objection. Firstly, it could simply be denied that it is unjust to abandon someone to their fate, if they bear responsibility for the situation they find themselves in. It is just that people should bear the full costs of their voluntary choices and we have no obligation to save them, as a matter of justice. Secondly, that luck egalitarianism need not entail abandonment, but does require holding people responsible for the full (financial) cost of their choices. Thirdly, we have good paternalistic reasons for preventing people from sliding into self-inflicted destitution which luck egalitarianism can legitimately employ to counter the abandonment objection. Fourthly, that justice involves a plurality of values, or there are other important moral values outside the sphere of justice, and the force of these other values sometimes trumps the principles of luck egalitarianism. Thus, we ought not to abandon the imprudent, but not because of reasons of equality or even, perhaps, as a matter of justice. Fifthly, that luck egalitarianism does not in fact entail abandoning anyone to destitution as a matter of justice and need not be committed to holding people accountable for the *full* costs of all their choices, under any circumstances. It is consistent with equality, and the fundamental claims of luck egalitarianism, that people ought sometimes to bear only part of the cost of their choices (or enjoy only part of the benefits). I argue that the first four strategies are unsuccessful and that only the fifth strategy can satisfactorily explain why we ought not to abandon someone, while nevertheless still holding that responsibility can legitimate some differences in people's situations. My main focus will be on the first and fifth strategies and I give brief reasons for why I do not believe the others can be successful.

The denial strategy

It is open to luck egalitarians as a first move, to simply deny that it is unjust to abandon someone to their fate, bleak as it is, if this is the result of actions, choices or decisions for

which they are responsible. That is, their situation was avoidable, foreseeable, they possessed full relevant information and they could at little cost have taken steps that would mitigate any negative outcomes, but freely chose not to. Those who make poor choices can have no claim on others as a matter of justice. So, the negligent driver Anderson discusses – let's call him Ayrton – suffers a nasty road accident. It was the result of his own poor driving and he requires costly surgery to save his life. This he cannot afford as he is uninsured. We take it that Ayrton's decision to have no insurance was freely made and he was in full possession of all the relevant information and had the opportunity to take out appropriate insurance. As this is a matter of a calculated choice turning out badly, bad option luck, Ayrton is owed nothing by way of resources, as a matter of justice. There is a difference, so the argument goes, between something being a bad state of affairs and something being an unjust state of affairs. It is certainly bad, tragic even if Ayrton has to be abandoned and left dying or destitute, but this need not mean it is also unjust.

The denial strategy need not claim that we have no duty to aid someone in need, but only that we have no obligation of justice to compensate them in any way for their predicament. We can offer them comfort and sympathy in their plight, but we need feel no obligation to relieve them of responsibility for the costs they may incur. Practical considerations may mean that initial care is given to Ayrton until such time as his insurance or financial situation can be ascertained, but if it transpires that he cannot meet the cost of his care we are justified in subsequently pulling the plug on his life support systems; although considerations other than those of justice, say compassion or benevolence, may prevent this. The point is however, that he is not owed aid as a matter of justice. We treat him with equal concern by taking seriously his choices of how to live his life; but we have no obligation to bear the cost of his choices. This seems to essentially be Eric Rakowski's (1991) position. It is a hard-line position, which Anderson acknowledges, but can seem to follow from the luck egalitarian position on responsibility.

I do not believe that this position is tenable however, as it is implausibly harsh. Marc Fleurbaey (Fleurbaey, 1995) discusses a very similar case of Bert, a negligent, non-helmet-wearing motorbike rider. He points out how counterintuitive it is that "if you freely and deliberately make the slightest mistake that can put you in a very hazardous situation, a society complying with [luck egalitarianism] will quietly let you die" (p.40). If we accept this, it appears that in such cases responsibility is not what matters in assessing the permissibility of an outcome; but also the amount of loss of well-being and the size of the resulting inequality. This appears to place a limit on the cost, and suffering, someone should have to bear as a result of their behaviour, no matter how negligent or imprudent they may have been. Fleurbaey also argues that it cannot be the case that it can be left to charity for the transfer of resources in such a situation as "it is obviously a matter of egalitarian distributive

119

justice that the satisfaction of basic needs should be given priority in the distribution of resources" (p.41). This suggests that the luck egalitarian account is not complete, or at least fully articulated, as some place must be found for the relevance of need to distributive justice. Need is one factor that places a limit on one extreme of the amount of inequality that responsibility can justify.

There is a further factor we are being alerted to in considering the justice of abandonment. Rakowski tells us that responsible agents "deserve better or worse as the result of their choices" (1991, p.41). The case of the negligent driver seems to provide a situation where there is a lack of connection between the choice made and what is deserved. No one seems to deserve such a fatal outcome as a consequence of an imprudent decision. We have a sense that there should be some proportionality between an act and its cost, or reward. The driver is certainly responsible for his situation, but doesn't necessarily deserve it. Losing a finger or leg may be deserved. It may be fair that some cost be imposed for the ambulance and hospital care, but that the driver should lose his life or be left hopelessly impoverished because the care he needs is prohibitively expensive for him seems disproportionately harsh, and also a matter of bad brute luck. Richard Arneson also makes this point. He states that in such a case "the 'punishment' the individual suffers is disproportionate to her 'crime', and distributive justice must be interpreted to require further provision of aid" (Arneson, 2002, p. 371).

It could be objected that we are just swapping intuitions; some might argue they don't share the intuition that abandonment is unduly harsh. Further reasons are therefore required to support the contention that abandonment is unjustly harsh. Consider what we think a cold-blooded, guilty-as-sin murderer deserves. There are many who do not think a death sentence appropriate for a murderer. A long period of incarceration certainly, perhaps even a life sentence would be many people's judgement. Many do not consider a death sentence fitting, even for the vilest criminal. But let us accept for now, that if anyone deserves a death sentence, it is a murderer who has acted in a premeditated and deliberate fashion. How then can the luck egalitarian credibly hold that someone who has not bought an insurance policy and negligently has an accident (but hurts no one other than himself) deserves to be left to die? This is simply implausibly harsh. To hold the uninsured and murderers as equally deserving of death does not cohere with our intuitions about desert, and is frankly bizarre.

The account of responsibility for the consequences of our choices that is being traded on here seems to be not just based upon the concern to limit the extent of the claims that others can have against us, but also to reflect the idea that responsibility is correlated with, or necessary, for desert. Desert is often held to be fundamental to principles of justice; justice is often characterized as a matter of ensuring that one gets ones dues. Now it may be

120

true that responsibility is necessary for desert, but it does not seem to be the full story of desert, as the abandonment objection brings out. Some degree of proportionality seems also to be required, implying perhaps that responsibility might be a necessary, but not sufficient condition, for holding that someone ought to bear the full costs of the consequences of their choices. I will say more about this later, but for now I just want to signal that the abandonment objection seems to raise a question for luck egalitarianism about the role played by desert in a theory of distributive justice and the relationship between responsibility and desert.

One objection to the argument then could be that luck egalitarianism is not a desert-based theory of justice, and it is therefore illegitimate to invoke desert when considering the justice of outcomes. People do not necessarily get what they deserve under luck egalitarianism. So luck egalitarians could say, without contradiction, that although Ayrton may certainly not deserve his fate, nevertheless, because this is the result of his freely-made choices, he is not entitled to any compensation as a matter of justice.

I have already argued (in chapter 2) that luck egalitarianism is not, or should not be, a desert-based theory of justice, and I will argue shortly that the conflation of responsibility and desert is also a mistake.[43] But the point here can be re-framed so that it does not rely on desert for its force. It can be countered that degree of responsibility can justify differences in the outcomes someone ought to bear, but that even without this there ought to be some relationship between the circumstances of a choice and the cost to those whom fortune, albeit courted fortune, does not favour. There is a morally relevant difference between someone who freely commits a crime with the purpose of harming another and someone who takes an imprudent risk that results in a similar outcome. In the one case a criminal is being punished for a wrong committed, but in the other case we seem to be abandoning the negligent driver to a similar fate because of a bad gamble over insurance. As Anderson argues, this is not according the imprudent or negligent equal concern and respect and to the extent that their fate is also a matter of bad luck, this ought to matter to luck egalitarians.

It could be doggedly repeated that if this is how things turn out as a result of freely made choices from an initial position of equal resources, then the outcome, regrettable as it may be, is not unjust. But this looks strained. It is hard to see how responsibility alone can mandate abandoning someone to death or destitution as these are such extreme examples of a life going badly that the egalitarian cannot view them with equanimity, while

---

[43] The conflation was apparent in the previously quoted statement from Rakowski that responsible agents "deserve better or worse as the result of their choices" (1991, p.41).

simultaneously maintaining an equal regard for the importance of each life. It is also hard to see though, why it should be thought that it is irrelevant to luck egalitarians what the outcomes of choices actually are. It similarly stretches credibility to assert that luck egalitarians should think that responsibility can justify *any* outcome, that choice permits *any* outcome. That seems arbitrary and makes the outcomes of choices that turn sour look too much like just plain bad brute luck. When it becomes difficult to see much difference between the unlucky outcomes of imprudent choices and just plain bad luck, and when the outcomes of imprudent choices are so severe, then it seems perverse to insist that those outcomes are not unjust and that responsibility must be borne for the outcomes of all choices made. It is therefore a stretch to think that luck egalitarians should accept as permissible any outcomes of any choices and luck egalitarians should not let themselves be painted in this corner. As I said before in my initial response to the abandonment objection, there is no good reason for thinking that luck egalitarians are obliged to accept the far-fetched view that choice licences unlimited inequality, and I would be surprised if any did. Even in the paradigm case of a freely chosen gamble, we do not consider that the fact that someone has freely chosen to gamble justifies any outcome, hence the prohibitions on Russian roulette and any number of other reckless choices that some may make. Some outcomes are so extreme that it does not accord with showing someone equal concern and respect that the exercise of choice can make their dire situation permissible.

So I will take it that many luck egalitarians will agree with Anderson's intuition that it is at least bad, if not unjust, to abandon someone to a miserable fate, even if they bear some responsibility for it themselves. Severe outcomes such as destitution and risk of death do seem to provide a sufficiently compelling reason for a claim on others, no matter their provenance. I believe the underlying reason for this is the fundamental egalitarian one of the equal importance of all human lives. Abandoning someone to destitution or death seems to go against the idea of according everyone equal consideration of their interests; it seems to be the abandonment of considering at all that person's interests or not giving their interests due weight. The needs of someone in a situation of destitution or urgent medical need have a moral urgency that demands that aid not be denied them, even if they could have avoided that situation. If each life is of equal moral worth then this would appear to generate an obligation to go to the aid of someone in a hazardous situation, just as we would hope that someone would aid us if we were similarly placed. Now the duty to give aid seems to have its origin in an egalitarian concern for the equal worth of each person and although the giving of aid as such may not come under the sphere of distributive justice it will if the aid involved requires resources. Such considerations, it seems to me, tell against the possibility of abandonment for the egalitarian. Many luck egalitarians will agree with this conclusion, that it is bad to not offer aid, but perhaps will not agree with the further

claim that it is as well unjust. So I still need to establish why the abandonment objection does generate demands of justice and why calling on other values cannot bail the luck egalitarian out. I will pursue this shortly.

Some, like Rakowski, would probably not advocate abandonment, but would claim such cases to be matters for charity or for paternalistic interventions and not matters of distributive justice. But this is a weak response as the egalitarian ought to be concerned to provide aid to those who are in need and this has distributive implications. To reject the denial strategy is therefore to accept the force of Anderson's objection that there must be something unjust for egalitarians in allowing anyone to fall into a state of destitution for any reason. I don't think the situation of those like Seventh Day Adventists, who reject blood transfusions, and who most would accept, reluctantly and with reservations about the genuineness of choice, may legitimately be abandoned, tells against this conclusion. The difference is that someone in a destitute state has not explicitly chosen this situation or their abandonment, although it was a foreseeable consequence of their choices. Seventh Day Adventist are explicit in asking to be abandoned and the explicitness of their choice seems to justify our honouring it, although we deny they have the right to make such choices for their children. Further, our obligation is to offer help to all as befits the equal moral status of all, but this does not mean that aid has to be accepted. If aid is explicitly declined, this would not constitute a case of abandonment.

This leaves us with some difficulties, as well as some hints, as to the possible shape of a solution. One difficulty is the fact that we have other powerful reasons for not endorsing a laissez-faire approach to bailing people out. If we do, we may take away incentives for prudent decision making and set up the possibility of moral hazard. If people know they are to be bailed out if their choices go wrong, they have no incentive to insure against it and this would be unsustainable. In other words, there must be a place for responsibility. This can also be seen if we consider a case where two people, one insured and the other uninsured, but otherwise equally situated, are injured and require costly medical help. Unfortunately, we only have the resources to save one of them. In such a case I don't believe it would be morally irrelevant, or morally objectionable, to distinguish between them on the basis of their insurance status. The one who has the insurance seems to have a stronger claim to the resources; the exercise of choice has created an obligation and justification for treating them differently. Responsibility is relevant to justice, but the extent to which someone can be held responsible must be limited and the limitation can be related to need and may perhaps reflect some degree of desert.

In rejecting abandonment as permissible, I am not claiming that it is just that the prudent are called upon to compensate for someone else's poor choice. On the contrary, it is unjust for others to bear the costs of Ayrton's imprudence and negligence. However, it would be a

123

greater injustice to abandon him and this outweighs the lesser injustice of the added costs to the prudent. If the cost of aid was such as to place others in a miserable state, then reconsideration of whether to abandon may well be called for.

Full costs, paternalism and values pluralism

The argument could go something like this: of course we have a duty to give aid to those in dire straits; it is not permissible to abandon anyone to die or live below a certain threshold that means their life goes very badly. It may be a moot point whether this is as a matter of justice or not, but this need not prevent us from subsequently charging people for the cost of that aid. If they are responsible for their perilous position by, for example, not taking out the insurance that could have covered their hospital care, lost job or destroyed house, then they have a legitimate claim on others for immediate emergency aid. But they cannot legitimately expect others to cover the costs of such aid, at least in the financial sense, and so we are justified in demanding subsequent repayment. I will argue more shortly for why I believe the duty to give aid in such cases is a matter of justice and give now one, brief, reason why I believe this strategy will not ultimately succeed.

This sort of response acknowledges we cannot leave people to suffer but can still hold them responsible for the outcome of their choices. But in some cases the cost of the aid may be so great that saddling them with a bill may still effectively leave them destitute and with poor prospects of ever getting out of serious debt. Therefore I believe that such a strategy will not in practice always avoid the abandonment objection and I will not, therefore, pursue it further here. Later I will, however, argue that the imposition of some cost may be justified, but not necessarily the full cost.

The third, paternalist based, defence of luck egalitarianism amounts to acknowledging the unacceptability of abandonment, on whatever grounds, and arguing that luck egalitarians ought therefore to advocate that things like medical and social security insurance ought to be mandatory, or a basic responsibility of government, paid for out of taxation. This involves some restriction on individual freedom, but is preferable to abandoning people and leaving them as burdens on the charity and good will of the prudent. It also appeals to notions of common citizenship and community and could be seen to arise from what person's might well want from behind a Rawlsian veil of ignorance. It is an appealing line of argument, and one which many countries practice to a greater or lesser to degree. Dworkin and Rakowski both see this option as feasible, but Anderson argues that it involves an unacceptably large restriction on freedom. She contrasts it with the minimal restriction that paternalistic legislation such as seat belt laws involves. It lies well beyond the scope of this work to investigate paternalism so I will, for the sake of argument, agree

with Anderson that this defence is illegitimate. But luck egalitarianism should also be defensible on its own egalitarian grounds. I also note that a paternalist defence may well involve appealing to values outside equality and can, perhaps, therefore be viewed as a variant of the next strategy.

So the fourth, and a common line of argument for defenders of luck egalitarianism, is to appeal to the plurality of values and call on values outside equality. This is the approach Segall (2007) takes in arguing that the value of *solidarity* gives us reason not to abandon the imprudent. Other commonly cited values are compassion, benevolence and charity. The argument here is that abandonment is not unjust, but it is morally wrong. We do, however, have good reasons aside from those of justice, for example a duty of benevolence, to aid those in need. So luck egalitarianism clarifies our moral thinking, by showing that the aid we owe the imprudent is not a matter of justice, but a consequence of these other moral obligations we have.

I think this approach has some considerable appeal and is often the right argument to pursue. There is no reason to believe that luck egalitarianism is the whole of justice, let alone the whole of what we are morally required to do. Modesty of scope and intent is not necessarily a bad thing. Nonetheless, I'm not going to argue for it, as I believe the sort of cases we are discussing are ones where it is a matter of justice, and that it is ultimately self defeating for egalitarians to appeal to other values in such cases. I do not deny that justice, and morality, are broader than the demands of distributive justice and that there can be cases where other moral considerations may have a bearing on how resources ought to be distributed. However, I do not think this is one of those cases. It does luck egalitarianism no good if it needs to call on other values in order to clarify what is required in a situation which has distributive implications. In such circumstances an adequate theory of distributive justice should be able to account for why we ought to direct resources to the imprudent, without appealing to other values. If luck egalitarianism needs to call on other values to argue against abandonment, it starts to look an ad hoc theory with patches applied to cover up flaws.

So the abandonment objection raises questions of justice for luck egalitarianism that cannot be avoided by calling on other values. Firstly, Ayrton's case - and those similar ones which Anderson discusses - challenges us to consider what is owed a fellow citizen who makes a choice that turns out badly. Questions of what we owe our fellow citizens, qua citizens, are generally ones of justice; and it is implausible to claim that the imprudence of a citizen alters this significantly. We are all prone to negligence and imprudence. The principles of luck egalitarianism suggest to some that such people ought to be abandoned; but I have argued this is untenable. There is a lack of clarity in the luck/choice principle, rather than a clash of values. Secondly, the abandonment objection applies to cases where

125

goods are denied people as a consequence of their behaviour. Situations involving the distribution of goods are generally ones where principles of distributive justice will apply and I see no reason to think differently here. Lastly, we are not looking at cases where we are asked to consider how we as individuals ought to behave as a matter of personal morality. We should not be misled by the fact that we often look at cases involving individuals, such as Fred and Roger, into believing that we are investigating questions of individual moral responsibility. The cases are meant to elucidate how we as a collective, as a society, and, more importantly, how governments ought to respond to those who *may* seem responsible for their disadvantage. We are considering whether governments can abandon someone and regard their poverty as of no concern, as a matter of justice. It seems highly implausible to me that a government can allow any of its citizens to be abandoned to death or destitution, if this can be avoided. What a government owes its citizens is determined by principles of justice and is not a matter of charity or benevolence, as it might be if we were looking at the actions of individual citizens. One view of justice is that it is concerned with the ways in which a government must treat its citizens and abandonment seems to be a case where equal concern and respect is not being accorded each citizen. The solution to the abandonment objection must therefore lie within the principles of luck egalitarianism – if it is to be a viable theory of distributive justice.

An egalitarian defence

The argument here is that luck egalitarianism need not imply abandonment, and need not call on values other than equality to imply this. It does involve restrictions on the extent to which differences in well-being can be validated by the responsible choices of agents though, but still holds that, in principle, inequalities that arise from the genuine exercise of choice are permissible. Luck egalitarians need not be committed to requiring a person to bear the *full market* cost of her choices. There is a limit on the extent to which one person can be worse off than another beyond which the exercise of choice does not sanction. The argument for this is a cumulative one, building on points already raised.

It is apparent that responsibility admits of degrees and we have seen that we have good reason to be unsure about the degree of responsibility someone can have for a choice or action. Therefore we may doubt how sufficient responsibility is, as a justification, for believing that it may be permissible to abandon someone to the consequences of bad choices. Consequently, holding someone liable to bear the full costs, or allowing them to enjoy the full benefits, of their choices will often be unjust. Cohen writes; "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 a wholly

126

due to genuine choice" (1989, p.934, his emphasis). This point does not hinge on the question of free will and whether responsibility is ultimately possible or not.[44] It is enough for egalitarians that notions of responsibility (and desert) are sufficiently ubiquitous in our everyday conceptions, practices, and judgments – our social norms – that account needs to be taken of it. Arneson makes the point that whether responsibility is intrinsically important or not, it is sufficiently instrumentally important to warrant its place within a theory of justice. Even if we believe that no one is ever truly responsible for anything, or deserving of anything, our "common-sense assignments of responsibility and desert would survive as instruments for achieving uncontroversial goods" (2007, p.267). In our everyday thinking and practices our belief that agents can be properly held responsible for at least some of their behaviour is so strong, that no theory of justice can ignore it, even if free will is metaphysically suspect. Furthermore, it would be an unrealistic assessment of human psychology, at least as it currently is, to believe that people can do without the motivations provided by praise and blame, differential rewards, the fear of failure, the belief that our lives are, at least to some extent, under our control, and the strong feeling that we do actually bear some responsibility for how our lives go. Qualities such as acquisitiveness and competitiveness, the desire for status and parents wishing to promote the welfare of their children are aspects of our nature that the egalitarian cannot ignore, regrettable as some of them may be.[45] Whatever the metaphysical status of responsibility may be, we still need to take sufficient account of it.

Granted then the importance of responsibility for an adequate theory of distributive justice, it is nevertheless clear that its legitimating force for outcomes must be limited. It is a common observation that it is impossible to determine of any one choice or act, exactly how responsible for it we are, when almost everything involves factors beyond our control. Even on the assumption that free will exists, there will be causal forces beyond our control affecting our choices. Those things commonly taken as examples of brute luck – our natural abilities and the social circumstances we are born into – clearly impact on our choices as do our tastes, preferences and temperament. There is disagreement about whether we should be held responsible for our tastes and preferences. Dworkin argues that we should if we identify with them, but Cohen says we ought not to be if they are unchosen. Whatever the result of this particular debate, it is evident that very few, if any, choices are entirely a matter of an agent's volition alone. Arneson calls this the *entanglement problem* and sums it up this way;

---

[44] This claim is defended in the next chapter.
[45] Nagel (1991, p.92-93) makes similar points.

127

the factors that influence choice that are entirely beyond the agent's power to control and for which she cannot reasonably assume responsibility and the residual factors that are reasonably imputable to the agent are inextricably tangled. We do not in principle know how to separate them, but even if we did, in practical terms the extent to which I am genuinely responsible for a given choice I make or inadvertent failure to attend is impossible to measure (2007, p.265)

The entanglement problem means that for any instance of choice for an agent, there will be tangled up in it factors for which the agent cannot justifiably be held responsible. This means that degree of responsibility is always in doubt, both in principle and in practice. We can never be certain that someone is entirely responsible or even if this coherent.

This problem perhaps motivated John Roemer (Roemer, 1994) to draw a distinction between responsibility and accountability.[46] He defines holding a person accountable for an action as meaning that they should pay for it and must accept the consequences of such an action. When it is appropriate to hold someone accountable for their behaviour, then we have no reason to adjust any consequences of that behaviour. In general, according to Roemer, a person can be held accountable for some behaviour only if they are responsible for it. But, the converse is not necessarily true; responsibility does not necessarily entail accountability. He gives the example of an adolescent who has a poor attendance record at school. The student is certainly *responsible* for her poor attendance record, as she chose to bunk classes frequently, but Roemer argues that, nevertheless, we need not hold her *accountable* for it if her behaviour is explained, to some extent, by her circumstances, those unchosen aspects of her situation. It follows from this that we therefore ought to limit the *extent* of differences in people's situations resulting from the exercise of choice, as the *extent* of responsibility, whether someone is genuinely accountable or not, will always be uncertain.

It may be objected that this only holds if we are uncertain about the degree of responsibility. If we are certain of someone's responsibility, then whatever outcomes ensue are permissible. But the claim is stronger than that. The entanglement problem is precisely that we can never, both in theory and in practise, be certain of someone's degree of responsibility.

To give one example of how this is pertinent to the case of the negligent driver, Ayrton, consider how the choice of whether to take out insurance or not will partly be a result of how risk adverse someone is. Now whether we identify with our risk aversiveness or not,

---

[46] There is much in Roemer's discussion that mirrors points made in chapter 2. There I discussed attributive versus substantive responsibility (Scanlon), causal versus consequential responsibility (Dworkin) and agent versus consequential responsibility (Knight and Stemplowska).

and to that extent can arguably be held responsible for it as Dworkin maintains, it is still clearly the case that we do not consciously choose our risk aversiveness. Few people probably even reflect upon their attitude towards risk-taking, let alone identify with it. It seems largely to be a matter of unchosen temperament, whether due to environmental circumstances or genetics is irrelevant. This therefore throws into doubt the extent to which people are properly held responsible for their decisions around situations of uncertainty. Anderson uses labels such as *prudent,* for the insured, and *imprudent,* for the uninsured. But both labels are unfair to the extent that temperamental predispositions to take or avoid risk may underwrite those choices (and also to the extent that they seem to represent value judgments about risk-taking behaviour). The situation is further complicated by the fact that decisions about insurance also involve judgments about probability, an area of mathematics that people are notoriously poor at and where an individual's natural ability may well have an effect. Consider also this, a point of consequence for education. Although nothing has been said, how old do you think Ayrton is? I think many will probably picture Ayrton as a young male. This group is particularly prone to risk-taking behaviour, along with being cash-strapped and not that financially literate. So a person's age, something over which they have no control, will be another factor in whether they are insured or not. This gives us a solid reason for doubting the degree of responsibility of our negligent driver; and therefore the extent to which he should have to bear the full costs of his choice.

It may be countered that Dworkin's hypothetical insurance scheme can in practice avoid this problem. We just average out people's preferences for what they want to insure against, in line with their conceptions of the sort of lives they wish to lead, and realize this in a taxation scheme. I am uncertain as to whether this really avoids the entanglement problem, as it relies on some assessment of people's preferences. Although people may generally identify with their preferences as being partly constitutive of who they are, I would suggest, following Cohen, that there is a question about the status of unchosen, as opposed to cultivated preferences; and why we should consider these any less a matter of brute luck than a person's talents. In particular, adapted preferences present a grave difficulty for believing that someone is exercising genuine choice.

Fleurbaey furnishes us with another reason for limiting the scope of responsibility. He invites us to imagine that after his accident Bert the bikie understands the folly of his previous behaviour. Call this newly enlightened individual Bert II to distinguish him from the blithely negligent Bert I. If Bert II could go back in time he would amend his driving and helmet wearing behaviour. Fleurbaey asks us to consider whether Bert II should therefore have to bear all the consequences of Bert I's decisions. We need to reflect whether it is right that someone should be condemned for the rest of their life for decisions they make now and whether this shows equal concern to each person. Fleurbaey argues that "a human

being is in a constant process of evolution and education"(1995, p.42) and that even though Bert II may still be responsible for what Bert I did, it is not obvious that Bert II should pay the cost for something he would not now do. The fact that people change over time, can revise their preferences and conceptions of the good, "dilutes the moral responsibility for (their) actions over time" (p.42), and justifies us taking this into account when formulating principles of justice. Showing equal concern and holding that each life is of equal moral status must involve a realistic understanding of human nature. It seems too lofty and unforgiving a view of human nature to not take into account the fact that people are fallible and make poor choices, often under conditions of uncertainty that they might well wish did not pertain. A view that always holds people fully accountable for their putatively free choices therefore seems to have an impossibly high-minded conception of the importance and reality of most people's autonomy. It does not show equal care and concern to not allow for the possibility of sometimes catastrophic errors in judgement. While we often give people second chances out of compassion, justice also requires that account be taken of human fallibility. Justice is a practical endeavour ultimately and needs to take account of the realities of human nature. So the luck egalitarian account of responsibility needs to be sensitive to the fact that people can and do change over time, they do make mistakes, and we do not in general hold them to be forever responsible, (in Roemer's sense of accountable), for their past actions.

Next I want to consider that responsibility may be seen to be connected with effort. Perhaps because the effort someone exerts may be thought to be a product of the exercise of free will. Further, responsibility may also be seen to be related to desert. The thought here is that to deserve something we need to be responsible for it – the desert-responsibility thesis (Cupit, 1996; Feldman, 1995).[47] So it might be argued that if we are responsible for the effort we make, then we deserve the consequences of our efforts. As I have already argued, luck egalitarianism ought not to be a desert-based theory of justice. But effort, desert and responsibility are often conflated so this point needs further consideration. I have previously cited Rakowski on this point, but it is not difficult to find other examples. Kymlicka writes "it is fair for individuals to have unequal shares of social goods if those inequalities are earned and deserved by the individual" (2002, p.58). Roemer is reasonably explicit about the conflation. He spells it out that individuals should be held accountable for the amount of effort they make and that people deserve reward "according to their propensity to expend effort" (1994, p.15). And of particular note here, Harry Brighouse, in one of his valuable contributions to egalitarian thinking in education, at a point where he is building the case for educational equality, says "Unequal rewards are only

---

[47] Cupit and Feldman both reject the thesis.

deserved if the candidates can reasonably be held responsible for their level of success in the competition for them" (2000, p.117, his emphasis). I am going to argue that, while there may perhaps be some correlation between these factors, the relationship is highly problematic. If we therefore think responsibility is a worthy criterion for justifying inequalities, because it is relevantly related to effort and desert, then this belief is far from secure.

Rawls pointed out that effort is a poor marker of responsibility and desert, when he gave what is essentially a version of the entanglement argument;

> it seems clear that the effort a person is willing to make is influenced by his natural abilities and skills and the alternatives open to him. The better endowed are more likely, other things equal, to strive conscientiously, and there seems to be no way to discount for their greater good fortune (1971, p.312)

There may be some aspect of an individual's effort for which she can be held responsible. It is also clear that this will be entangled with other factors that are a matter of luck for her, and as stated before when discussing the entanglement problem, it seems impossible both in principle and practice to disentangle all these factors. The ability to sustain effort, and think it worthwhile to do so, seems on reflection, to owe much more to good fortune in one's upbringing and temperament and the nature of the circumstances where effort may be required. None of this looks much under the control of the individual.

We could next observe that effort by no means automatically implies someone deserves what they diligently strive for. Consider the student who makes a commendable effort in writing an essay, but nevertheless may still not deserve an A. The student can be held responsible for her effort and is certainly worthy of praise for the effort she has made, she deserves at least that, but no amount of effort alone can justify the highest grade. One can imagine two students who make an equal effort. But it does not follow that their work is of equal quality and equally deserving of reward. If they produce work of differing quality they deserve different grades.

Susan Hurley (2003) points out that we are making tacit value judgments when we hold that effort is deserving of reward. We do this in two ways. Firstly, in holding that effort is a quality especially deserving of reward in and of itself. This may be true; effort is certainly instrumentally valuable for a society. But the view that it is intrinsically a basis of desert needs to be spelt out and defended. Secondly, there is an implication that only effort in some direction which we favour counts as deserving. We would hardly say, for example, that Hitler deserved the ends which he was pursuing, even though he expended great effort. So effort cannot be claimed to be something which we are uniquely responsible for, and effort alone does not seem to be straightforwardly related to desert.

131

And neither can desert be straightforwardly related to responsibility. If we should get what we are responsible for, because this will not be a matter of luck and we therefore deserve it, we run into the following difficulties pointed out by Hurley;

> Some can deserve his situation even though he is not responsible for it: as a matter of serendipity an unsung hero may receive a windfall that he richly deserves, or a blackguard may get his comeuppance. Conversely, someone can be responsible for his situation even though he does not deserve it: a saint may reasonably and deliberately take a calculated risk, and lose; a sinner may do the same, and win (2003, p.198)

Geoffrey Cupit (1996) and Fred Feldman (1995) make similar points in arguing that desert and responsibility cannot be straight-forwardly related. Cupit credibly claims that responsibility is only relevant to desert when assigning rewards and punishments to individuals. So as distributive justice is concerned, not with rewards and punishments, but with the fair distribution of the benefits and burdens of social co-operation, then it should not be relevant what someone deserves.[48]

We also have the problem of proportionality. Desert should be proportional to the circumstances justifying it. Thus, for example, it may be claimed that the greater someone's efforts are then the greater the rewards they deserve. Or conversely, the more serious the crime, the greater the punishment they deserve. But this does not tell us how to relate desert to responsibility. The only way that it seems this could be done, is if desert is related to degree of responsibility. But this will get us nowhere, as I have already argued that degree of responsibility for any one choice is hopelessly entangled with factors which are a matter of luck for us. If it is held that responsibility can justify people bearing the full costs of their choices because it is related to effort or desert, then we see that it will, at best, only approximately achieve this, as it is only approximately related to effort or desert. I do not deny that there may be a role for effort and desert, just that this is not straightforwardly so. If it is correct that ideas of effort and desert have played a part in the luck egalitarian understanding of distributive justice, then this gives us a good reason to exercise caution when we advocate that responsibility can justify abandoning people whose choices turned out badly.

There is another subtle reason why responsibility and desert may be conflated and it is to do with being clear about the sort of responsibility that matters for distributive justice, that is, the sort of consequential responsibility discussed in chapter 2. There it was argued that this sort of responsibility is distinct from moral responsibility. Neil Levy (2011) notes Galen Strawson's point that there is an internal link between *moral responsibility* and desert,

---

[48] Note that my claim here, consistent with arguments in chapter 2, is not that desert is irrelevant to justice. It is rather that desert is irrelevant to distributive justice.

although he argues that the link is less direct than suggested. Now this may well be right, moral responsibility may well be linked to desert, but luck egalitarians are not concerned with a person's moral responsibility, but instead with the different problem of when it is fair to expect a person to have to bear the costs or enjoy the benefits of their genuine choices under suitable conditions.

A further limitation on the power of responsibility to mandate differences in people's well-being arises from the following argument, which I base on one made by Roemer (1996, p.250). Consider the case of two people, Ayrton and Rubens, who are both identically placed as regards all circumstances we care to consider, their preferences, and their talents, whatever. They are also both identically uninsured and equally negligent in their driving behaviour. Predictably enough, both have an accident of a very similar nature; coming off the road after driving too fast around a bend. However, the consequences for each are quite different. Ayrton requires very costly life-saving surgery whereas Rubens merely requires a sticking plaster on a scratch. Now as they were identically placed, have identical preferences and took identical actions, the difference in their final states appears to be a matter of brute luck. But their option luck was identical as they both freely chose to be uninsured under identical conditions and subsequently suffered an accident under identical conditions of negligence. Their final states with their different costs cannot be deserved as they are both equally (un)deserving as identical in all respects other than the consequences of their actions. In such cases it seems that the costs of a person's choices are, at least partly, a matter of brute luck and therefore the victim can legitimately be granted compensation according to the principles of luck egalitarianism. It need not be claimed that full compensation is in order, just that there are legitimate grounds for some, as yet to be determined, amount of compensation. In general, the point of this argument is that it will often be the case that any given instance of luck is likely to be a mixture of brute luck and option luck and therefore the extent to which someone ought to bear the full costs, or enjoy the full benefits, of their option luck will depend on the exact nature of the mix, which is likely to be indeterminate although rough measures may be possible. For similar reasons Kasper Lippert-Rasmussen (Lippert-Rasmussen, 2001) has also argued that the differential outcomes of option luck ought to be of concern to the egalitarian and that "precious little differential option luck-and indeed precious little inequality, whether generated by differential option luck or otherwise-would be unobjectionable from the point of view of inequality"(p.577).

It seems unlikely too that market cost is a reliable guide to the true cost of someone's choices. Dworkin claims it is appropriate "that people pay the true cost of the lives they lead" (2000, p.76). He further argues that the market cost will be the true cost as it is appropriate that "people decide what sorts of lives to pursue against a background of

information about the actual cost their choices impose on other people and hence on the total stock of resources that may fairly be used by them" (2000, p.69). The argument is that market cost will be the fair cost or true cost as it reflects the preferences and life choices of everyone and that a person's fair share of resources should be determined against the background of everyone else's competing claims. That last part seems plausible, but it is harder to see why the cost as dictated by a market will ensure a fair cost. It is fair in the sense that the preferences of everyone are taken into account, but that situation is to some extent a matter of brute luck for any individual. It is a matter of brute luck what happens to be true in any possible world about the distribution of preferences and conceptions of what constitutes a good life. In some possible worlds a taste for plovers' eggs will be cheap as such a commodity may be abundantly available. Further, as Arneson points out, the market distributes according to conditions of supply and demand and it does this with admirable efficiency; "but there is no reason to think that the economic market will shower benefits and costs on people so that each gets what she deserves according to any remotely plausible conception of desert" (2007, p.266). The market cost only gives one measure of fairness according to efficiency and the preferences of everyone, but this need not necessarily be the full story of what a fair price must be as the example of Ayrton and Rubens demonstrates. So if the consequences of someone's choices are dominated by the market cost, then we have another reason to question whether this need be the true cost or a fair cost.

Conclusion

This chapter has looked at many of the intuitions that may be operative in thinking about choice and responsibility and the way they pull us towards different ends of a continuum regarding the moral significance of choice. But we do not need to situate ourselves at one end or the other of the continuum and attempting to do so is mistaken. A more measured approach is warranted that takes account of the significance of choice and also how that significance can be undermined.

I have argued that Anderson's abandonment objection is essentially correct. No one should be abandoned to penury or death, and this is as a matter of justice. The degree to which anyone is responsible for their situation is difficult to determine in practice and in principle and, given other considerations of the human condition, responsibility seems to lack the characteristics which would enable it to render any outcome of a person's choice not unjust. We cannot therefore view any outcome of choice as non-problematic from the standpoint of justice and, in particular, those extremes which someone can suffer. However, while those who make imprudent or negligent choices should not be abandoned to destitution or death, it may still be fair to expect them to bear some cost for their choices

under some conditions. But when these costs impact on their life prospects to a significant degree, then they are owed egalitarian redress as a matter of justice. Luck egalitarianism should hold that individuals are only held responsible for their choices to the extent that they do not fall below some threshold. This threshold will be a matter of some debate, perhaps some subsistence provision that provides at least the basics of life, or something much more generous is my feeling. Of course, the corollary is that those whose choices turn out well will not be entitled to all their good fortune. I am a little hesitant about this suggestion as it sounds like a sufficiency argument and I argued in chapter 4 that luck egalitarianism is not sufficientarian. However my point is different here. It is not about whether it is equality or sufficiency that matters, but about limiting the inequality that choice can legitimate. So there is no contradiction.

Choice and responsibility have taken something of a battering in this chapter. It might be thought that I have really demonstrated Anderson's contention that choice and responsibility are of little significance for justice. So I turn now to a consideration of the values and principles that ground their moral significance to see if that can help clarify our thinking.

Chapter 6:
Choice and Responsibility II

The importance of choice

Robert Nozick wrote that "a person's shaping his life in accordance with some overall plan is his way of giving meaning to his life; only a being with the capacity to so shape his life can have or strive for meaningful life"(1974, p. 50). The capacity to shape one's life crucially involves being able to make choices. Nozick also argues that the ability to make choices is not morally arbitrary as far as moral significance and moral consequences are concerned. Luck egalitarians thus (sometimes) agree with him that if an unequal distribution has arisen from the voluntary choices of agents, then it may not be unjust, it may be permissible. But luck egalitarians and Nozick swiftly part ways on why this may be so. While Nozick holds that voluntary choice is part of a just procedure that has the property of conferring on its outcomes the imprimatur of justice, luck egalitarians argue that the significance of choice is more to do with the idea that holding people responsible for their choices is part of treating them as equals. Luck egalitarians and libertarians also differ sharply over the significance of background conditions. Luck egalitarians point out that it is one thing for people to choose from a position of equality, and quite another thing to be making choices from positions of inequality. Libertarians are right to point out the importance of choice, but wrong to ignore the different circumstances from which people may be choosing.

The relevance of choice to distributive justice thus depends firstly on it being a palpable and pressing feature of our lives, central to any autonomy or agency we may possess, and independently valuable, that is, choice is something people want. It is because of this fact that a number of writers claim that choice, of a sort for which an agent can properly be held responsible, is the only value which has the potential to, sometimes and under suitable conditions, outweigh the value of equality. Ingmar Persson (2007), for instance, holds that there is nothing which makes it just for some to be worse off than others. But he thinks autonomy, the exercise of choice, leads to distributions outside the sway of justice such that inequalities are permissible because they are not unjust. Murphy and Nagel (2002) follow Rawls in believing that a just society cannot condone morally arbitrary inequality, unless it is unavoidable or serves some other just and nonarbitrary end. If desert is ruled out, and on Rawls' (and my) arguments it should be, then no one deserves their starting point in life, and a person's choices seem the only possible source of nonarbitrary inequality. The libertarian Hillel Steiner (2002) similarly argues that only choice can interrupt equality. He writes that it is possible that many things that matter could constrain equality, but that choice for which one is personally responsible is the only plausible one. So luck egalitarians take the position that inequalities which flow from an agent's genuine choices, under

suitable circumstances, may not be unjust and are therefore sometimes permissible. Choice can be conceptualized as the inverse correlate of luck and chosen circumstances contrast with circumstances which are a matter of luck.

We come into a world not of our making or choosing, into circumstances not of our making or choosing and, as we saw in chapter 3, the perception of how much is subject to the baleful influence of luck can be overwhelming, disorienting. Luck egalitarianism offers an equilibrating balance to this. Yes, much is a matter of luck, but not all. Choice, in luck egalitarianism, is also a counterweight to luck. It embodies the belief that, subject as we are to the slings and arrows of outrageous fortune, we are also agents who do and can, to some extent, have meaningful control over our lives and the way things go for us in the world. We are not totally powerless, tossed hither and thither like leaves by random gusts. We are certainly buffeted by the winds of fortune, but we also have the ability to shelter ourselves from it and push back to some extent, especially in co-operation with others. I do not see this as a deep metaphysical point but, without the ability to choose and act, it is questionable whether we still have a person. And whatever tenuous agency we have, each person, on the arguments of the previous chapter, should have equal opportunities and resources to exercise it. That is a reason for favouring distributive equality, because distributive shares have a considerable influence on a person's ability to act in the world and it is unfair if some are more disadvantaged by the influence of luck on distribution than others.

Choice is also a counterweight to the demands of equality. This is a point made by Rawls (1982). He argues that there must be some more private space in a society for the exercise of choice and responsibility. While egalitarianism goes deep, people must also be able to live their lives as they see fit without continuously worrying about how egalitarian they are being. We each have our separate lives to lead for which we have special responsibility. Rawls thought citizens should be free to live their life as they want, as long as they allow others to live theirs and do not violate the prior and independent principles of justice.

There is some suggestive and interesting research in education that is related, perhaps tangentially, to this point. The research looked at what happens when one group of children are praised for their intelligence and another group are praised for their hard work (Blackwell, Trzesniewski, & Dweck, 2007; Mueller & Dweck, 1998). On a subsequent challenging task, the group that were told they had worked hard performed better. The group that were told they were intelligent were less motivated to perform the task and performed worse on it. So it seems to be better to give people messages about the importance of working at things, than about how intelligent they are. A plausible interpretation of this finding is that it is better to give people messages about something they can control, their effort, and not about something over which they may have no

control, their intelligence. This idea gains more credence from the further finding that if you do give children messages about their intelligence, it is better to do so with a model of intelligence as something fluid which can be improved through work. So children, and the rest of us I surmise, are better off believing we have some agency and that all is not down to luck.

However, whatever the anodyne effects of belief in one's agency, luck egalitarians hold that inequalities which flow from the choices a person has voluntarily made, and for which they can reasonably be held responsible, are not unfair. It is not unfair if someone is worse off or better off than another due to choices they have freely made because it is fair that persons should, at least partly, bear the costs or enjoy the benefits of some of their free choices. This seems to be part of a quite general belief that, under certain conditions – e.g. the absence of duress and manipulation, being of sound and sober mind, having a range of genuinely possible options – someone having chosen or agreed to an outcome gives legitimacy to that outcome (Scanlon, 1988). We see this clearly, for instance, in areas of public health where it is generally thought to be important that someone consents to medical intervention, especially if they are conscious. The best example though, may be that in democracies it is the aggregate choice of the people that gives legitimacy to a government. The background assumption to these is that a person's choice has moral significance for the legitimacy or permissibility of outcomes.

Another idea supporting the place of choice is Nozick's unexceptional belief, in liberal democracies at least, that it is good if persons are able to shape their lives according to their own choices, tastes, desires and preferences. People value the freedom to decide for themselves the sort of lives they want to live, although no doubt within parameters set by their culture and requiring social supports, such as education. Having choices makes for better lives; freedom is better than slavery. A qualification is that people cannot exercise their tastes and preferences in ways that harm others or affect others without their consent. Also, Dworkin (2000) argues that tastes and preferences should be ones we identify with, or have deliberately cultivated, and which are constitutive of who we are and not alien or imposed. The fact of choice according to one's preferences will sometimes mean that it is not unfair if some end up worse off or better off than others. This is because they are better off or worse off, not because of morally arbitrary good or bad luck, but because of the choices they have made. Egalitarians also think that each person should enjoy this freedom equally. It is objectionable for some in a society to have greater freedom than others. An idea we met earlier was that equality should be seen as freedom maximizing, not a constraint on freedom.

Being able to choose how to live has a profound impact on well-being. However there are fishhooks in this claim. The psychologist Daniel Kahneman (Kahneman, 2011), in his

138

fascinating deliberation on a lifetime's research into human rationality, writes that whether one has achieved one's goals has a profound effect on one's well-being and life evaluation. But the value of choice appears to be a double edged sword. While it is a significant influence on well-being for people to be able to choose their life and live according to their own tastes and desires, Kahneman makes the point that we often choose poorly. He points out that a belief in the rationality of people can go with another belief, that it is wrong to protect people from their choices. This belief, typical of neoliberals or libertarians, tends to assume that rational people should be free and should take responsibility for taking care of themselves. So we should not interfere with individual's right to choose unless those choices will harm others.

Luck egalitarianism takes a more nuanced approach. It accepts that choice is valuable to people and an important component of well-being. But it also notes carefully the ways in which the exercise of choice can go wrong and can be corrupted. It also notes the importance of revocability, the opportunity to change one's mind. One cannot do this if one is left to face the possibly crippling costs of bad choices. Kahneman documents some of the ways in which human rationality, and therefore the quality of our choices, is not an infallible instrument. This knowledge of human limitations gives us further reason to think that luck is playing a large part in consequences and the costs and rewards of choices that one should have to bear should be limited. The problem then is of balancing, on the one hand, the value choice has for us which requires that we must be responsible for our choices, and on the other hand, and knowing that we are all very fallible choosers who often choose in non-ideal circumstances, a requirement to limit the costs, and the rewards, that can legitimately flow from our choices. Kahneman, also known for his work in economics, provides much evidence that contradicts the rational model of some economic theories. He argues that freedom has a cost and a sympathetic appraisal of the nature of freedom leaves us with the impression that individuals should not alone bear the cost of freedom. Society provides a *choice architecture* and that architecture ought not to be such as it leaves too much to luck. The architecture must accurately reflect what it is fair to leave to individuals choices.

So for choice to have significance for inequality, it needs to be exercised under circumstances as benign as possible. Scanlon puts the point this way:

> One thing which people may reasonably demand, however, is the ability to shape their lives and obligations through the exercise of choice under reasonably favorable conditions. Moral principles or social institutions which deny such opportunities when they could easily be provided, or which force one to accept the consequences of choice under extremely unfavorable conditions which could be improved without great cost to others, are likely to be reasonably rejected for that reason (1988, pp. 184-185).

139

Choice, as was apparent in the last chapter, should not be thought to legitimate any outcome under any conditions. Scanlon argues that it is reasonable to hold people responsible for what ensues from their choices under good conditions, to expect them to bear the costs, because this shows that they were, firstly, given choices, and secondly, provided with good conditions under which to exercise choice. The common intuition is that, under such circumstances a person cannot reasonably complain about the outcome.

This point needs stressing because a theory endorsing the inequality permitting nature of choice faces the obvious danger of victim blaming. When assessing a person's degree of responsibility for their situation we should not simply ask, what choices did they make, or how did they contribute to their own disadvantage. Rather we should focus on assessing the value and nature of the opportunities a person had open to them, could they have easily or realistically avoided being disadvantaged, could they really have chosen otherwise, and how costly would it have been for the person to do what would have prevented them from becoming worse off (Stemplowska, 2011, p.134). The focus is thus not simply on the individual, but just as importantly on all the background conditions within which they are living.

The idea of freedom of choice is also a way in which a society can take due account of human diversity, the diversity of ends that people can conceive, and the fact that people, reasonably, differ in their beliefs over those ends and what constitutes the best way to live. Call this grounding of the value of choice the belief in the ideal of personal liberty. It was well expressed by John Stuart Mill:

> The only freedom which deserves the name, is that of pursuing our own good in our
> own way, so long as we do not attempt to deprive others of theirs, or impede their
> efforts to obtain it (Mill, 1859/1962, p. 138).

Now, it follows from the ideal of personal liberty that the very different life paths that people will in fact choose must be permissible (with Mill's caveats noted and also an acknowledgement that some may fall onto paths which will count as chosen although maybe not explicitly so). But the vast range of possible, and reasonable, life paths that may be chosen are highly unlikely to be of equal quality. So, according to what life path is chosen, some people will be worse off, in some ways, than others. This seems an inevitable and unavoidable consequence when outcomes are, to some extent, dependent on what people choose. Where choice is valued, people will make different choices, and experience different outcomes, some of which may be distributive in nature. Exercising choice can be risky too, and if people take risks, some will turn out relatively well and others relatively badly. There are reasons for restricting the costs and benefits attendant on some risks. There is no need to think a simple business risk should hold the possibility of enormous

wealth, but neither should it hold the possibility of ruin. At the principled level then, given a belief that choice is essential to personal liberty, then some inequality is a necessary corollary. Such inequality must therefore be permissible, as the inevitable consequence of a permissible act cannot be held to be impermissible. It must also be noted that holding this does not mean that any resulting inequality cannot be both permissible but nonetheless regrettable, or that other moral values cannot have purchase. The argument can be summarized:

1. People should be permitted to make choices about how to live their lives (the ideal of personal liberty)[49]

2. Inequalities between different chosen life paths are inevitable

3. The inevitable consequence of a permissible action is itself permissible

∴ 4. Inequalities that are the result of choice are permissible (to an extent consistent with other values and moral principles)

The main difficulty with this argument appears to be with premise (1) which concerns one way in which choice is valuable. Although (1) is an almost foundational belief of liberal democracies, we may nonetheless be mistaken that it is good for people to choose their own life paths, we may not in fact be the best judges of our own interests (e.g. Goodin, 1990). However, while this would admittedly weaken the case for choice, (1) does not actually say it is good for people to make choices, just that they should be permitted to do so. This could still be valuable because, while it may be true that others can often make better choices on our behalves, it is in general dangerous to allow others such sweeping power and, all things considered, it is prudent to allow individuals autonomy over many aspects of their lives, even knowing that they will make many poor choices. We may also make the rather banal observation that, as a matter of fact, people do make choices every day that have an impact on their lives and it is rather odd to suggest that they not be allowed to do so, as if this could be stamped out if we prohibited it. Perhaps most importantly though, it is quite simply extremely hard to imagine how any reasonable theory of distributive justice can avoid making use of choice, and that it matters for outcomes, and for justice, whether they were to some extent chosen, or largely a matter of luck. Any theory that is grounded in the idea that persons are agents capable of making decisions – and I take it that theories that are not so grounded have got a huge evidentiary and credibility problem to overcome – must see that there is a difference between matters over which one can exercise meaningful choice and those over which one is powerless (Tan,

---

[49] It is arguable, at least, that this is also a feature of a decent and humane society. It should also be noted that this can be seen as a minimal requirement as permissibility is a lesser requirement than a principle that says people should be enabled to make choices about how to live.

2008). There are difficulties with (1) then, but it is not obviously wrong and most plausibly fits with our conception of persons as agents in the world and not objects. The argument provides, at the very least, a *pro tanto* reason for believing that inequalities may not always be unjust given suitable conditions of choice.

Ethics not metaphysics

Many of the preceding claims have been heavily qualified, and I have been far from exhaustive in listing the things that could be relevant for holding someone properly responsible for their choices. Some of these will be dependent on the particularities of context and a source of reasonable disagreement. Segall's (2010) idea of *reasonable avoidability* is helpful here for seeing that the range of reasons we might consider relevant to considerations of responsibility for some outcome is likely to be very wide. This is what we observe in legal cases where judges and juries are very often faced with the difficult task of taking appropriate account of mitigating circumstances. There is, however, broad agreement that to be genuine a choice must be voluntary, free from coercion, fulfil some knowledge conditions and needs to be a choice between genuine alternatives (a choice between starvation and an exploitative job is no real choice at all).[50]

An objection to this is that some of these conditions are never satisfied because determinism is true or because moral responsibility is impossible (e.g. Levy, 2011; Strawson, 1994). J. J. C. Smart dismissively claimed that "responsibility is a piece of metaphysical nonsense"(Smart & Williams, 1973). One thing to observe first is that, as I argued in chapter 2, the sort of responsibility that luck egalitarians are interested in is not the same as moral responsibility. So one response to these metaphysical concerns is that the question of when people are properly held responsible for certain of their choices, such that it is fair for them to bear the outcomes of those choices, is an ethical one, not a metaphysical one. It is about how we ought to respond to certain choices of persons (because respond we must), and understanding the conditions under which a person's choices are morally relevant to what they are owed and the obligations others have towards them. It is not about the metaphysical status of those choices. Smart goes on himself to draw a helpful distinction. He points out that we can distinguish between the utility of an action, and the utility of praise or blame for it. It may be that if determinism is true no one is actually responsible, but nevertheless, it may be useful to hold or treat people as responsible for the consequences of their actions. If people are not treated as responsible for the consequences of their actions and choices, they may feel no incentive to act in useful and productive ways, to

---

[50] But note, I am not saying that these are sufficient conditions for holding someone responsible in an inequality permitting way. There are more background conditions relevant to responsibility than just the 'genuineness' of choice.

invent new things, seek out new knowledge or start up new businesses. Conversely, they may not feel deterred from doing vicious and harmful things if they see themselves as not being responsible for what they choose to do. We thus have the problem of incentives, it seems to be a fact that we respond to incentives, and the problem of moral hazards, it also seems to be a fact that people sometimes act according to deterrents and removing these can affect what people do in perverse ways. The metaphysical truth about responsibility is simply irrelevant then to its instrumental importance. It is instrumentally important to treat people as responsible as this is necessary for motivation; it grounds incentive and deterrence structures.

Rawls (1985) also goes to some lengths to stress that his theory of justice as fairness is a political, not a metaphysical, conception of justice. Being a political conception means it is also a moral conception, although not a comprehensive moral conception, as its subject is restricted to the 'basic structure' of society; the political, social, and economic institutions. Some luck egalitarians use this argument too. Tan (2008), for example, argues that the subject of justice for luck egalitarianism ought to be the basic structure. But Cohen (2008) argues cogently against this interpretation being completely satisfactory. He notes that people's choices have distributive significance – our choices become part of the background conditions for others – and so are also part of the subject of justice. How the effects of an individual's choices on others can be controlled without unacceptably infringing individual liberty is a knotty political and philosophical problem however. So a restricted focus on the basic structure may be a defensible pragmatic compromise. Iris Marion Young (2011) broadly agrees with Rawls, and Tan, that the basic structure is the subject of justice. But she also takes note of Cohen's critique that there is much injustice (particularly structural) which emerges from individual choices. Nevertheless, she thinks it is useful to distinguish a structural point of view from one that focuses on individual interactions. So she reformulates the claim that structure is the subject of justice and suggests a distinction between structure and interaction that involves individual action at both levels. On her account, individual choices are not directly part of the subject of justice, but we must be sensitive to them in order to make structural changes that can ameliorate current injustices. Young thinks individuals should evaluate their actions in terms of normal moral standards, but also be attentive to whether and how they contribute by their actions to structural processes that might deprive, dominate or exploit those with more limited options than others. She observes that it is also quite possible for people to behave faultlessly towards others but, nonetheless, still contribute to the construction and reproduction of structural injustice because of the social position they occupy and the actions they take within it – an observation of acute pertinence for those involved in education. However, it is irrelevant to

143

my argument here what the correct subject of justice is. Rather my point is that none of this is a metaphysical problem but rather an ethical, or political, one.

To think that people can never be held responsible for their choices also undermines ideas of agency, that we are effective actors in the world. It might well be wise, and true, to hold a belief in our efficacy, even if it is in some way illusory. Illusions can sometimes be powerful and not things to ignore. It is an illusion that the world is made up of solid bodies; they are in fact largely empty space. But this illusion cannot be ignored; we must open doors to go through them. It is an illusion that there is colour out in the world; there are only different wavelengths of light reflected off surfaces with different properties. But it would be wrong to ignore the fact that it seems to me that the traffic light is red. In the same way it would be foolish to ignore that it seems people are sometimes responsible for their choices.

Metaphysical concerns about the truth of determinism do not undermine the fact that persons have substantive choices to make, choices that are theirs and no one else's. The truth of determinism would also not undermine our perception that, as Alfred Mele (2006) says, it seems to be the case that some human beings sometimes choose freely and can be held responsible for some of what they choose. This is not an obviously mistaken or implausible belief. But its converse, as Mele points out, that we never choose freely and can never be held responsible for what we choose, looks a hard sell. Our choices hold an immediate significance for us and seem to matter in a way that compels us to believe that we can, at least sometimes, be held responsible for our choices. Galen Strawson aptly calls this the "experiential rock" (1994, p. 11). The significance of choice is therefore an ethical claim, grounded in the human perception that chosen circumstances contrast with lucky circumstances and this matters for how we should ourselves be treated and how we should treat others.

G. A. Cohen famously remarks that in luck egalitarianism "we may indeed be up to our necks in the free will problem, but that is just tough luck" (1989, p.934). He then goes on to comment that when we look at the genuineness of a person's choice we do not in practice worry about the metaphysics. We recognize that the genuineness of choice is a matter of degrees, dependent on a number of conditions and we seek to judge the extent to which we think an outcome reflects someone's choice. So we do not try to determine exactly what someone knew when making a choice, but we say that the more they knew the less cause they have for complaint about some subsequent inequality that has flowed from that choice.

144

Scanlon's "Value of Choice" theory

Scanlon's (1988) approach to the problem of whether we can ever properly hold people responsible for their choices is important here. While acknowledging that determinism and freewill raise concerns, he thinks the Causal Thesis is of greater concern:

> This is the thesis that the events which are human actions, thoughts, and decisions are linked to antecedent events by causal laws as deterministic as those governing other goings-on in the universe (Scanlon, 1988, p. 152).

The causal thesis represents a challenge to accounts of responsibility because it suggests that human actions are ultimately the result of outside causes (in interaction with a person's physical constitution). The idea that outside forces may be the ultimate causes of human acts, like choosing, seems intuitively to negate the idea of personal responsibility. Scanlon thinks the best approach to this challenge is to find an account of the moral significance of choice that recognizes all the conditions that we commonly believe excuse people from responsibility (e.g. duress, mental incapacity or manipulation etc.), but explains why the causal thesis does not mean that all responsibility is undermined. Such an account will need to show that our reason for thinking that some conditions excuse a person from responsibility is not because of a causal relationship, but for some other reason.

Scanlon argues that one such promising account of the moral significance of choice is found in the Value of Choice theory which looks at the value choice has for people. Scanlon notes three ways in which choice has value to us.[51] Firstly, there is value to us in having outcomes depend on our choices. That is, choice has instrumental value as it allows us to align outcomes with our tastes and preferences. This value is shown when students are free to choose some of their subjects or the sports they would like to play. Scanlon notes that this value is dependent on conditions like the value of the alternatives to choose between, the chooser's knowledge of them and the abilities of the chooser. Changes in these change the value of the choice.

Secondly, Scanlon says choice can have 'demonstrative' value, allowing us to express the sort of people we are, or want people to think we are. A, perhaps, trivial example of this is the way people dress as a statement of who they are (literally with some T-shirts). If someone else chooses your clothes, then you are deprived of this way of demonstrating who you are. This may not matter if there are other avenues for asserting your individuality and if there are features of yourself that can be demonstrated in other ways. But it is interesting that it has significance for secondary students. They are at an age where they are

---

[51] It is not meant to be an exhaustive list. I would add to it the value choice has to us as a component of personal and political liberty.

trying to demonstrate, and work out, who they are. So when made to wear a uniform they find individual ways of wearing it or ways to customise it. Big examples of the demonstrative value of choice are choices about jobs, where to live and partners. All of these can vary in their significance for value according to cultural practices and a person's abilities and preferences.

The third way in which choice has value, according to Scanlon, may overlap with its demonstrative value and he calls it 'symbolic' value. The exercise of choice is a critical part of demonstrating one's agency and autonomy, a point I have already made much of. Being denied the freedom to choose is to treat a person as a child, or incompetent or of less account. The symbolic value of choice thus relates to the moral status of persons and shows that choice has value for people in its own right and not just instrumentally for getting what they wish or showing who they are.

There is much of interest in Scanlon's rich paper on the significance of choice. But of relevance here are two things. It firstly adds to the luck egalitarian claim that choice be included within a theory of distributive justice. The value choice has for us is a good reason for a society to design institutions that help people align outcomes with their choices (to an extent consistent with other values, including equality). Secondly, Scanlon's Value of Choice theory goes a considerable way to supporting the claim that metaphysics is of little concern to luck egalitarians. The value of choice will sometimes mean accepting some inequality because it will be of more importance for a person to be able to make certain choices than to have distributive equality maintained. This will depend on certain conditions, for example, a person's state of knowledge, the alternatives available, the mental state of the person and the degree of voluntariness of a choice.[52] Depending on these sorts of conditions, the inequality permissible may be limited. But this is not because of metaphysical concerns. Rather, it is because unfavourable conditions of these types undermine the value choice has for a person. Choice is of little value if you know nothing about the alternatives or even what the alternatives are. From this viewpoint, it is relatively unimportant whether people are ultimately free in a way that implies moral responsibility. It is more important to ensure that background conditions support the value choice has for a person and not undermine it.

A perhaps apposite example here that demonstrates how the value of choice can be eroded is the student loan scheme. Some students are faced with a difficult choice between a hefty loan, with the subsequent debt this entails, and not furthering their education. But the nature of these alternatives undermines the value of the choice. Both alternatives can

---

[52] It might be helpful to think of the sort of conditions that are relevant to these considerations in terms of Segall's (2010) idea of *reasonable avoidability*.

146

lead to some being worse off than others and are quite unappealing. Indeed, we normally counsel people against both taking on debt (particularly when they are not in a position to service it) and not furthering their education. The upshot of this is that if students subsequently complain about their unequal condition, either indebted or unskilled, replying that they had a choice and could have done otherwise carries little weight as the forced nature of a choice between two problematic outcomes was not a valuable one.

When the value of choice is undermined, choices lose their force to legitimate inequality. This is another of the points of departure between libertarians and luck egalitarians. Perhaps believing in the metaphysical significance of choice, the libertarian right sometimes seems to think that the fact of voluntary choice is enough to make any outcome permissible. Luck egalitarians, by contrast, recognize that under some conditions choice is of little value and legitimates nothing. In order for it to be fair to hold people responsible for the outcomes of their choices, and expect them to bear the costs, choices must not only be voluntary, but also made under favourable conditions. It appears to be the case that people have the ability to adapt their preferences to their circumstances. Sadly, for example, many battered wives 'choose' to stay with abusive husbands. But it is wrong to think that choices under such circumstances can legitimate any outcome. A more nuanced approach to choice thus focuses on the wider background conditions. Critics of luck egalitarianism often focus on examples where the value of choice has been undermined by unfavourable background circumstances. However, one must avoid invalidly deducing the false conclusion that choice is never relevant to distributive justice, from the correct premise that the legitimising force of choice can sometimes be undermined.

I conclude this section with a well made point of Scanlon's:

> On this account, when we criticize someone who has behaved badly, or when we follow a policy that leads to some people's being injured because they have ignored the warnings they were given, we may be correct in feeling that what we do is justified. But we must also recognize that what separates us from such people is not just, as we would like to think, that we behave better and choose more wisely, but also our luck in being the kind of people who respond in these ways. In this respect our attitude toward those who suffer or are blamed should not be "You asked for this" but rather "There but for the grace of God go I" (1998, p. 294).

Is choice inimical to equality?

It may seem that choice is inimical to equality because, after all, choice according to luck egalitarians can permit some inequality. As far as distributive justice is concerned then, choice is, perhaps not inimical, but certainly in tension with equality. Resolving this requires us looking to the deeper principle of moral equality. Will Kymlicka argues that singling out

choice can properly be construed as egalitarian because part of treating people as equals is to give equal consideration to each person's interests. If we each start from a position of fair – i.e. equal – distributive shares, then "we should not expect others to subsidize our projects at the expense of their own" (2002, p. 42).[53] While it is unjust for some to be worse off than others due to bad luck, it is also unjust for me to impose the costs of my freely made choices on you. We each have our own separate lives to lead and it is reasonable to expect people to make choices about their lives with due regard to the fact that they do this against a background of necessary social co-operation and of others with objectively equally valuable lives to lead. Justice is not served when extra advantage is sought by some at a cost to others. Kymlicka argues that equality thus enters into our choice making, as when making our choices we should give due regard to what rightfully belongs to others. The idea is not that we should not violate the property rights of others, although it may also be that. The idea is that equality is violated if I expect my choices to be paid for out of your fair shares. To act in a prejudiced or selfish way is to fail to give equal consideration to others. If (and this is a big if) people have equal distributive shares, then it is fair to expect them to make choices that do not impinge on the shares of others, and sometimes this will mean accepting some inequality.

Respecting the autonomous choices of agents therefore is part of a plausible interpretation of treating people as equals. If I say I want a butterscotch ice-cream, and the dairy owner ignores my choice (she thinks customers' choices can be ignored because the truth of determinism means choice is metaphysically impossible) and gives me hokey pokey, then respect is absent, even if choice is an illusion. To have your choices disregarded is to be treated as incompetent, a child, less than equal. This reason is related to the sort of concerns commonly expressed about paternalism (Scanlon, 1988). Respecting a person's autonomy sometimes means respecting their freedom to make bad choices. This will sometimes override concerns about well-being, depending on how valuable one thinks choice is in a given context. Paternalistic restrictions are demeaning when they deprive people of autonomy for an insufficiently good reason, or in a manner that implies you are incompetent.

In a similar vein, Christine Korsgaard writes that treating a person as an equal means holding them responsible for some of their choices:

---

[53] This is to reiterate that distributive equality is a precondition for moral equality. But it is also to add that it is, sometimes at least, a background condition which contributes to the value of choice, mainly because the less well off someone is the fewer genuine options they have open to them. If people have fewer options, then we are less inclined to think choice has much value for them. People in great poverty may not unreasonably think that they *can* impose costs on others, because they do not have a fair share and are not being treated as an equal.

it is not possible for us to avoid holding one another responsible. For holding one another responsible is the distinctive element in the relation of adult human beings. To hold someone responsible is to regard her as a *person* – that is to say, as a free and equal person, capable of acting both rationally and morally. It is therefore to regard her as someone with whom you can enter the kind of relation that is possible only among free and equal rational people: a relation of reciprocity (her emphasis, 1996, p. 189).

Korsgaard is making the very Kantian point that, unless we hold people responsible for the ends they choose and the actions they take, then we are not treating them as moral and rational agents. And the point here is again not a deeply metaphysical one; it does not depend on a belief in the noumenal self. The point is rather that holding another responsible is something we do with those we consider our equals. It involves the adoption of an attitude towards someone else, strongly influenced perhaps, by how we too want to be treated. So to the extent that we want to be held responsible, rational, not a child, we are inclined to treat others similarly in the expectation of reciprocity. Respect does not depend on reciprocity, but it may be motivated by an expectation of reciprocity. Korsgaard also notes a difficulty. In practice there is a fine line sometimes between holding someone responsible, and appearing insensitive or heartless, or failing to hold someone responsible, and appearing disrespectful or patronizing.

Dworkin (1985) makes a different point about the relationship between choice and equality. He deals with what it means for a government to treat its citizens as equals and argues this can be done in two broad ways. The first way holds that governments should be neutral between any reasonable conceptions of the good life. This is because citizens can, and do, quite reasonably differ in their conceptions so a government does not treat them as equals if it prefers one conception over another. The second way presupposes that governments cannot be neutral about conceptions of the good but need a theory of what humans ought to be. On this understanding, the content of treatment as an equal is dependent on some theory about what constitutes the good for persons or what constitutes the good life. This is because equal treatment will mean treating someone in accordance with what is actually good, as far as this is possible.

Now Dworkin claims that liberalism takes as its constitutive political morality the first understanding of equality. One way citizens are treated as equals under liberalism is therefore by respecting their ability to choose their conception of the good and promoting their capacity to choose how best to pursue it (always with a proviso against harm to others). Dworkin contrasts liberalism with other political theories which are not neutral as regards the good. In this camp are found conservatism and various forms of communism or Marxism. These political theories agree in not being neutral as to the good, but disagree in

their conception of the good. Dworkin argues that to defend their claim to treat people as equals, they need substantive conceptions of the good and, more importantly, good reasons why it is permissible to impose them on those who have a different conception, even granted that people can be mistaken. But given the diversity of human beings and human cultures, it is hard to accept the claim that there is only one true conception of the good and the fact of pluralism in modern liberal societies underlines its implausibility. Furthermore, the history of governments and the powerful imposing what they think is right on others suggests we should be very wary of pursuing this view.

Luck egalitarianism is best characterised as belonging within the liberal tradition. It asserts that people ought to be free to formulate and pursue their own conceptions of the good. On this understanding, space for choice, and space for holding people responsible for their choices, is not inimical to equality, but rather, fundamental if persons are to be treated as true moral equals.

The ideological objection

There are good reasons then to think that a principle of equality requires space for choice and responsibility. But, what we can call the *ideological objection,* maintains that the idea of choice and responsibility is a useful fiction, used by ruling elites to justify their more favourable position, and so has the effect of undermining equality in practice. That is perhaps a strong version of the objection. A weaker version suggests that, while people are perhaps sometimes properly held responsible for some of their choices, in practice this is not of great significance for justice as the belief is often exploited to perpetuate inequality or legitimate more inequality than it really does. On either version though, policies predicated on the inequality permitting nature of choice, which can then inform the structure of social, educational and political institutions, and influence the social ethos, are likely to work against equality in practice.

Now, it is important to note that the ideological objection poses no challenge to what, at the fundamental level, the correct principles of justice are – the focus of this work. If it is correct that some inequalities flowing from genuine choice are permissible, then at that level, there is nothing more to be said. Political prudence, sociological observations or psychological facts about human behaviour do not bear directly on the truth or falsity of normative principles. So luck egalitarians can accept, as an empirical fact about a society, the claim that ideas of choice and responsibility are used by the privileged and powerful to defend and maintain their more advantaged position. But this does not mean that they must also accord the claim any moral standing. It is plausible, though, that other values can sometimes trump equality or that the best social arrangement, all things considered, may place little or no emphasis on choice. So the objection is worth more consideration.

We can discern the ideological objection in the work of Bowles and Gintis (1976). They identify the need for legitimacy as an imperative for capitalism and argue that education is one mechanism for indoctrinating the young with a belief in the legitimacy of the existing social order. The inculcation of a belief in the legitimating power of choice helps reproduce existing unjust inequalities by training students to see themselves as responsible for their place in society. Kevin Harris (1979) likewise argues that it is part of the distorting ideology of capitalism, promulgated by schools, that people are free and able to choose for themselves a life course. If this is so, then whatever eventuates must be fair as that is what has been freely chosen. On this account, the better-off have simply made superior choices than the worse-off and people come to view their misfortunes as due to their own shortcomings, or conversely, their good fortune as due to their own merit. Emphasis on choice and personal responsibility may also make us less likely to assist people, because we become habituated to seeing inequalities as due to a person's own poorly considered decisions and actions. It can be pointed out too that such beliefs are easily accepted because we do experience ourselves as freely choosing individuals. One could also add to this objection a claim about the metaphysical absurdity of moral responsibility or freewill. The ideology of freely choosing autonomous persons thus becomes an example of false consciousness, imposed by the ruling elite, and serving their interests.

There is much in the ideological objection to take seriously, particularly because it can be made without necessarily rejecting the importance of choice. So Harris (1994) also writes that he thinks an important aim of education is to equip people with the ability to make good and substantial choices about their lives. But he thinks this aim is thwarted, and educational policies advocating it are "empty idealist rhetoric" (1994, p. 51), if in practice the social conditions do not exist to support free and autonomous choices. With this luck egalitarians can only heartily agree as it has already been stated that the value of choice is undermined if background conditions are not favourable. There is little doubt too that choice and responsibility are sometimes used as a cudgel with which to beat the least-advantaged, blaming them for putting themselves in their poor condition and frequently invoked to justify and perpetuate an unjust status quo, thereby preserving the privileges of the powerful. But it does not follow from the fact that mistaken attributions of responsibility are inculcated in people, or that the powerful use the notion to their advantage, that people are *never* properly held responsible for their choices, particularly in principle, but also sometimes in practice. The ideological objection is more a criticism of the way powerful individuals and groups are inclined to behave unless there is the political will to build and maintain strong public institutions that can thwart their self-interested and predatory behaviour. It is an objection which relies on the fact there will probably always be individuals who try to subvert political and social institutions in order to manipulate and

151

exploit people to their own advantage. The objection does not directly engage with the moral status of choice and responsibility, it rather points out that these ideas can be abused and assumes, sometimes, that any case for them founders on false metaphysical assumptions. But it has been argued here that metaphysical assumptions are beside the point. What the ideological objection very forcefully demonstrates, is that we need to be very wary about attributions of responsibility and that many choices under conditions of inequality legitimate little or no further inequality at all, because under such conditions the value of choice is eroded. The problem is to develop, as Stemplowska said, a sufficiently nuanced understanding of choice and responsibility.

The structural objection

The ideological objection may gain some of its credibility from a related, and potent, objection we can call the *structural objection*. This objection claims that structural flaws in our institutions and conventions are sometimes ignored or overlooked when the significance of choice and responsibility is explored by looking at how inequalities issue from the choices of individuals, often in pairwise interactions (as I did earlier with Amber and Brittany). Anne Phillips (1999) argues that focussing on the choices of individuals often comes at a cost to a broader examination that takes thorough account of background conditions and the web of social relationships and political structures within which people make their choices. She suggests that when this is done, it becomes clear that structural factors, which have little to do with any two individuals, have a considerable bearing on distributive outcomes. Phillips argues that structural inequalities cannot be understood in individualist terms, the language of much egalitarian writing, and emphasis on individual comparisons involves neglecting power relationships. Phillips also warns that, in the face of existing inequalities, with no political enthusiasm to ameliorate them, a reluctance to even acknowledge them, and with strident neoliberal voices saying there are no alternatives to free-market capitalism, luck egalitarianism could be seen to be playing into the hands of those defending current inequalities. This is because it may incline us to treat as products of personal choice what may better be described as structural inequality. Further, if we feel powerless to change our circumstances we may, as the ideological objection asserts, come to think that our situation is fair and due to our own poor choices.

Another who puts forward a thoughtful and compelling version of the structural objection, and its focus on individuals, is Iris Marion Young (2011). She identifies three problems in some egalitarian writing: a false dichotomy between outcomes that a person is responsible for and ones which are structurally caused; assumptions that the least-advantaged can improve their positions by themselves without regard for unjust background conditions; and an improper focus only on the personal responsibility of the

least-advantaged, combined with an assumption that persons are self-sufficient and able to internalize the costs of their own actions. Young suggests that we do not as yet have adequate conceptual tools for thinking about the relationship between individual responsibility and structural social processes and that, by characterizing aspects of a person's circumstances out of their control as a matter of luck, some writers are ducking the need to think about the structural background circumstances of individual action and failing to examine the personal responsibility individuals bear for the lives of others. She argues too that many discussions of personal responsibility adopt a *blame* or *fault* model, particularly in legal and some moral debates. The problem with adopting this sort of model is that it can become a way of apportioning responsibility to one person in order to exonerate others.[54] It also implies that the costs of individual actions should be internalized and that others have no obligations for helping us, and we have none for helping them. According to this individualistic model, we are only required to check the outcomes of our own actions and ensure that we do not wrongly interfere with others. Young believes that the positive responsibilities persons have to one another, that emerge from social cooperation and common citizenship, are thus overlooked and that the wider structural features of a society are treated as irrelevant to the assessment of an agent's responsibilities for their situation, and for the situation of others.

Young critiques particularly the work of Ronald Dworkin**.** She characterizes his work as focussing on two intuitions. One is that respect for persons requires us to see them as the authors of their own lives and properly held responsible for some of their choices. The other is that persons are owed egalitarian redress for those social circumstances over which they have no control. Young argues that Dworkin's concentration on individuals causes him to miss a distinction between disadvantages that are unlucky, and those which are the result of social structures. She suggests that much more attention should be given to the way individuals act within a given social structure and to the collective effects of many such individual actions. For Young, a theory of justice which does not take sufficient account of prevailing social structures is deficient. She thinks it is important to examine, not only the responsibility that persons bear for the consequences of their own choices and actions on their own condition, but also for the effects of their choices and actions on the condition of those who are disadvantaged by prevailing social structures.

Young does agree with Dworkin and luck egalitarians that bad luck is a significant influence on a person's circumstances. She just thinks that there are many circumstances, correctly thought of as beyond a person's control, that are not best conceptualized in terms

---

[54] Notions of blame and fault sit well with ideas of desert. This criticism of Young's coheres well with my earlier arguments that luck egalitarians should avoid desert-based arguments.

153

of luck. For example, the rules governing institutions, the effects of culture, and the power held in society by advantaged individuals and groups. On her understanding, questions of justice arise from the extent to which these features affect a person's circumstances, disadvantaging some while advantaging others. Young therefore argues that we should not think of justice in terms of what individuals are owed, and in particular what the disadvantaged are owed. Instead, we should ask how we can build social structures and institutions that promote justice and do not privilege the well being of some at a cost to the well-being of others to begin with. She suggests we should distinguish misfortune from socially caused injustice,[55] but notes this is difficult both conceptually and practically as the distinction will rest on a number of claims to do with social and political factors that are unlikely to be a matter of common agreement, or based on sound empirical evidence.[56] A theory of justice, according to Young, should tell us about how the members of a society are interdependent, the nature of social cooperation and the nature of the relationships it gives rise to. If society is correctly seen as a system of cooperation, then justice is not so much about the post fact redistribution of benefits and burdens, but rather it is about the design, reform and maintenance of social structures that produce less inequality in the first place.

Young then, thinks luck egalitarianism, it would seem particularly as represented by the work of Dworkin, has a deficient understanding of the responsibility individuals in a society have for each other. She depicts this as a view that the only responsibility individuals have for others is to try to internalize the costs of their activities and contribute to a redistributive tax system that corrects for defects in that internalization. She argues too that many of the circumstances that unfairly disadvantage some are not best conceptualized as instances of bad luck. Rather, she suggests they are largely, although not completely, brought about by institutionalized norms and social conventions that put people in unequal positions of power and privilege. Young thinks that a good account of the relationship between personal responsibility and justice will include, not only what aspects of a person's circumstances they are themselves responsible for, but also how we should understand our responsibility for the background conditions of others, especially those that are shaped by prevailing social structures. On this understanding, social structures should not be treated as natural forces whose effects are lucky or unlucky, but as a matter of justice for which we all bear some shared responsibility. She therefore argues that structural injustice is distinct from bad luck or the wrongful actions of individuals or states. Structural injustice is the result of many

---

[55] Chapter 8 deals in more depth with this distinction.

[56] It can be noted here that the work of Thomas Piketty (2014) does appear to provide powerful empirical evidence for the structural nature of economic inequality. Piketty's much heralded work seems to demonstrate that if the rate of return on capital exceeds the rate of growth of output and income, which it generally has over the past two centuries, then capitalism will automatically generate arbitrary, and for that reason unjust, inequalities.

individuals and institutions acting to pursue their own plans and interests, largely within accepted conventions and regulations.

That last point of Young's has some historical pedigree. Marx saw that capitalism has a problem with individual versus collective rationality which, in this context, can be seen as a type of structural flaw that no one is individually responsible for, but for which all are collectively responsible. Peter Singer (1980) highlights this nicely in a discussion of how Marx adds to our understanding of freedom by pointing out difficulties with the classical liberal conception of freedom. This conception says that we are free if others do not deliberately interfere with us and governments can only legitimately place constraints on individuals in order to prevent such interference. This fits well with the economic theories of supporters of laissez-faire capitalism which portray free market outcomes as legitimate because they are the result of the free choices of individuals.

To explain Marx' objection to this, Singer says, look at the example of individual choices to drive to work. We can imagine each driver choosing freely and without interference, and the result being traffic jams and slower travel times which nobody chose. The outcome is something no one wanted, no one chose, and yet was not entirely unforeseeable given prevailing social structures and the likely choices of others. The problem could perhaps be solved if everyone travelled to work by bus. The problem with this though, is that no individual by themselves is likely to choose that option because taking a bus will be no better as long as everybody else is still driving their own car. The liberal conception thus leads to a paradox that each person has chosen in their own self-interest, but the result is in no one's interest.

Marx saw that capitalism involves this kind of irrationality and that a solution is to make decisions collectively, as individuals cannot bring about a desired situation by themselves. According to Marx, most workers under capitalism have as little freedom as serfs, not because they have chosen badly, nor because of a scarcity of resources or a lack of technology. It is because the aggregate effect, of the myriad self-interested choices of individuals, is a society that no one actually chose. Despite no deliberate interference from others, Marx says people cannot be free under such conditions because we do not individually control our own society and we end up competing with each other, to the advantage of a few, rather than co-operating for the good of all. The benefits of human progress are thus squandered rather than being enjoyed by all, which they could be if society was more rationally organized. And the economic relations that bring this about are not blind forces; they are human creations that predictably restrict freedom. No one is individually responsible for the economic relations of our society, but they are our own unintentional creations, not deliberately chosen, but nevertheless the outcome of our own individual choices and thus potentially subject to our will. Instead of letting our creations

control us then, we should collectively take control of them. Central planning is thus an essential step to true freedom as it involves reasserting control over economic forces.

However, Singer points out, Marx' proposal has its own challenge to freedom, as history has shown. The problem of obtaining the co-operation of each individual in the joint enterprise of controlling our society is acute. So, thinking of the commuter problem, we can see the possibility of free riders driving once everyone else taking the bus clears up the traffic. From a self-interested perspective this reasoning is correct; as long as most take the bus a few can take advantage of this. But, as Singer points out, it is far from clear what to do. If we leave everything to individual choices we run the risk of systems breaking down. But the majority, or an elite few, coercing the rest in the interests of all carries its own dangers and in the name of freedom for all we can end up with freedom for none. It is perhaps not as easy as Marx thought to bring harmony to the conflicting interests of individuals. As Singer pointedly notes, alienation is not overcome by coercion, it is perpetuated by it.

The problems posed by notions of choice and responsibility, and how these interact with social structures, are deep and have been the subject of analysis for some time then. Young and Phillips have made a valuable contribution to the debate about choice and responsibility within egalitarianism by calling attention to the importance of structural inequalities. Depending on one's point of view, their work can be seen as an important addition to thinking about distributive justice, or a vital corrective, or a refutation. If luck egalitarianism ignores deep structural features of injustice, then that would be a major failing for the theory, and a problem for its applicability to education. For educational equality, structural features are acutely pertinent. Prominent among them are the numerous social practices and institutional rules that have worked over the past few decades to ghettoize the children of the wealthy, the middle class and the working class in separate schools and those institutional features of schooling which can act conspicuously against the interests of the children of the least advantaged in our society, and in favour of the children of the advantaged.

Response to the structural objection

A first response to the structural objection is to make a technical point about luck egalitarianism, not directly to do with choice and responsibility, but which arises from Young's critique. The luck egalitarian concern with that which is a matter of luck for an individual subsumes the full range of circumstances which are unchosen and not under the control of agents. It therefore has the most general possible compass over all possible sources of disadvantage, and this includes the structural features of a society. Some seem to baulk at labelling certain circumstances as bad luck. But this is to take insufficient note that

luck egalitarians when talking of bad luck (in the context of the distribution of whatever it is that is thought to matter for distributive justice) do not mean *mere misfortune.* Rather, the claim is that it is in itself *unjust* if some are worse off than others due to bad luck, whether that is structural or otherwise. It is true that some structural inequality is not unlucky in the sense of having come about by chance, or of being unforeseeable, or of being unable to be changed if we have the will to do so. Some structural inequality is a matter of deliberate design and some is quite predictable. But it is a matter of luck to individuals born into circumstances they did not choose. There is an almost involuntary mishearing, I think, of the luck egalitarian claim about luck. The claim that misfortunes that influence ones distributive shares are injustices, and grave ones at that, is part of what is distinctive about luck egalitarianism. When luck egalitarians describe structural inequalities as bad luck, this is equivalent to saying they are unjust and says nothing about whether they are unalterable natural forces or subject to human control.

It is probably true that luck egalitarianism has tended to concentrate largely on the choices, and luck, of individuals. This is not in itself a failing though. Some writers knowingly and deliberately set aside the wider social perspective, not because it is unimportant, but in order to get a clearer personal perspective. It is also valid to point out that focusing on the collective and social to the exclusion of the personal is a weakness; feminists have long maintained that the personal is the political. So Dworkin clearly, and knowingly, works within the more individualistic liberal paradigm which has traditionally focused on individuals, not collectives, as the bearers of value and the subjects of normative claims. It does not strike me as at all fatal to his work that he leaves more sociological perspectives to others. It is somewhat absurd to criticize philosophy for not being more like sociology. Traditionally, liberal political philosophy has tended to focus on the situation of the individual agent acting within whatever wider political and social circumstances she finds herself in, how we can co-operate to bring about desired ends and what those ends ought to be.

However, even if being focussed on the individual is a valid basis for criticism, it is not clear that it is a valid indictment of luck egalitarianism in general or that luck egalitarianism is not cognizant of structural influences on inequality. For one thing, many luck egalitarians are not focused on purely individual comparisons. Indeed, Young comments approvingly on the work of another luck egalitarian, John Roemer (1996). Roemer proposes that we can deal with the problem of holding people responsible only for those circumstances which flow from factors under their control, by comparing people of roughly the same *type.* The range of circumstances relevant to type is up for debate but will typically include those such as economic class, ethnicity, level of education, age, occupation, gender, family background, national and cultural background, health and whatever else we can agree is likely to have an

influence on an individual's actions and choices and is beyond their control. If persons can be, at least roughly, grouped into classes, and compared only with others who share similar circumstances, then whatever differences in condition between them remain are more likely to be due to the persons own choices and preferences.

As an example, Roemer considers the question of the extent to which someone is responsible for their ill health as a result of the choice to smoke. He suggests two possible types relevant to this question might be sixty-year-old white, female, college professors and sixty-year-old black, male steelworkers. Statistical differences in smoking behaviour between these groups are unlikely to be attributable to the individual, but differences within a group are. If it happened that most sixty-year-old black, male steelworkers smoked, then the choice to smoke would not be genuinely open to members of this type and their responsibility for the outcomes of such behaviour would be minimal.

Young suggests that Roemer is rejecting Dworkin's individualistic scheme where individuals make choices according to their tastes and preferences, against a background of others exercising their own choices, for which they are rightly held responsible. Instead, she claims Roemer is arguing that inequality and responsibility must be understood by means of social classes in which people are situated differently and which are defined by numerous institutional rules and social practices. This means Roemer is appealing to a notion of social structure as necessary to theorizing about justice. However, Young also thinks Roemer pays insufficient attention to the inequalities between types and social justice should focus on whether the whole of the background conditions faced by people are fair. This is a little unfair to Roemer whose focus, it seems to me, is more on making the concepts of choice and responsibility clear in a way that makes it coherent to accommodate them within a theory of distributive justice. But he is also clear that we should equalize advantage across types and this answers Young's concerns about overlooking wider structural injustices.

Roemer is not alone in luck egalitarianism in seeing the importance of structural factors though. Rawls claimed that the basic structure of society is the proper subject of justice and, as previously noted, Tan (2008) argues that luck egalitarianism should adopt this position too. Tan's paper is in many ways a sustained argument that luck egalitarianism is, in fact, very much concerned with social and institutional factors and he makes a number of points that should allay the concerns of those like Young about luck egalitarianism. He says, for instance, that luck egalitarianism's subject matter "is the basic structure of society; its aim is to ensure that social institutions do not convert matters of luck into social advantages or disadvantages for persons" (p.675). In a later passage, responding to a criticism that luck egalitarianism is merely a principle of redress, he expands on this:

On the institutional account, however, luck egalitarianism is by design concerned with the institutional norms and background rules of society that establish who owns what. On the institutional reading, luck egalitarians do not want persons' distributive entitlements to be determined by institutions that assign resources to individuals according to natural and arbitrary facts about them. For example, institutions should not be structured such that persons born into wealth continue to gain social advantages, or that persons born disabled are socially disadvantaged because of certain institutional barriers. This is fundamentally a distributive concern and not merely a concern with redress. It is a commitment towards securing what Rawls refers to as "background justice," that is, the justness of "the background social framework within which the activities of associations and its individuals take place" (Rawls, *Justice as Fairness*, p. 10). Thus luck egalitarianism does not judge an unlucky person's life to be less worthy and then proceed to compensate her for her poorer life out of pity, much less out of contempt. (2008, p.684)

These points from Tan may well be a reaction to the objections of various critics and his focus in these passages is more on the relationship between luck and institutional structures. But Cohen (2000, 2008) has long argued for a very wide interpretation of the purview of luck egalitarianism as a theory of distributive justice. He argues that luck egalitarianism should be concerned, not just with the basic structure of society, but with the overall pattern of advantage. This includes the effects of the choices of individuals on others, and how these contribute to inequality, a very similar claim to one Young made. Cohen argues that inequality will remain even with an optimal basic structure and therefore the basic structure of society cannot be the exclusive subject matter of distributive justice. Inequality will remain because focussing only on the basic structure will miss the motivational underpinnings that guide the choices individuals make and, as these choices have consequences for the pattern of distribution, they should not be discounted as outside the sphere of concern (another argument for including choice within a theory of distributive justice). Cohen notes that people often act so as to maximize their advantage, or to put it another way, people are often selfish – and whether as a matter of human nature or whether as a matter of historical and social contingencies is irrelevant to the point here. Unless people are motivated to avoid pursuing advantage for themselves at the expense of others, then an institutional focus that also permits as legitimate the exercise of personal choice cannot realize equality. And if we value personal liberty, we must permit as legitimate the exercise of personal choice. We might also observe that in many societies, people are given incentives, one might say positively encouraged, to act out of quite narrow self-interest. Cohen believes that;

how selfish people are affects the prospects for equality and justice...partly because...justice cannot be a matter only of the state-legislated structure in which people act but is also a matter of the acts they choose within that structure, the personal choices of their daily lives. (2000, p. 122)

His view is thus that theories of distributive justice should not be limited to the basic structure but must also include people's quotidian choices.

Cohen also argues that we can intelligibly distinguish between two types of society. On the one hand, we could have a *just* society, where citizens in addition to having just institutions share an ethos of justice that guides their daily choices. On the other hand, we could have a *well-regulated* society, which restricts its concept of justice to the basic structure and within that allows individuals to act out of self-interest to maximize personal gains. On this view, laws and regulations alone cannot bring about justice; citizens must also share an egalitarian social ethos. And such a social ethos is also necessary because, even if rules could be designed to guarantee that people make egalitarian choices, this would likely be at considerable and unacceptable cost to another value, that of liberty. So Cohen claims the subject matter of distributive justice is not only the basic structure of society "but the pattern of benefits and burdens in society" (2000, p. 130). He observes that differences in advantage are the combined result of people's lucky and unlucky circumstances, which includes the basic structure, and the choices people are able to make as a result of those circumstances and within that structure. Accordingly, both are of concern to the luck egalitarian, but only secondarily so; the primary site of justice for Cohen is the pattern of advantages and disadvantages itself.

It may seem that this argument is at odds with some portrayals of luck egalitarianism; it seems to call into question the fundamental claim about the permissibility of inequalities resulting from the exercise of choice. A response to this is to point out that Cohen, himself a luck egalitarian, is making a different point to the claim that people ought to bear the costs of their choices. It is a point about what it takes to have a just society. One thing necessary for such a society, according to Cohen, is a social ethos of justice. This is because the predominant social ethos plays a large part in shaping the choices individuals freely make in their everyday lives and these in turn have a large effect on the overall pattern of advantage. Luck egalitarianism regards it as appropriate that people bear the costs of their choices. But the point raised here is more to do with people suffering the consequences of choices made by others, a point also raised by Young, but which Cohen thinks does not undermine the place of choice, but only adds to its significance for distributive justice. The choices individuals make are not necessarily meant to disadvantage others, but nevertheless, when made out of self-interest, seeking to maximize personal advantage and without due regard as to the consequences for other people, can contribute to inequalities.

160

If the prevailing social ethos regards it as permissible for people to act largely out of self-interest, without a commitment to equality and justice, then inegalitarian results are inevitable. But the dilemma is that, as Cohen points out, any basic structure that so constrained people's choices that, whatever they chose to do, no inequality could result, would likely be an intolerable violation of liberty.

Education furnishes us with a good example of the point Cohen is making. We think it is a good thing for parents to make decisions in, as they see it, the best interests of their children. We might think it would be peculiar, reprehensible even, if a parent did not show partiality for the interests of their own child ahead of others. We further think that parents should be free to make choices about their children's upbringing and how they spend their money. It is at least plausible then to claim that, if it is permissible for parents to buy junk food, violent video games and sex role stereotyped toys for their children, then they ought to be free to choose altogether more beneficial things, like a school to attend, and ought to be able to spend their money on an acknowledged good like education. However, when parents make these sorts of choices about their children's education, with little or no thought about the consequences for others, the results can be quite inegalitarian. The better-off tend to buy into more expensive neighbourhoods in an attempt to get their children into what they perceive to be better schools, in the process shutting out the worse-off from the schools in those areas. They will say they are just acting in the best interests of their children, and they are not wrong to say this, as going to a school with a high proportion of more advantaged children really does have a beneficial effect on the educational achievement of those children.

The access to schools that a child has is a matter of distributive justice and it involves not only how our education system and society are structured but also the choices people are permitted to make within that system. It is at least partly because we see school choice as a matter of distributive justice, as well as a matter of freedom, that it is the contentious issue that it is. The choices, mainly of the better-off, betray a social ethos that sees no problem in people being able to make market maximizing choices to gain competitive advantage for their children ahead of others. If parents were not inclined to make choices that advantaged their children at the expense of others, the inegalitarian outcomes we observe could more easily be mitigated. But it is conceivable that the contribution to educational inequality made by parental choices could be neutralized if governments disallowed all such choices. A government, acting impartially in the best interests of all, could tell people either where to live or what school to can send their child to. This obviously buys greater educational equality at a, probably, unacceptable cost to liberty, and would have other deleterious consequences such as high surveillance and administration costs. This line of thought shows one reason for the, perhaps intractable, nature of the school choice issue. It involves not

161

just rules about the regulation of our education system but also the social ethos that helps guide the choices and decisions parents make about their children's education. Martin Thrupp (2007) calls the way in which the middle class has been able to capture considerable educational advantage for its children *education's 'inconvenient truth'* and believes that there is an ethical challenge at a personal level for all such parents "to recognise the line to be drawn between advantaging our own children and doing this at the expense of other people's children"(p. 85). Taking Cohen's point we see that, while a focus on how we structure our education system may well be (currently) the only politically and practically feasible way to proceed, this does not mean that all outcomes of our institutional arrangements are just, or merely unlucky, or totally unavoidable either. Practical comprises may be politically well motivated and quite *justified*, but all the results of such compromises should not be thought of as *just*.

To conclude this section then, while the structural objection is a potent one, it is not clear that luck egalitarianism does not or cannot take account of structural inequalities. It may be true that such features have been overlooked in the past, but there is every indication that, perhaps in response to critics, luck egalitarians are giving it greater attention.

Conclusion

This chapter has argued that choice and responsibility have substantial value to us. They are essential to conceptions of agency, important for well-being, and vital for personal freedom. These claims are qualified, but why should they not be. The objections I have looked at have, in the end, served to help clarify our understanding of these ideas rather than refute the claim. The most substantial of these was the structural objection, and I argued that it is fails because there is no reason to think that structural inequalities are outside the luck egalitarian ambit. In fact, the next two chapters make considerable use of the idea that luck egalitarianism *is* sensitive to structural features of a society. There are considerable challenges for a theory of distributive justice incorporating choice and responsibility. But dismissing a role for these morally potent concepts is too easy; they are too intimately related to other values and beliefs about persons for that strategy to succeed.

The idea of the basic moral equality of persons is the ultimate ground of the demand for equality of distribution, a reason for holding people responsible for their choices under suitable conditions, and a reason for denying luck an undue influence on distributive shares. Seen in this way, it is not so surprising that all three beliefs can come together in one egalitarian theory.

Chapter 7:
Distributive Equality

This work has been located within the domain of distributive justice. But this is a surprisingly problematic claim. This chapter examines further what some of the reasons are for characterizing luck egalitarianism as a theory of distributive justice, some of the difficulties of so doing, and some important implications of this.

The what and the why of equality

Beliefs about equality, luck and choice are central to luck egalitarianism. However, luck egalitarians can, and do, disagree over what ought to count when trying to determine whether someone is worse off or better off. They disagree, that is, over what exactly needs to be equalized. In general terms, luck egalitarians, like all egalitarians, believe that the benefits and burdens of social co-operation should be shared equally, or that each person should be equally well off as regards the distribution of the numerous advantages and disadvantages that accrue to the members of a society. A number of more specific candidates have been suggested that spell out what is meant by this; welfare, well-being, resources (income and wealth), opportunities, primary goods and capabilities are some of the more commonly discussed ones. However, this can be set aside to some extent, as *what* exactly we ought to distribute equally is not the most fundamental question for egalitarians and is certainly not critical to luck egalitarianism.

That last statement is by no means obvious and needs some defending. A glance at the philosophical literature on egalitarianism for the past thirty odd years would appear to support the belief that what we should be distributing equally is of major concern. Dating particularly from Amartya Sen's paper, "Equality of What?" (1979), there has been intense debate over the correct metric of equality, to which many of those seen as canonical luck egalitarians have contributed. Sen (1992, p. 4) claims that "equality of what?" is the central issue that differentiates egalitarian theories. While there is also the not unimportant question of "why equality?" this is, for him, of only secondary concern. He sees the question of what to equalize as being central for a number of reasons. One is the perfectly reasonable point that we can hardly make judgements of equality or inequality if we do not know in what respect we ought to be comparing individuals. Another is that Sen believes that all major ethical theories advocate for some particular principle of equality; even theories generally considered to be virulently and explicitly anti-egalitarian in fact have somewhere in them a principle of equality. So, for example, the libertarianism of Nozick appeals to a principle of equality when it claims that each person has an equal bundle of inviolable rights and liberties.

However, luck egalitarianism is not at heart making a claim about what the right focal variable ought to be. What is distinctive about luck egalitarianism is not any particular claim about what ought to be equalized. Indeed, those generally called luck egalitarian are clearly not being identified as such on the basis of any agreement over the right focal variable. Look, for example, at four of those seminal luck egalitarian thinkers originally identified as such by Anderson (1999). Ronald Dworkin[57] (Dworkin, 1981a, 1981b, 2000) argues for equality of resources, Richard Arneson (1989) for equality of opportunity for welfare, G.A. Cohen (1989) for equality of access to advantage and Philippe Van Parijs (1995) for an unconditional basic income. What is distinctive about luck egalitarians comes out of noting that they appeal to the core principles that individuals should not be disadvantaged or advantaged solely because of bad or good luck but that, under suitable circumstances, it is proper to hold agents responsible for the outcomes of their choices and so some inequalities are not unjust. These principles are not about what needs equalizing. This is not to say that luck egalitarianism holds that what ought to be equalized is unimportant, but instead, that it takes the question of why we should equalize the focal variable as being of greater importance to the egalitarian project than Sen allows.

Tan (2008) argues that luck egalitarianism should most properly be seen as supplying a motivating or grounding principle that tells us *why* distributive equality matters. Luck egalitarians say it matters because people's lives matter, they matter equally and people's life prospects ought not to be predominantly a matter of luck. Taking this seriously means not allowing morally arbitrary factors to influence the distribution of those things that are important to how a life goes. Tan argues too that it is a separate matter what substantive principles are entailed by this. By this he means that it is a further question *what* should be distributed equally and *how* it should be distributed. He claims that substantive principles do not just fall out of the luck/choice principle but require further investigation of the implications of this principle. This echoes a similar point made by Cohen (1989) concerning what he called the *equalisandum* of equality. Cohen writes that egalitarians can disagree over the *equalisandum* of equality, over precisely in what way we should make people equal, but he thought that, whatever the *equalisandum* is, they should agree that it should not be a matter of luck how it is distributed.

Philosophically, but perhaps not from the standpoint of political feasibility, Cohen and Tan seem on firmer ground than Sen in giving priority to the question of why distributive equality matters. It is more likely that the grounding principles for a principle of equality can be argued for independently of what the distributable substantive good is, rather than the

---

[57] It is normally acknowledged that Dworkin rejects the claim that he is a luck egalitarian (Dworkin & Burley, 2004), but this is generally ignored as he fits the label as well as anybody else so identified.

other way around. Determining substantive principles is a separate exercise involving arguments about what else is valuable, what matters as well as equality, what things are in a person's interests, what things make a life go better or worse, and many of these will vary across individuals. But it will also depend much more on what you think the most fundamental principles of equality are. Believing a distribution should be largely free of the influence of luck is likely to have implications for thinking about what we should be equalizing. This is because luck may not be morally relevant or applicable to the distribution of some goods. For instance, friends and marriage partners are counted as great goods and luck clearly plays a part in who can become our friends or spouse. But such human relationships do not seem to be of the right nature for considering them the sort of good where luck can be the grounding concern governing their distribution. It would be very peculiar for luck egalitarians (or any egalitarian) to demand as a matter of justice that friends and spouses be equally distributed, even if such a thing would be nice and help lives to go better. However, other factors, that have an influence on who we can meet, do appear to be of the right nature. We may be concerned about the distribution of wealth and income or access to schools and universities. These have a big effect on whom we meet and therefore on the people who can become our friends or spouses. But the actual distribution of friends itself is not a legitimate focus of egalitarian concern.

To illustrate the pertinence of *why* over *what* further, John White (1994) mounts an argument which is representative of a particular critique of egalitarianism. He rejects egalitarianism, and egalitarianism as a basis of educational policy, because he thinks the answers offered for "why equality?" are inadequate, not because he is concerned about the appropriate focal variable. White is perhaps being somewhat disingenuous, or maybe just tendentious, when he says that he fails to see that the proponents of equality give any reason for the desirability of equality. He says this immediately after quoting from a writer (Nielsen, 1985) who defends equality on the grounds of fairness. To my mind fairness is a substantial reason in support of equality. Nevertheless, I think White's concern with "why equality?" is indeed the more fundamental question and concerns about the focal variable do not have much grip until that is answered.

White argues that egalitarianism is dead in the water if no good reason, more than just instrumental ones too, can be given for it. He also suggests that equality is not a fundamental moral value which needs no further justification and that egalitarians often argue from a starting point that presumes equality – although if the intended audience is fellow egalitarians this need not matter. In response to these concerns, I argued in chapter 4 that there is indeed no presumption in favour of treating people equally and equality often requires us to treat people quite differently. I argued that treating people equally is not the fundamental egalitarian principle, which is rather that people ought to be treated *as* equals

(Dworkin, 1977, p. 273). Sometimes this injunction may require us to treat them the same, but just as often it may not. Egalitarians do not presume moral equality and I gave a number of arguments to support that claim. It has also been argued that distributive equality, and by implication therefore, educational equality too, is entailed by moral equality and is a type of fairness. To this I now add that luck egalitarianism also motivates equality of distribution by its identification of luck as an unjust distributor. It also gives us reason for accepting some inequality by its identification of choice as a, sometimes, not unjust distributor.

Perhaps White's difficulty with the answers to "why equality?" is not that there are no answers, but because it is unlikely that the answers are going to be knock-down conclusive. This is because with equality, although we are not at the level of fundamental moral belief or basic value, we are certainly approaching it. As such we are dealing with moral principles which depend, not so much on further facts and reasons, as on their coherence with all our other best considered moral intuitions and beliefs, such as the one just given of fairness. The success of giving a good answer to *why equality* is to be judged on the total package and is dependent on how well it coheres with other values, not because these are the foundational and more basic values, but because they cohere and mutually support each other. Luck egalitarianism offers a particular take on why equality matters that should be taken in conjunction with the wider reasons supporting the value of equality.

So what the *equalisandum* should be is not central to luck egalitarianism which claims that, whatever the substantive good is, a fair distribution will be equal and it is unfair if luck is the dominant influence on how that good is distributed. In talking about what is to be equalized then, it often suffices to talk in generalities such as advantages and disadvantages, well-being, utility or benefits and burdens. These expressions can be taken as place holders for whatever it is that ought to be of ultimate distributive concern.

This is an important point for this work which is only concerned with the metric of distributive equality to the extent that it throws light on developing an understanding of education as one of the advantages that a person can have and that its distribution is therefore a matter of egalitarian interest. This idea happily means that that there is no obvious obstacle to applying a luck egalitarian conception to education, with education (in a way to be further developed) as the *equalisandum.* My task here can partly be viewed as an attempt to supply a grounding principle for educational equality. I am arguing that education ought to be equally distributed, because its distribution should not be a matter of luck, a matter of where you live, who your family is, or what sex you are, for example. Note though that an implication of this is that it is not so much my purpose to set out how this happens. Some implications will be touched on, that is unavoidable, but what exactly it might mean to distribute education equally will require further working out within a framework that says choice, but not luck, can permit inequalities.

166

Complexity

Thomas Christiano (2007) employs the idea of a *fundamental substantial good* to serve as a place holder for the correct metric of distributive equality. He too argues that the precise metric is not critical to theories of egalitarian justice but, whatever it is, it should satisfy three basic criteria. It should be something that all rational agents must pursue for themselves and others (this explains why it is substantial); it should be something that can give us an overall measure of the quality of a life (it is a universal good and it is how lives go that matters) and it should make approximate interpersonal comparisons possible (equality is necessarily comparative in nature). Christiano believes that notions of well-being and capabilities are closest to achieving this but some sort of general notion of advantage, that incorporates these and resources, also looks promising. In this he would also appear to be following Cohen's (1989) preferred metric of *equal access to advantage*, where he understands *advantage* as being wider than welfare and including resources, at least.

While a fixation on resources ignores the fact that resources do not matter intrinsically, it is what we can do with them that matters, they cannot be ignored. As Rawls points out, they are the principal means to pursue whatever is of ultimate value to us and have the advantage of allowing individuals the opportunity to pursue whatever conception of the good they have. However, a simple equalizing of resources fails to take onto account differences in needs, desires, preferences and abilities. Clearly too we value welfare. We all have an interest in avoiding pain and it would be foolish to suggest that pleasure and happiness are not worth having. However, as resources are required to promote welfare, and if we think welfare matters for equalizing, then we are logically required to think that resources must matter too. But welfare too is not all that matters to us and we cannot focus just on welfare and resources as metrics because our preferences and desires can be distorted by the circumstances we find ourselves in and the resources people require, and the welfare they are capable of achieving, are both affected by a person's various unchosen physical and mental attributes. And if we think freedom is important to how a life goes then resources are the means to freedom, but they are not freedom itself, and neither is well-being.

So the sketch Christiano gives of a fundamental substantial good points out something significant about the appropriate *equalisandum* and helps clarify both why the debate over what to equalize has been inconclusive and why it is not the central issue for egalitarian theories. It is often unproblematic to talk in generalities about what to equalize because the range of advantages and disadvantages that are of legitimate egalitarian concern – because they matter for the quality of a life – is extensive. It is likely therefore that the correct metric of equality is some quite general and composite good. The debate about what to equalize

167

has therefore been somewhat misdirected and could never have reached a consensus on any one narrow metric.

It has, nonetheless, not been fruitless and highlights that the correct *equalisandum* must actually be something quite complex. All the possible candidates – broadly resources, welfare, and opportunity for welfare – have something right about them and not one of these candidates alone is sufficient to fit all our considered judgements. The range of goods of legitimate egalitarian concern is wider than any simple metric can encompass.

This perhaps partly explains the popularity of the *capabilities* approach to well-being, a popularity that goes beyond philosophy and into economics. The idea of capabilities is broad and contends that what is relevant to equality is the diverse range of possible human "beings and doings" and the opportunities to achieve those beings and doings (Sen, 1992). It is thus concerned not only with the means of achieving well-being, such as resources, but also with the freedom an individual has to pursue and achieve well-being, and this must take into account features of the person himself. Sen sums up the capability approach by saying that under it "individual advantage is judged … by a person's capability to do things he or she has reason to value" (2010, p. 231). It focuses on "the freedom that a person actually has to do this or be that" (*ibid.*) and includes the freedom to decide for ourselves what we want, value and choose to do. Sen is explicit in recognizing the plurality of spaces that are thus of relevance to equality as there are a plurality of features that are of significance to how our lives go and which matter to us. This, he suggests, reflects the fact that there are many, valid, ways in which one person can be advantaged in comparison with another and this should not be a source of any embarrassment for the idea of equality. As Sen explains it, the capabilities approach represents a clear departure from a concentration "on the *means* of living to the *actual opportunities* of living" (2010, p. 233, his emphasis).

But it is not clear that Sen's capabilities are a radical departure from other metrics and, as Cohen (1989) points out, they are in many ways a blend of Rawls' social primary goods, which included a bundle of liberties, and welfare. It is also not clear that it is substantially different from Cohen's own, tentative, proposal of opportunity to achieve advantage. Stuart White suggests that both Sen and Cohen have what he calls a *pluralistic access theory.* In judgements about the equality of two people we need to consider "their access to a plurality of types of advantage which include, but are not reducible to, welfare"(2007, p. 87). But a problem for both approaches is that in order to say what opportunities or "beings and doings" matter, a theory about what makes a life valuable is required. This is difficult without the answers to controversial questions about value which do not look like being solved anytime soon.

168

What I think we should take from this is that the correct equalisandum is going to be complex, a sum made up of weighted parts that include, at least, means (resources), opportunities, freedoms, advantages, welfare and, I would suggest, Rawls' (1982) idea of the social bases of self-respect. The exact weighting of parts is unlikely to be the same for each individual. This fits the fact of human diversity and the observation that different factors we consider important for well-being can be traded off against each other without affecting our overall judgement of how well off someone is. So, for example, people frequently trade off income against welfare (in the form of leisure) and many mixes of these two can be valued equally when looked at as a whole. It has been pointed out that resources matter instrumentally, as a means to what we care about, whereas welfare matters in itself. But one way of viewing this is that they both just matter to us, but in different ways.

Alan Carter (2002) also urges an appreciation that egalitarianism is at heart multidimensional. He argues that egalitarians are best viewed as motivated by opposition to injustices which involve inequalities. Rather than being obsessed by some strict equality in one dimension, they are actually opposed to inequality across a number of dimensions. He stresses that egalitarians have a view that combines equality of resources, welfare (this is itself a complex variable) and average level of utility, possibly also with other values such as freedom or autonomy (choice makes this explicit in luck egalitarianism). As it is generally not possible to equalize all variables simultaneously, because people have different constitutions and different preferences for example, trade-offs between different dimensions are to be expected and egalitarians will not be disturbed by those that lie on the same indifference curve.

Carter's substantial contribution to the debate then, is to notice not only the complex nature of whatever ought to be equalized, but that we object to inequalities in distribution of the parts and do not generally think in terms of a complex whole. So he concludes that egalitarians will oppose inequalities in (or unequal opportunities for) welfare, resources, average utility or autonomy *individually*, but not to the extent that the cost of achieving equality in any one dimension is substantial inequality in another dimension or too low an average utility. For instance, egalitarians do not favour equalizing welfare at the cost of a substantial inequality in resources or too low an average level of utility. Of relevance to luck egalitarianism, they also favour people being able to shape their lives according to their choices, but not at the cost of substantial inequalities in resources or welfare. So while egalitarians may want to equalize all that matters, this is not practically possible or theoretically desirable.

A consequence of such a view though, is that it becomes unavoidable that at times trade-offs will be necessary between, say, liberty and welfare, or resources and average

169

utility. It will be necessary to weigh up different factors and it will be a matter for disagreement and debate as to how much each factor ought to count towards some overall measure of well-being and therefore contributes to judgements of inequality. It is partly this, I think, that has encouraged some to see egalitarianism as incoherent. But this is mistaken. Equality is rather complex and it is necessarily impossible to achieve equality in all dimensions at once. This means there will always be room for disagreement over the trade-offs that must be made between the dimensions of concern.

The lesson here applies just as well to educational equality. We might have a little more certainty about what we want to equalize – the quality of education each child gets – but education is itself a multi-faceted and complex variable too and we care about its individual parts as much as some overall assessment.

Pluralistic egalitarianism

The idea that the correct *equalisandum* is a quite general good may also tie in with the frequently encountered statement that equality itself is a *pluralistic* ideal (e.g. Walzer, 1983). Walzer was concerned with the different spheres of justice and the need to recognize the complexity and conflicting nature of the criteria we use for identifying what requires equalizing. What is of relevance in the health sphere to equality will be different from what is of relevance in the political sphere, for instance. So his point is closer to the idea I have just discussed that there is an unavoidable complexity in what matters to us and how it should be measured. It may be the case though, that the complexity of the metric is also a function of the nature of the underlying ideal. Equality can seem an ideal that has many parts or is many-sided, and looks slightly different depending on the viewpoint from which it is looked at.

The work of Larry Temkin (1993) gives a good indication of what is meant. He is concerned particularly with the question of when one situation is more unequal than another situation and argues that conflicting judgements over this are the result of the fact that, when we make such judgements, we intuitively adopt a range of different, but valid, positions. His analysis identifies a number of these positions and shows how they can each give rise to different judgements about how bad an inequality is for a given situation. These differing judgements seem to all legitimately reflect our egalitarian intuitions, although they may not all be of the same significance.

So, according to Temkin, we can adopt a position that looks at inequality in terms of maximizing the position of the worst-off. Another position focuses on the aggregate level of inequality by adding up measures of inequality for each member of a population. Yet another position looks at adding individual measures of inequality but with a weighting according to how badly off each person is. Each of these three positions can then be

combined with a further three positions that judge inequality for any particular individual relative to either the average level of well-being, the level of the best-off or relative to all those better-off than that individual. Temkin also notes that our judgements of a situation's inequality can be further influenced by how gratuitous the situation is, how much it deviates from some ideal state of absolute equality and some consideration of the extent to which the inequality is a result of the way a society is structured. All these positions seem to offer judgements that reflect some legitimate aspect of our concern for equality and Temkin's analysis is invaluable for making it explicit how multiple positions underlie and influence our egalitarian judgements. He concludes that the notion of inequality, and hence also equality, is surprisingly complex.

Temkin largely thinks that these positions are the result of inequality being a multifaceted notion that has many aspects, not all of which are entirely compatible. The obvious objection to this is that they are incompatible because the ideal is incoherent and lacks any underlying unity because what is being called equality is actually a conglomeration of disparate concerns. But incompatible need not imply incoherent. To see why not, consider these two worlds of eight inhabitants at varying levels of well-being[58] but with equal aggregate well-being:

World A – (3, 6, 6, 6, 7, 8, 8, 20)

World B – (3, 3, 4, 4, 5, 5, 20, 20)

Intuitively, I suggest, World B is more unequal than World A. But this intuitive judgement seems to be on the basis of different aspects of each world, and even if you disagreed that World B is more unequal, this would still be the case. Any comparative judgement about the inequality in each world cannot be simply on the basis of the difference in well-being between the worst-off and best-off in each world, or on differences in the average level of well-being, as they are the same in both cases (i.e. the mean is 8 for both worlds, although the medians are different). It also cannot be simply on the basis of the differences between the worst-off and the best-off, which are also the same in both worlds (i.e. the range is the same in both cases, although the standard deviations are different). Considerations of aggregate inequality across all pair-wise comparisons is certainly having some impact on our thinking about each world but what Temkin wants to draw our attention to is that our

---

[58] This is not an example that Temkin uses and does not strictly apply his different positions from which to judge a situations inequality. But it does, I hope, convey some of the flavour of his thinking while also anticipating what I want to say next. To stick more strictly to Temkin's aspects, World B is worse as regards inequality from the position of additive inequality relative to the average, but the two worlds are the same for inequality from the position of additive inequality relative to the best-off person. The two positions thus yield incompatible judgements. One says World B is more unequal than World A but the other says they are the same as far as inequality is concerned. My suggestion is that which judgement is the most fitting is context dependent.

judgement depends on what position we adopt and I would add that we find different positions more salient depending on which world we are looking at.

In World A it seems most salient to our judgement of how unequal the world is that most inhabitants are not that far from the average level of well-being, that all except one person are at reasonably similar levels of well-being. On the basis of a comparison between the worst-off inhabitant and the best-off we might say this world is very unequal but really this does not seem to fairly capture the overall inequality of this world where the difference between seven of them is not that great. In this world a judgement that takes account of the average level of well-being seems to best account for our intuitive response.

In World B the more salient aspect is now the large difference between the greater numbers of the worst-off and the best-off. In this world the gap between the worst-off and best-off exercises us much more. So although the average level of well being is important to us, and appears most salient in World A, the gap between the worst-off and the best-off is also important to us. Changes in context (in this case largely changes in the numbers at each extreme), changes what is most salient to us. And it is not that the difference between the worst-off and best-off is unimportant in the World A; there is something quite objectionable in the gratuitousness of having one person so much better off than everyone else. Similarly, the average level of well-being retains some relevance in World B e.g. World C (2, 2, 3, 3, 4, 4, 19, 19) would be a worse world than World B as its average level of well-being is lower.

As Temkin argues, different positions yield conflicting but valid judgements about inequality. This is not incoherent though. Rather, which position we ought to adopt is to some extent context dependent, or more accurately, how we weigh up the views from each position is context dependent. There is nothing incoherent in saying that we find it objectionable when there are great differences in well-being between larger numbers of poorly-off and larger numbers of very well-off people, but the same difference is not so bad if it involves fewer people who are overall more homogenous in well-being. This looks like a fairly solid and coherent egalitarian reason for judging one case to be more unequal than the other even though different aspects, the average and the difference, are being responded to in each case. It is more correct to say that different positions give us different insights into a pluralistic value.

Take another familiar example; in some situations we judge that inequality is better ameliorated by distributing a good to those who are averagely-off and will benefit a lot from it, rather than by distributing the same good to those who are the worst-off and may benefit only minimally from it. Think here of cases involving the profoundly handicapped whose quality of life may be little improved no matter how many resources are lavished on them. This does not justify doing nothing for them, but suggests that in such cases equality may

actually be enhanced by not focussing only on the worst-off. This is another example which shows we trade off concerns about the differences in well-being between the worst-off and the better-off against the level of average well-being.

What explains Temkin's multiple positions, I believe, is that egalitarianism is unavoidably pluralistic in nature. The idea that egalitarians are motivated by multiple values has already been referred to in the context of Scanlon's discussion of the diversity of our objections to inequality (in chapter 4). He takes the diversity of objections as evidence of the plurality of values being drawn on by egalitarians and the multiplicity of motivations for caring about equality. He further suggests that some of the concerns motivating egalitarians are not essentially egalitarian in nature, by which I take it he means to do with comparative fairness between persons. So, for example, Scanlon says our concern for the plight of the worst-off is often better described as humanitarian in nature rather than egalitarian; we deplore deprivation and suffering in themselves. I would rephrase that slightly and say that some of the values motivating egalitarians are not *exclusively* egalitarian, but humanitarian values should not be viewed as something unrelated to egalitarianism. This is because the fundamental belief underpinning egalitarianism, the equal moral value of each person's life, resonates with humanitarian intuitions. If little value is placed on a life there is little humanitarian feeling. Equality thus goes hand in hand with humanitarian values. In fact, I don't believe one could be an egalitarian without placing value on life. They are different values, but they are intimately related in a way that makes egalitarianism almost inseparable from humanitarianism. Once we see this it is not so surprising that one can have sometimes incompatible, but not incoherent, judgements.

I need to be clear that the meaning of pluralism intended here is different from the normal use of this term to mean that there are many different and distinct moral values. There is a difference between egalitarianism being intrinsically pluralistic, and egalitarian judgements being modifiable in the light of a plurality of other values. I accept values pluralism too. However, when it comes to the pluralistic nature of egalitarianism there are actually only two quite specific values involved that are inextricably entwined.

The idea that equality is fundamentally, and I suggest inescapably, pluralistic was observed by Derek Parfit (1997, 2002). A belief in the value of equality almost always goes with a humanitarian concern to improve the lot of the least well-off. But this could not be the case if egalitarians did not have the even more basic belief that human well-being, at least, is of fundamental value. Parfit argues that, although there may be some pure egalitarians – holding that equality is the single or most important value – it is most likely that egalitarians are in fact pluralists about value and hold some more elaborate view. Parfit claims that most egalitarians hold what he calls a *Pluralist Egalitarian View*, believing that it is better to have both more equality and more utility (or well-being, and understood in the

complex sense discussed). This is so because, if equality was all that mattered, then any perfectly equal distribution would have to be judged as good as any other perfectly equal distribution. It would then be a matter of indifference whether two people were equally badly off or equally well off and this does not seem to represent the position of most egalitarians at all. In view of the claim that the equal moral value of lives is a core egalitarian belief, this is not likely to be very surprising. Nonetheless, Parfit makes it explicit that egalitarians most plausibly hold two values simultaneously.

The Pluralist Egalitarian View, according to Parfit, consists of at least two principles. The first is the Principle of Equality: It is in itself bad if some people are worse off than others. The second is the Principle of Utility or Well-being: It is in itself better if people are better off. In this light, we see that the arguments Temkin makes depend to a large extent on this being the case. His judgements about inequality are made on the basis of *both* well-being and equality. His multiple viewpoints arise from the different ways in which we can compare (equality is necessarily comparative) the well-beings of different individuals.

According to the Pluralist Egalitarian View both equality and well-being have intrinsic value. The pluralist view will, however, hold for any fundamental good, such as well-being or education, where more is better than less. "The things of which we care about egalitarian distribution are things that we want more of rather than less for everyone. And it is because we want more of rather than less of these things for everyone that we think that egalitarian distribution of these things matters" (Christiano & Braynen, 2008, p. 399). The thesis is to some extent a justification of the claim that equality is intrinsically valuable and it is, I think, accurate to say that most egalitarians value well-being too, certainly those who argue that welfare is the appropriate currency of equality do. But say you rejected this view. Scanlon (1982), for instance, has argued that individual well-being need not be thought of as intrinsically valuable. His contractualist account of right and wrong holds that the moral relevance of well-being resides, not in its intrinsic value, but because an individual could reasonably reject a principle that gave his well-being no weight. But this does not count against a pluralistic view. If Scanlon's contractualism is a good account of aspects of morality concerning what we owe each other, then the pluralist view would be saying that, in moral argument, it would be reasonable for a person to reject a principle that did not give equal weight to their well-being. It does not seem to me that this alters things substantially as it involves largely a shift in emphasis from intrinsic value to intrinsic reasonableness.

It is perhaps easier to be a pure utilitarian than a pure egalitarian, holding that only well-being is significant and we should therefore maximize it. But I would suggest that neither pure egalitarianism nor pure utilitarianism is stable. Pure egalitarianism is unstable for the reason Parfit gives; it is hard to say there is no moral difference between a state of equal suffering and a state of equal happiness. Pure utilitarianism is unstable because, once the

174

value of well-being is asserted for one life (say your own), it becomes hard to deny that other lives have value and hard to deny that most lives, at least, are probably of similar value to yours. Once the value of well-being is asserted it is hard to be indifferent to distributions of utility that have no regard for the separateness of lives; it is hard to say there is no moral difference between a state which maximizes aggregate utility, but concentrates it mainly in one person, and a state with a more equal distribution e.g. (3, 3, 4, 10) versus (5, 5, 5, 5). Our intuitions in these cases are explained by the value that both equality and well-being hold for us. However, I also think that the Pluralist Egalitarian View is more than simply holding two distinct values. It is holding values that are intrinsically conjoined. That is why pure egalitarianism and pure utilitarianism are unstable. The two values cannot be isolated from each other.

Parfit did not fully develop the pluralist egalitarian view he identified and, according to Iwao Hirose (2009, 2011), at times mistakenly interprets it as allowing the value of equality, or the disvalue of inequality, to be detached from the value of well-being. Hirose argues that the two cannot be treated separately as equality is best understood as "a feature of an aggregative process for estimating the goodness of a state of affairs" (2009, p. 303). By this he means that equality is not some object that can be examined separate from a state of affairs. It is rather, an intrinsic property of how we aggregate people's well-being in the determination of the goodness of a state. Equality on this view should be seen as a good-making feature of a state of affairs. That is, egalitarians believe that states of affairs are made better, because fairer, by being more equal, and worse, because more unfair, by being more unequal.

Hirose emphasises that we cannot talk of equality separate from the listing of people's well-being. Equality cannot exist independently of people's well-being for the reason that, without people (at least two) there is no equality or inequality at all. As pointed out, equality is essentially comparative, so people need to be compared in some dimension for the possibility of egalitarian judgements to even exist in the first place.

This may make it seem that equality is a value derivative of the more basic value of well-being. I think this would be mistaken. The point is rather that equality is an intrinsic property of a pattern of distribution of well-being, just as statistical parameters such as means and standard deviations are. Hirose points out that inequality cannot be measured without some distribution of well-beings which we can see. This suggests that we can think of the value we place on well-being as being expressed by the imperative to maximize the aggregate or average of a distribution. Similarly, the value we place on equality can be expressed by the imperative to minimize the spread. The two are certainly related. They are not, however, derivative of each other; they are two facets of the same distribution. But equality is more intimately related to well-being than that statistical analogy allows. Hirose

points out that a distribution of (10, 5) is going to be judged more unequal than (110, 105). It cannot be only the spread that is eliciting that judgement; they are the same in each case. It must therefore be on the basis of the aggregate or average well-being too. This shows inequality cannot be judged separately from well-being but only on the basis of both each individuals' level of well-being and the pattern of distribution.

I think the pluralist view as developed by Hirose is very promising. There are some problems it raises for egalitarians, however. For one thing, it does not tell us how much we ought to value well-being and equality. Hirose gives us a general formula, based on the Gini social welfare function, which calculates the goodness of a state of affairs as a function of well-being and equality. As inequality can be expressed in terms of differences in well-being the formula is a function of only one variable and has normalizing coefficients dependent only on the number of people in a distribution.[59] It seems to me though, that it is open to argument whether the coefficients ought to be adjusted according to how one weights equality and well-being. Nothing about pluralism indicates anything about how we ought to weight the two values. This suggests a weakness in Hirose's formula that has a consequence we will see shortly.

Another consequence of the pluralist view however, and a significant one, is that it means there is always a good reason for maximizing. Because utility (or some substantive good) is valued for itself, the egalitarian is always going to be open to the allure of utilitarian arguments to maximize. There is nothing, I think, incoherent in this. We have seen how egalitarians believe both that equality is an effective *means* for promoting well-being and that equality is also a desirable *end* in itself. But it can be uncomfortable and means there is an inherent and unavoidable tension to pluralistic egalitarianism. Equality and utility are like the ends of a pushmi-pullyu, joined, but sometimes pulling in opposite directions. Egalitarians, if pluralist, are always going to see arguments to maximize, say welfare, or efficiency or academic excellence, as having genuine merit although they may work against equality. This need not be a bad thing, but as it is not clear where boundaries should be drawn, it is uncomfortable nonetheless. Somewhat related to this is another lurking pitfall. As equality is itself a function of well-being (or some substantive good) – it is the difference in well-being between two people – it can seem that only well-being is of intrinsic value. This can tempt some of an egalitarian disposition who, abhorring poverty and deprivation, find themselves drawn towards a prioritarian position which concerns itself only with

---

[59] $g(w_1, w_2, w_3,..., w_n) = 1/n^2(w_1 + 3w_2 + 5w_3 +...+(2n-1)w_n)$ for $w_1 \geq w_2 \geq w_3 \geq ... \geq w_n$ and where g is the goodness of a state of affairs and w a measure of well-being in the most general understanding (Hirose, 2009, 2011).

absolute levels of well-being. I think this is understandable, but mistaken given the core luck egalitarian beliefs.

A consequence of the pluralist nature of egalitarianism can be seen in cases where a government may recognise that some situation is unjust as regards equality but that nonetheless it is not required, all things considered, to remedy it. For example, a government may sincerely believe that it is unjust that some are less well educated than others, but that this situation must be tolerated as it would be too expensive in human and material resources to ensure that everyone is equally well educated without affecting welfare in other areas such as health. An egalitarian could acknowledge this but claim that it is still open to debate about what level of inequality can be tolerated within the bounds of existing resources.

A final point here is that I think Scanlon's diversity of objections to inequality is, as he says, partly to do with the normal sort of values pluralism. But I suggest that it is also a function of the Pluralist Egalitarian View and therefore unsurprising. Looking again at his objections they can be categorized as either to do with concerns about level of well-being, or concerns about differences in well-being. It could then be argued that they are in fact all egalitarian in nature.

The levelling down objection

The pluralist egalitarian view was first put forward by Parfit in the course of a discussion of types of egalitarianism, the levelling down objection and possible responses to that objection. The levelling down objection holds that it counts against the intrinsic value of equality if it recommends that we make some worse off, and no one better off, in order to bring about a more equal state. This is ludicrous according to Parfit. How can one state be better than another state if it is better for no one and achieved by making everyone as badly off as each other? The force of the objection comes from the way it starkly brings the well-being of individuals directly into conflict with the principle of equality. Maintaining the value of equality appears to require the egalitarian to counter-intuitively claim that it is better, in at least one respect (equality), if everyone is equally badly off than to have some better off than others. But if no one is better off and some are worse off it is hard to see how this can be better in any respect. I think it is possible to discern a strong and weak version of the levelling down objection. I will call the strong version that which objects to levelling down all agents to some level of equality. This is the standard formulation. But there is a weak version that objects to any levelling down of a better-off individual, particularly when doing so lowers the level of aggregate utility. This weak version appears to be based on avoiding waste. It appears to be wasteful if the total possible aggregate of utility, or in education of talent, is left unrealized.

177

The levelling down objection is a strong reason for why some (often the better-off) reject equality. The 'tall poppy' syndrome is a form of it. Opposition to progressive taxation employs it. It is also prevalent in education. For example, there are those who would reject any change in the education system to improve the achievement of the poorest performing, if they thought it might have a detrimental effect on the their child. Many are inclined to tolerate educational disparities, as long as some are encouraged to pursue excellence. Proposals that look like they may involve some levelling down encourage accusations of dumbing down and breeding mediocrity instead of nurturing rare talents and giving the gifted an opportunity to shine. Of course I am simplifying. But the levelling down objection, in its strong and weak form, is one reason behind these sorts of complaints.[60]

Pluralistic egalitarianism provides a reply to the levelling down objection. Because both values are held, the pluralist egalitarian believes that levelling up the worst-off is to be preferred to levelling down the better-off and needn't believe that levelling down is ever justified. Hirose also claims, and his numbers seem to show it, that his pluralistic egalitarianism – he calls it weighted egalitarianism (Hirose, 2011) – is immune to levelling down while still accounting for giving priority to the interests of the worst-off.

But this is not totally convincing. While it might be easy for the pluralist egalitarian to deny that (7, 7, 7, 7) is any better than (7, 8, 9, 20), it is harder to deny that (7, 8, 9, 15) is not in some way better than (7, 8, 9, 20), even though no one is better off. The smaller inequality seems to matter in the moral calculus to those of an egalitarian disposition, despite being aware that it seems irrational to hold one state better than another when it is a move that only makes some worse off. So while the strong form of levelling down is avoided, the weaker version is not. Hirose's weighted egalitarianism seems to judge that (7, 8, 9, 15) is worse than (7, 8, 9, 20) and so raises the suspicion that it grants too much to the value of well-being and tends too much towards utilitarianism.[61] Weak levelling down is also precisely the sort of thing that anti-egalitarians object to, a small levelling down in order to achieve less inequality.

Temkin (1993, 2002, 2003c) suggests that what supports the levelling down objection (and therefore indirectly prioritarianism) is a belief, often tacitly held, in what he calls the Slogan. The Slogan states that one situation cannot be better or worse than another if there is no one for whom it is better or worse. Such a *person-affecting* belief implies that there is no good in a situation if there is no one for whom it can be said to be good. Temkin gives a particularly vivid example to demonstrate the power of the slogan. Imagine a world where

---

[60] The levelling down objection is used to good dramatic effect in *Harrison Bergeron* a short story by Kurt Vonnegut Jr., also made into a 1995 television movie by Showtime.

[61] $g(7, 8, 9, 15) = 131/16$ which is less than $g(7, 8, 9, 20) = 136/16$, where g is a measure of goodness.

half are blind and another world where all are blind. A belief in equality as intrinsically valuable would seem to give us at least one reason to judge that, in at least this one respect, the world where everyone is blind is better. This seems to imply that there is therefore some reason to think that, in the world where half are sighted, they ought to be blinded in order to bring about a more equal world. This is an example of the *argumentum ad absurdum* nature of the levelling down objection to the intrinsic value of equality. Leaving aside the horror of thinking it may be permissible to blind half a population, many think that there is no way in which the world where all are blind can be better than the world where only half are blind. In moving from one to the other there is no one for whom it would be better and many for whom it is demonstrably worse. How could such a world of the equally blind be better in any way if there is no one for whom it is better? Temkin thinks it is the strength of this belief that underlies much nonegalitarian thinking in general.

Nonetheless, Temkin argues we ought not to accept the Slogan despite its strong appeal and possible widespread acceptance. The Slogan ought not to be accepted because a situation or an outcome *can* be reasonably judged better or worse on a number of grounds, quite independently of whether it is better or worse for someone. Temkin draws a distinction between what makes something good or bad for someone, and what makes an outcome good or bad. Often the goodness or badness of an outcome will in fact be determined by its goodness or badness for people. Are their interests, rights, needs or well-being being served? Many things, probably most things, have value or disvalue solely because of the effects they have on people. The Slogan implies that this is where the account of goodness or badness ends.

Should we accept this? Temkin contends the goodness of outcomes does not reside solely in their goodness for someone. If this were true then virtually every ideal we hold would be undermined. For example, an outcome can involve greater injustice, and hence be worse as regards justice, without being worse for anyone. Imagine we could go from a world much like this one to a world where those who are honest, hard-working and law-abiding are better off than they are now. Hooray! But the dissolute, criminal and indolent are even better off than them and much better off than they are now. No one is worse off; everyone is better off. But many would say such a world is not as just; there is something morally wrong with a world where bad people fare better than good people (yes I know that is this world too but we're thinking of a world where this aspect is amplified). It is worse in at least this one respect and it doesn't seem at all strange to make this judgement.

We can say then that justice has value for us and that value is not necessarily based on it being good for anyone in particular.[62] Temkin calls it an impersonal value. In fact, the odd claim to make would be to say that the second world is in no way worse than the first because there is no one for whom it is worse. Temkin believes that analogous arguments can be made for most ideals; freedom, autonomy, virtue, duty, many ecological values and, of course, equality. How outcomes compare as regards any of these ideals can be judged quite apart from the well-being of anyone. We could have a world where all are free but not particularly well-off or a world where some are slaves but everyone, slaves included, are better-off. The second world can coherently be called less free and be judged worse in at least this one aspect, even if it is worse for no one. We need not, all things considered, prefer a world where all are free, although many will. Nevertheless, it is perfectly coherent to claim that, at least in this one respect, it is better for having more freedom, even if not better all things considered. It is better for no individual but it is a world of greater freedom.

It will be objected that people *are* worse off when they are slaves. But it is not hard to imagine being free to eke out a living in some post-apocalyptic wasteland (or maybe just some anarchic third world country), in thrall to no other person, but utterly miserable. In such circumstances, having your needs met, maybe even quite well, but being at the beck and call of another, may well seem preferable, and this in no way contradicts it simultaneously being the case that it is unjust to be enslaved. Here, well-being is trumping freedom all things considered.

To accept the Slogan seems to entail the rejection of all ideals as intrinsically valuable. This would be wrong. Ideals coherently have value that attaches to outcomes, to states of affairs, rather than just individual well-being or self-interest. They may also have value for people. It is not inconsistent to claim that freedom is good for someone and good even if it does not mean their life goes better. The egalitarian can also claim that equality is good for people, as argued in *The Spirit Level* (Wilkinson & Pickett, 2009). But the egalitarian, in my understanding, also claims that there is something valuable about equality independent of it being good for someone. And this is so because the basic claim is that people are equals and it is fair, but not necessarily welfare enhancing, to treat them as such. Consider only one

---

[62] There is some intriguing empirical evidence that supports the claim that people value fairness independently of whether a situation is better for anyone. In ultimatum bargaining experiments, subjects are asked to divide some amount of money, X. The first subject proposes some division of the amount. The second subject can accept the proposal, in which case they receive what was proposed and both are better off (unless the proposal was a (0, X) split which is rare). Or the second subject can decline the proposal, in which case they both get nothing and no one is better off. It has been found that if the proposal is too unequal it is likely to be turned down. This seems to indicate that fairness, in this case a more equal division of the money, is valued independently of whether anyone is better off, as a situation where both are better off is sometimes rejected in favour of a situation where both are equal i.e. (0, 0) is often preferred to say (1, 9), even though it is better for no one (e.g. Güth, Schmittberger, & Schwarze, 1982).

possible distribution of a good between identically situated individuals; (7, 7, 7, 20). Perhaps the good that is distributed cannot be divided in any other ways, say, four identical families for only four state houses, one of which is much better than the others. An inequality is unavoidable and it would be foolish to bring the quality of the better house down to that of the others. That seems wasteful. Or a school with four teachers for four classes and one of the teachers is outstanding while the other three are equally mediocre. One class must get the outstanding teacher and it would be foolish to sack her and employ another mediocre teacher so that all classes receive the same level of teaching. However, there is nothing incoherent in saying that there remains something unfair about these states. We will try to mitigate the unfairness by holding a lottery perhaps, or rotating the outstanding teacher around. But the situation still has a regrettable unfairness about it that we would want to avoid, if we could.

Temkin's conclusion therefore has some plausibility: "I, for one, believe that inequality is bad. But do I *really* think there is some respect in which a world where only some are blind is worse than one where all are? Yes. Does this mean I think it would be better if we blinded everybody? No. Equality is not all that matters" (1993, p. 282).[63]

Christiano and Braynen, however, reject this response to the levelling down objection. Rather than accept that equality sometimes requires levelling down, albeit trumped by other moral considerations, they deny that levelling down is an implication of the principle of equality at all, *properly understood*. They claim that, properly understood, it opposes levelling down and "always favours states in which everyone is better off, even if unequally so, to ones in which everyone is worse off even if equally well off" (2008, p. 394). In order to make good on this claim they describe what they call a *common good conception* of the principle of equality, which gives preference to states where everyone is better off, as opposed to a *purely structural conception* which judges states solely on the basis of interpersonal comparisons. The second view, they think, does entail levelling down, but the first, and superior conception, avoids it. Their idea involves a pluralist egalitarian conception versus a purely egalitarian one.

As Christiano and Braynen define it, the common good conception of equality has two parts. The first is that, for any given state of affairs there is an ideally just – i.e. equal – distribution of the feasible goods accessible in that situation. The second says that, our evaluation of how just a state of affairs is depends on how far it deviates from this ideal

---

[63] One is here reminded, perhaps, of the short story *The Country of the Blind* written by H. G. Wells. In many ways it was better for the villagers to have everyone blind than to suffer the disruption brought about by one sighted person.

distribution.[64] What is distinctive about this approach of Christiano and Braynen's is the idea that our evaluation of a state, and its alternatives, ought to be from the reference point of the ideal distribution, rather than the status quo or some other, possibly arbitrary, equal state. They maintain it is these two steps together that sidestep the levelling down objection: the ideal distribution is a distribution of all feasible goods, and so accepts no wastage, and the second step allows that inequalities are unjust, but sometimes not as unjust as equalities where all are worse off.

There are three points that I think favour this conception. The first is that it fits comfortably with luck egalitarians rejecting, as unjust, equalities that do not fittingly reflect choices freely made i.e. not all equality is fair equality.[65] The second is that it preserves the intuition that inequality is unjust, that less inequality is better, but that nonetheless, sometimes, the value of well-being means an inequality ought to be preferred over an unfair equality i.e. (7, 8, 9, 15) is unfair because it is unequal, but not more unfair than (7, 7, 7, 7). Pluralist egalitarians share Christiano and Braynen's belief that egalitarians are not committed to believing that any equality is necessarily better than any inequality. The third point is that it accords with the arguments I made in the introduction that judgements about justice and injustice ought to be on the basis of ideals, or universal and fundamental principles. Judgements cannot be solely contextualized, but context is not irrelevant.

There are some mathematical complexities involved in measuring the deviation of a distribution from the ideal that we need not go into here.[66] The upshot is however that Christiano and Braynen describe an understanding of, what I would call a pluralist egalitarian conception, that avoids the strong form of the levelling down objection, but allows that some weaker levelling down involving slightly less average utility is sometimes acceptable if it achieves a less unequal distribution. (7, 8, 9, 15) can legitimately be preferred to (7, 8, 9, 20), because it is closer to the ideal distribution (11, 11, 11, 11). But (7, 7, 7, 7) should be preferred to neither. This is important because pluralism should not have the consequence of always maximizing average well-being. They conclude that their (pluralist) understanding of equality succeeds against the levelling down objection because, while egalitarians hold that inequality is unjust, they do *not* have to hold that inequality is

---

[64] The idea that evaluations of justice ought to be on the basis of a counterfactual – in this instance the ideal distribution – is pursued in more depth in chapter 8. There it is argued that counterfactual reasoning is the correct basis for many egalitarian judgements.

[65] Think of a group of friends dining out. Ben orders the best steak, the best wine and a Pavlova dessert. Ken orders a simple salad and drinks water. To split the bill equally at the end of the evening is, c*eteris paribus,* an unjust equality; it does not fit the choices of the diners.

[66] They suggest their solution as a working hypothesis. It is not a simple sum of deviations which has some sizable problems. But I'm not sure their 'reciprocals' approach is the best either (I think some variance approach may be better) but this is not the place for such investigations.

always more unjust than a low level of equality. The reason for this is that a state of inequality may sometimes be closer to the ideal equal distribution than a state of equality.

This section then, vindicates the pluralist egalitarian view, resists the levelling down objection and provides further clarification of what is involved in distributive justice.

Staunch egalitarianism

The conclusions from the last section encourage some further examination of those who are better off than others. Such discussions commonly focus on those better off economically, so the emphasis here is similar, but always with the understanding that this is only one facet of the correct *equalisandum*. Commonly, luck egalitarians state that it is bad if someone is worse off due to bad luck alone. Emphasis is thus often on the worst-off in society, their condition often being the trigger for an egalitarian response. This is because egalitarians are, in part, motivated also by a humanitarian concern to alleviate deprivation and suffering and, as pluralists, believe that more well-being, or education or whatever the substantive good to be distributed, is in itself better. This emphasis on the worst-off is understandable, and often justified, but runs the risk of morphing into something other than an egalitarian concern (i.e. prioritarianism or sufficientarianism). It needs then to be asserted that the converse is also a matter of egalitarian concern and, while it tends not to be so evident, luck egalitarianism should also be read as claiming that it is bad if some are better off than others due predominantly to good luck. Temkin has made this point most lucidly.

> Two people are unequal if and only if one is better off than the other. And one is better off than the other if and only if one is worse off than the other. Thus, although one might gain rhetorical mileage by expressing one's demand for equality in a benevolent way, rather than an envious or neutral way, each of the ways express the very same relation that may obtain between different individuals. Correspondingly, if it really *is* bad for one person to be worse off than another through no fault or choice of their own, then it must be bad for one person to be better off than another through no fault or choice of their own, and similarly it must be bad if two individuals are unequally well off. These relations are logically equivalent. (2003b, p.126)

The condition of the best-off then also engenders egalitarian concern. As Temkin makes clear, on logical grounds alone this must be the case, as to say someone is better off than another means that the other person is worse off. This isn't envy, although it may regretfully be tinged with that, but a statement consistent with the luck egalitarian intuition that someone's fate, their life prospects, should not be a matter of luck alone.

183

Perhaps though there is reason to think that, while it is bad for someone to be worse off, and this requires egalitarian redress, maybe levelling down the better-off is not required. Imagine, well we do not need to imagine too much, if some are better off than others because they are more beautiful than others. How can it be good to make the beautiful less attractive even if this means a more equal state of affairs? Now I do not share the intuition that this is patently absurd, if some are much better off than others a more equal condition is to be preferred. Nonetheless, I might not want to make the beautiful less attractive because of other moral concerns. We think it is wrong to disfigure people and that such an action would have adverse consequences for a society if people were to think that the state could legally interfere with their bodies. But this is actually beside the point; all such objections are largely red herrings, of the Harrison Bergeron type. What is actually required by luck egalitarianism is that our institutions and social structures not be such that the lucky – beautiful, talented, fast – are systematically advantaged over others; no disfigurement is implied at all. Just that institutions and rules be fair.

This does not, however, negate the thought that it would be in one respect better if those beautiful people were not just a little bit less attractive. It also does not in the least negate the idea that, if the lucky beautiful profit materially from their looks, then those material rewards are subject to redistribution, through entirely unremarkable mechanisms like progressive tax scales, for instance. If our social structures accord the beautiful greater advantage, due to no credit of their own, then it is entirely appropriate to transfer some of those resources, in some non-disrespectful way, to the attractively challenged. People sometimes object to such an idea as if the fact that some talented and gifted people enjoy greater advantages than others is some immutable natural law. Such claims are to be resisted. While no one person is responsible for our social structures, they are nevertheless the result of collective human agency. If our structures systematically advantage the lucky over the unlucky this is not a fact of nature, it can be altered by that same human agency.

There is too the thought that if someone has more than their fair shares then someone else almost inevitably has less. Kevin Harris (1997) has argued that in various ways a market economy functions like a zero-sum game. It is admittedly not a perfect zero-sum game; economies can grow over time and lift everyone. But at any particular time a market economy is enough like a zero-sum game that it is often the case that some must be worse-off in order for others to be better-off. If such is the case then the very possibility of someone enjoying plenty is, to some extent, contingent on others having little or, to put it bluntly, the cause of some being poor is that some are rich. The solution to such distributive inequality is precisely to transfer from the lucky to the unlucky, even though the lucky might not like it. Consider that in our society the educated tend to earn more than the uneducated. To some extent the greater earnings of the educated are *dependent* on the

184

uneducated earning less. The two are inextricably linked and it is logically impossible then to disentangle the condition of the better-off educated from the condition of the worse-off uneducated. Now, this need not be too troubling if the educated owe their position to their good choices and the uneducated to their poor choices under suitable background conditions. But to the extent that the position of both is a matter of luck then the better-off should not be encouraged to think their greater fortune a matter of just processes or iron laws of nature. Luck egalitarians claim that people should not be better-off or worse-off than others due to luck. In this case an economic and educational system is producing differential outcomes and it is a matter of luck, from an individual's standpoint, whether they are were one of those born into conditions that allowed them to benefit from the structures in place or not. It is not luck in the sense that it is unpredictable. It is entirely predictable how and who will be advantaged. But it is largely a matter of luck that those who possess the favoured attributes should have those attributes or have enjoyed the circumstances that nurtured them. We can change the social structures or redistribute the wealth, or both. But justice dictates that something be done.

It may be the case then that our sentiments about the condition of the worst-off are not symmetrical with our sentiments about the condition of the best-off and that we are right to feel this. But this does not appear to be because of egalitarian principles. Rather we seem to care more about the position of the worst-off because we have additional moral concerns. There is greater moral urgency about their position because of the likelihood that it involves absolute and not just relative poverty or suffering, as well as a loss of dignity, possibly stigmatizing treatment and less control over their own lives. We thus have other moral reasons for attending first to the condition of the worst-off. But the concentration on the worst-off is also partly generated by the very simple idea that if we have some benefit, say $50, to bestow on one of two people, egalitarian reasons will point in favour of it being given to the worst-off of the two as inequality would be increased by giving it to the better-off person and decreased by giving it to the least well-off person. Sometimes reasons of diminishing marginal utility are given for prioritizing the needs of the worst-off. $50 will often mean more to a poor person than a rich person so we gain an overall greater increase in utility by giving the $50 to the poor person. However, this is a reason of efficiency and not an egalitarian reason. More difficult cases may well suggest that the worst-off person will ultimately be better off if we gave the money to the other person who can use it to generate more wealth that can then be transferred, but in the first instance there is a simple egalitarian reason for giving priority to the worst-off.

It is also arguably the case that we are not very good at judging our own circumstances and are inclined to self-justifying deceptions. So, for example, there is considerable empirical evidence that people tend to systematically overestimate their own skill,

185

knowledge, expertise, talent, personality, and moral character. In particular, they "are often motivated to reach flattering conclusions about themselves and their place in the world"(Dunning, Heath, & Suls, 2004). In the same way, there is a tendency for those who are well off to see little luck at work in bringing about this happy state, while those who are worse off may be acutely conscious of their bad luck. In addition, the wealthy are wont to point out that the poor are not worse off due to no fault of their own, but are in many ways culpable for their condition. In response, the poor might point out that the rich do not enjoy their position because of how wonderful and deserving they are but because of the luck of birth or agreeable happenstance.

This is one reason why the following is interesting; because it is unusual to see the well-off acknowledge how much their position is a matter of good luck. It also serves as another example of the fundamental luck egalitarian intuition at work and how it applies just as well to the position of the best-off. The passage is from a book that Barack Obama put out not long before he announced himself a U.S. Presidential candidate in 2006. In it he records a conversation he had with Warren Buffet, a man who has been one of the world's richest billionaires for some time and is perhaps an unlikely luck egalitarian, especially given the observations just made. But we see him here doing a fairly good job of enunciating some of the key intuitions behind luck egalitarianism and reaching an interesting and principled redistributive conclusion.

> They [his fellow billionaires] have this idea that it's 'their money' and they deserve to keep every penny of it. What they don't factor in is all the public investment that lets us live the way we do. Take me as an example. I happen to have a talent for allocating capital. But my ability to use that talent is completely dependent on the society I was born into. If I'd been born into a tribe of hunters, this talent of mine would be pretty worthless. I can't run very fast. I'm not particularly strong. I'd probably end up as some wild animal's dinner.
>
> But I was lucky enough to be born in a time and place where society values my talent, and gave me a good education to develop that talent, and set up the laws and the financial system to let me do what I love doing – and make a lot of money doing it. The least I can do is help pay for all that. (Obama, 2008, p. 226)

Observing then that we may have asymmetrical intuitions as regards the better-off and the worse-off does not show that the position of the better-off is not a legitimate area of concern for luck egalitarianism, as Warren Buffet so admirably elucidates. It does not mean that we ought to restrict our concern to how the least advantaged are faring. Our intuitions may well be asymmetrical as regards this because there are other moral, and economic, principles at work. But a concern with the least well-off, while a concern that many

egalitarians will have, is not a distinctively egalitarian concern. Rather, it provides a further moral reason for attending to the needs of the worst-off first. Luck egalitarianism is concerned primarily with equality and this may overlap with, but is not the same as, a concern for the least well-off.

Let's think about the better-off and worse-off in an educational context. If some children suffer some educational disadvantage it will at least sometimes be because of the greater advantages enjoyed by a better-off group. Therefore, removing barriers to education for some may well involve a redistribution of opportunities and advantages from others. Gina Schouten (2012a) points out that educational inputs (which contribute to, but are not constitutive of, the quality of someone's education) are finite in terms of resources, teachers and time. She argues then that greater such benefits to some students must always be at a cost to others. This is hard for some people accustomed to the unfettered pursuit of self-interest to accept. Those who are better-off often protest that it is unfair if some of the benefits they currently receive, which they will claim they merit in some way (e.g. their greater talent and effort), are taken off them. What have they done to deserve this, they may say? Why should my child be worse off than they currently are? Why should their education be compromised by giving benefits they currently enjoy to others? What sort of an ideal requires that everyone be levelled down to the same mediocre standard?[67]

The deficiencies of levelling down have been discussed. But it is worth refocusing the argument on why there may be a reason for reducing the level of some in the first place. There will be reason when, to give some their fair share, requires us to take from those who have more than their fair share. Redistribution will be required if, under the status quo, some benefits and burdens are unfairly distributed and reflect more a person's luck than their choices. This immediately suggests how the better-off might respond i.e. they have made superior choices while the worse-off have made inferior choices. This may sometimes be true but can hardly be said to apply to something like the state provision of education to children. There is no issue of choice here but only an issue of fair distribution and luck egalitarians say unchosen, morally arbitrary circumstances do not define what is fair. Children do not choose their level of ability or family circumstances and it would thus be unfair if the quality of education a student received were sensitive to such factors. Such factors are irrelevant to someone's entitlement to a good education, although they may be relevant to exactly how this is to be achieved. It is in some ways a purely logical point then.

---

[67] Some parents make significant sacrifices to ensure that their children receive a good education. This may be an admirable thing for a parent to do. But I also think it is a telling indictment against a society, and its education system, if it is thought that it is fair for some to have a lesser education while others can enjoy a better education because it can be bought. Of course, private education is often about more than just a better education. It can be an expression of social status or an opportunity for advantageous networking.

If justice requires us to rectify unjust inequality, this will sometimes reduce the advantage enjoyed by some because their advantage is part of the same inequality disadvantaging others. Cohen writes, promoting equality "is not only an *equalizing*, but also a *redistributing*, policy" (2009, p. 14).

This may be psychologically unsatisfying to the lucky, but redistribution will sometimes be a strong requirement of justice. If some have more than their fair share then the right thing to do is to take it from them and give it to those who have less than their fair share. So, for example, *if* it was the case that high ability classes were being advantaged by getting more of the better teachers, then correcting that inequality is going to involve giving them less of that resource in order to give others more. In fact, it may be that the least able require more of the better teachers in order to promote their educational well-being. Equality is not just about giving to some what they have previously been denied while allowing the advantaged to go on enjoying that good. If that were possible it would be preferred but, if not, then justice requires redistribution. Education systems, and schools, have a limited budget and if on reflection some part of the system or a school was getting more than their fair share then it is not going to be possible to bring everyone up to that same amount.

Another common argument against redistribution from the better-off to the worse-off is the Rawlsian one that inequality is sometimes needed in order to provide the incentive for the talented to be maximally productive. When the talented are maximally productive, so the argument goes, benefit accrues to the least well-off also; they are better off than they would otherwise be. Luck egalitarian conceptions of educational equality are not committed to this argument as only suitable conditions of choice can validate inequality, not extra inducements that advantage some over others. But the pluralist view will tolerate some unjust inequality against a more unjust equality. However, the argument is especially weak when applied to education as it is very hard to see how the talented enjoying a better education can help the *educational* well-being of the least talented and it is hard to see that extra resources for the education of the talented is an incentive necessary to get maximal productivity out of them.

It could be objected that the argument is more about the benefits that will accrue to the least well-off beyond education, benefits that accrue to all in a society where the talented are motivated to employ their educationally enhanced talents. It is possible that being poorly educated could be compensated by being better off in some other way, but it is not obviously so. There is the feeling that the intrinsically valuable education of some is sacrificed more for the benefit of others. It is not at all clear that having the talented being better educated need result in any sort of benefit to the less well-off. If the talented use their skills to develop new technologies and life enhancing drugs that would be great. But

when they use them to work out clever schemes to avoid taxes and leverage more wealth for the wealthy it is hard to see any benefit for those whose own educations were sacrificed along the way. Extra educational advantage at the expense of others is going to be difficult to defend in education. The pursuit of excellence for its own sake, that the human condition is enhanced by excellence in the arts and sciences, looks equally problematic from the perspective of someone whose life prospects have suffered because of a poorer education.

A theory of distributive justice

So far it has been taken that a belief that people should be treated as equals should be interpreted in terms of distributive justice. Much of the foregoing coheres with this but some more explicit support for the position is also required.

As luck egalitarianism is more a set of core grounding principles it is possible to develop it in more or less comprehensive ways. How this is done will depend on arguments about whether its principles are applicable to morality in general, or only to that part of morality concerned with justice or, most narrowly, only to distributive justice. Because its principles are quite general there is a pull toward it being developed in quite comprehensive, and global, ways. Certainly the principles grounding luck egalitarianism admit of wide application and more comprehensive views of luck egalitarianism are plausible, but are harder to defend. So partly for that reason, partly for reasons of manageability and intellectual modesty, and partly because my focussing aim is how to best distribute education, I am restricting my view of luck egalitarianism to one of it being a theory of distributive justice.

Tan (2008) has argued explicitly for limiting luck egalitarianism to being strictly a theory of distributive justice. One way to test the plausibility of this claim is by looking at its implications. If Tan is correct, one implication would be that it cannot be a complete account of justice, and on the surface, this seems trivially true. For example, luck egalitarianism generally makes no claim to being an account of retributive justice. But that does not mean it could not be. A belief that it is unjust if people are imprisoned, and therefore worse off than ordinary citizens, due largely to bad luck, but that it is not unjust if imprisoned criminals are worse off due to choices they have freely made, could be quite congenial to luck egalitarians.

There is then a distinction to be made between luck egalitarianism as a theory of distributive justice as against the application of the luck/choice principle beyond that sphere. To make the distinction finer we can note that the ideal of equality is best seen as a part of justice too and, specifically, that part of justice which is concerned with "how people fare relative to others" (Temkin, 1993, p. 13). Retributive justice is not best characterised in this way. It is more concerned with the proportionate punishment of wrongdoers. Justice in turn is best seen as a subset of morality; we might say it is that part of morality which is

concerned with fairness. Justice may be a large part of morality but is certainly not all of it. So on these grounds restricting luck egalitarianism to the domain of distributive justice does not seem arbitrary and we can usefully characterise luck egalitarianism as being a theory of distributive justice by which we mean it is principally concerned with "comparative fairness" between persons (Temkin, 2003, p.782).

It might be thought that characterising luck egalitarianism as a theory of distributive justice is a nice bit of taxonomy, but a relatively trivial matter. But it turns out to have some more substantive implications. One is that it provides another way of replying to Anderson's abandonment objection. A number of responses to the abandonment objection have been explored by various defenders of luck egalitarianism (N. Barry, 2006; Knight, 2005; Segall, 2007; Tan, 2008), including myself in chapter 5. But one fairly common line of reply is to embrace what is, ironically, another of Anderson's criticisms; that luck egalitarianism is essentially distributive in focus. If this is accepted then, as luck egalitarianism is but a part of justice, and a part of morality, it will sometimes be the case that outcomes which may appear to be permissible according to the principles of luck egalitarianism will be trumped by other principles of justice and other moral values. Therefore the unjust consequences alleged by Anderson need not be accepted as unavoidable all things considered. If one is luck egalitarian and pluralist about values then there will be many cases where values must be traded-off and this is an expected condition, not a problem.

This may sound a bit like a get out of jail free card so it is worth looking more closely at Tan's argument. He argues that the abandonment objection essentially rests on a category mistake by thinking that luck egalitarianism applies to cases of urgent and basic needs or cases requiring assistance and rescue. But this objection misses its target when it is seen that luck egalitarianism is concerned principally with questions of how to justly distribute goods *beyond* those needed for the satisfaction of a person's most basic requirements for life. Tan claims there is a distinction then between "the duty of assistance and the duty of distributive justice, each motivated by different considerations" (2008, p. 671). This is not because luck egalitarians think questions about basic needs are insignificant. According to Tan, luck egalitarians can quite consistently believe that a person's right to have their basic needs met takes priority over distributive equality. What luck egalitarians are saying though is that what is owed in cases involving basic needs and rescue depends on moral reasons that are distinct from those governing what is owed as a matter of egalitarian distributive justice.[68] Our reasons in such cases are not actually egalitarian in nature but more to do with humanitarian principles, compassion and matters of just plain decency. Tan also points out

---

[68] Voigt (Voigt, 2007) argues similarly in responding to what she calls the Harshness Objection. She also points out that luck egalitarianism may not have much to say about the provision of basic needs as such.

that this conception does not reduce luck egalitarianism to a trivially small domain as how to distribute goods fairly after basic and urgent needs are met is still a substantial issue, indeed, it is largely the situation in most first world countries at the very least. It counts in its favour that luck egalitarianism restricts itself to being a theory of distributive justice. It makes it easier for luck egalitarians to trade-off against other values, without embarrassment, than more comprehensive accounts such as democratic equality and fair equality of opportunity (Segall, 2010).

Tan makes a strong case that luck egalitarianism is essentially distributive in nature and distinct from other moral concerns. It is true that equality does not fill all the space of justice or morality. But he may be leaving other values doing too much work and presents a picture of a somewhat neutered egalitarianism. Grinding poverty amidst wealth is objectionable on *egalitarian* grounds and not just because poverty is bad. Tan concedes too much, perhaps because he does not take account of the intrinsically pluralistic nature of egalitarianism that has been argued. But he also underestimates how much inequality the luck principle will condemn as unjust and gives too much credence to Anderson's claim that luck egalitarianism is committed to a belief that people ought to bear the costs of their choices no matter what those costs are – it is not, as was argued earlier. Luck egalitarians have a constrained view of both how much inequality is permissible due to choice and of the background conditions that give choice legitimating force. Once this is appreciated considerable air is let out of Anderson's objection.

Cohen (2008, p. 271) takes another view on Anderson's critique, but also takes luck egalitarianism as being essentially about distribution. He argues that the critique misfires, partly, because she fails to distinguish between fundamental principles of distributive justice and rules of regulation. He argues that much of her criticism is about the problems of implementing such principles, the practical difficulties of interpretation and possible negative consequences – such as abandonment. But Cohen believes luck egalitarians are free to say that the rules we should actually adopt, while informed by our basic beliefs about what justice requires, must also attend to other moral principles and practical considerations. Saying this does not undermine the status of the principles at the fundamental level. On Cohen's account, it does not tell against a theory of justice that facts about the world and other moral considerations militate against its full throated implementation. It just says they cannot be implemented unrefined as if they were rules to regulate our society. Justice is a value that carries great gravitas. But it is not the only value, it is not always achievable (i.e. it involves ideals that lean in a utopian direction), and luck egalitarians do not think it is.

To appreciate Cohen's point better, think of a principle like; avoid inflicting pain on people. This is close to being as sound as a fundamental principle can get. But should it

always be adhered to? Not at all. There are occasions when facts about the world, and other moral principles, such as, preserve human health, mean we have to compromise. A doctor, for instance, must sometimes inflict some pain in order to preserve health. Note too that facts about the world, such as whether there are anaesthetics, can alter where the compromise needs to be drawn. A non-anaesthetic environment forces a compromise that requires more pain to be inflicted.

While Cohen is the most explicit in spelling out this position, he is not the only one to adopt it. Similar arguments have been made by Arneson. He argues that theories like luck egalitarianism are operating at the level of "a set of principles of justice" rather than at the level of "a specification of just institutions or just practices"(2000, p. 345) which must, by their nature reflect facts about the world and issues of practical feasibility. The task we have is to find the best implementable rules that reflect the deepest values we hold. He suggests then that at least some of Anderson's critique misfires because she is pitching her arguments at a lower level of abstraction. He finally observes that some of her, fair, criticisms are therefore more a criticism of inept implementation strategies.

These arguments are all sound but I will reiterate that I think they concede too much to Anderson's characterization of what the luck/choice principle means. The luck/choice principle places considerable constraint on what inequality is permissible and the choice principle permits far less than she claims.

There is another side to this argument. Many bad things can happen that may appear to be distributive in nature, but are not in fact instances of egalitarian distributive injustice or about the satisfaction of basic needs. And as for the case of those in distress, luck egalitarianism need give no account of them and need not be thought any the worse for failing to be a totally comprehensive view of justice.

For example, luck egalitarians will be concerned if Maori are on average worse off than Pakeha. They will be concerned if Maori children on average do worse in education than Pakeha children. But this concern is mainly because it looks like an accident of birth – what ethnicity one is – appears to be having an undue influence on how well off some individuals, identifiable by their ethnicity, are in relation to others. Whether one is born Maori or Pakeha is a matter of luck (understood as an instance of constitutive luck), and if inequalities track some groups fairly reliably then being worse off as a member of that group will be, in a sense, a matter of bad luck. Where there is present inequality that is historically and socially contingent – i.e. largely a matter of luck for those suffering it – there is a strong *prima facie* case for equalizing mechanisms to be employed.

Note however; egalitarian concern is not raised by the specific historical causes of these inequalities. Inequality alone is enough for that. The salient feature of Maori inequality for a

luck egalitarian is the extent to which Maori are worse off just because they are Maori and not because of any choices for which they can *properly* be held responsible. The exact nature of the factors that have made them worse off – racist attitudes, colonialism or past transgressions of treaty obligations – is relevant only to the extent that it gives us good reason to believe that the background conditions are of a nature that undermines the legitimating force of choices under these conditions.

The historical wrongs may well require separate redress as a matter of justice, but they are wrongs of a non-distributive nature and do not themselves give rise to egalitarian concern beyond their effect on our intuitions regarding choice conditions. Breaking a treaty and denigrating a race do not belong squarely within the purview of distributive justice in themselves. They may well act to sustain or cause distributive inequality and they will certainly be criticized on the grounds that such acts can have inegalitarian distributive consequences. But breaking treaties is a different sort of wrong in the first instance, our concern with it is not fundamentally egalitarian in nature but more to do with honouring contracts and acting in good faith. The fact that other wrongs may have brought about distributive inequality is not the most salient feature to a luck egalitarian. Most salient is the brute fact of inequality, whether Maori or Pakeha are worse off or better off in an area of legitimate distributive concern – and education and income are – and whether this is largely a matter of luck. Whether one is born Maori or Pakeha is arbitrary, a matter of luck, and so does not provide a good *moral* reason for inequality, although it may provide some, perhaps largely historical, explanation of how that inequality came about. So luck egalitarianism will properly concern itself with addressing distributive inequality between Maori and Pakeha. It may well label those factors that have led to those inequalities unjust. But beyond the requirement to remedy inequality it need have little to say about those historical factors themselves and what ought to be done about them. Maybe this weakens luck egalitarianism as an account of justice. But some modesty of intent may also strengthen it by noting carefully that it is an account of distributive justice and makes no claim to being an all encompassing theory of justice.

Distributive equality or democratic equality?

Despite the foregoing points, it is somewhat tendentious to claim that equality should be seen as a distributive ideal, or only as a distributive ideal. After all, Anderson criticizes luck egalitarianism for this very feature writing that it is "too narrowly focused on the distribution of divisible, privately appropriated goods, such as income and resources, or privately enjoyed goods, such as welfare" (1999, p. 288). In doing this, she claims that it neglects many of the issues that, historically, have motivated egalitarian political movements, such as the fight by various groups for equal rights and freedom from

discrimination. In a similar vein, Samuel Scheffler has argued that equality is not principally a distributive ideal but "a moral idea governing the relations in which people stand to one another"(2003, p. 21). It might be thought that this diagnoses the difficulty in the point above about inequality between Maori and Pakeha rather well. Racism might be thought to be paradigmatic of a type of inequality that does not seem to be essentially, or only, distributive in nature and if luck egalitarianism has no account of it then that may count against it as an egalitarian theory. As Anderson notes, historically the ideal of equality has been appealed to by those insisting that it is wrong for people to be oppressed or dominated, that the mistreatment of minority groups or individuals is to be abhorred, that we ought not to discriminate on the basis of morally irrelevant differences such as race, gender or sexual orientation, and that subjecting people to demeaning and stigmatising social arrangements is offensive and unfair. None of these sounds much like a concern over distributive shares.

Now this is an important and well observed objection. It is partly a facet of a conflict noted by Bernard Williams (1973) in his rich and oft cited *The Idea of Equality.* He there noted that an unavoidable conflict is bound to arise between an idea of distributive equality involving certain goods, which are able to confer on their possessors some preferred status or prestige, and the idea of equality of respect which it is urged should prevail independently of those goods. Both ideas look credible interpretations of the basic belief in treating people as equals. He suggests that there may be nothing formally incompatible in these applications of the idea of equality, that we can imagine perfectly well a world where distributive equality reigns and people are equally respected regardless of their distributive shares. However, Williams points out that there are in fact deep psychological and social obstacles to this happening. The difficulties that surround achieving distributive equality, and features of human nature such as our competitiveness and desire for prestige, militate against achieving equality of respect. But equality of respect also looks unattractive if it ignores people's economic circumstances. However, he believes both are still valid ideas of equality and that, uncomfortable as it may be, we should seek to have our cake and eat it too on this issue. Williams diagnoses this quite well, and I think that moral equality implies both aspects. But I think distributive equality takes precedence.

It was said before that equality is about how people fare in relation to each other, meaning that equality is essentially comparative in nature. People can be compared in many ways and luck egalitarians emphasise particularly how people fare in relation to each other as regards the distribution of advantages and disadvantages. But Anderson and Scheffler argue that it is more to do with how they fare in terms of their social relationships and how they compare as regards issues of power, hierarchies, domination and exploitation. The core of their objection then, is that the proper arena of social justice is that of human

relationships. The distribution of goods and resources, if it is morally important at all, is subservient to this concern. This conceptualization is often referred to as *democratic equality* (e.g. Anderson, 1999; Tan, 2008). According to Anderson, democratic egalitarians assert the equal moral worth of persons and reject hierarchies and distinctions of moral worth based on birth or social identity. Under democratic equality people seek to abolish socially created oppression and seek to live together in democratic community, understood as "collective self-determination by means of open discussion among equals" (p. 313). This requires people accepting the obligation to justify their actions on grounds acceptable to all and there being conditions where mutual consultation, reciprocation, and recognition are taken for granted. Under democratic equality people are "fundamentally concerned with the relationships within which goods are distributed, not only with the distribution of goods themselves"(p. 314). Similarly, Scheffler claims that equality is based on "an assumption that everyone's life is equally important, and that all members of a society have equal standing"(2003, p. 22). For Scheffler, the ideal of equality has moral, social and political dimensions. It means that we have claims on each other simply because of our shared status as persons. It means that society should be conceived as a co-operative enterprise between equals. And it means that one's fundamental rights and privileges are based on one being a citizen.

It is doubtful though that any luck egalitarian would disagree substantially with much of that. If people are dominated by others, excluded, made to feel inferior, belittled, demeaned or exploited, then they are quite simply less well off in comparison to others. Any appropriate account of the correct metric of equality will need to account for this and certainly the sort of complex and pluralistic conception of egalitarianism I have been urging will have no difficulty doing so. Unless a person endures such conditions as a result of their genuine choices and not due to accidents of birth – and that seems vanishingly unlikely – then luck egalitarians will not hesitate to call such conditions unfair and requiring egalitarian redress. So what's going on here? Let's look at some ways of viewing this clash between luck and democratic conceptions of egalitarianism.

One way of understanding the problem is suggested by Arneson (2000). He argues that Anderson's objection to a distributive focus would be correct if luck egalitarians were focussed only on the distribution of material goods. It might be thought that Dworkin's equality of resources matches this criticism, but that would be unfair. Dworkin makes it quite clear that resources are not just a matter of material goods (2000, pp. 79-83). His idea of an envy-free distribution, combined with the device of the hypothetical insurance market, means that equality of resources takes account of people's physical and mental powers as well as their share of material resources. Most luck egalitarians, including Dworkin, share Arneson's belief that what matters is the quality of people's lives, their

ability to live their lives in accordance with their own values and ends, and goods are only instrumentally significant to that end, not important in their own right. Arneson therefore contends that the quality of relationships is, as a matter of empirical fact, a contributor to human well-being. But he asks us to imagine what if it was not. It can be imagined that it is possible that people are not in fact social animals , but solitary, in which case the quality of relationships would not be important to well-being and therefore not of great egalitarian concern.

Arneson's argument is correct as far as it goes, but is unlikely to trouble many democratic egalitarians. Arneson is correct that the quality of relationships would not matter to us if we were not social in nature. But we are, relationships do matter to beings like us and principles of justice will take that as a factual presupposition. The possibility of human relationships being central to a theory of justice cannot therefore be automatically ruled out.

The other point Arneson makes about the metric of equality is sounder though. Nicholas Barry (2006) also argues that much of the disagreement between democratic and luck egalitarians is defused when luck egalitarians take more care to spell out clearly the metric of equality they are employing. A suitable metric will be sensitive to non-material as well as material aspects of well-being. This approach to the problem would seem to accord too with Stuart White's (2007, pp. 96-97) claim that both the luck egalitarian approach and the status-power approach of Anderson need to be combined for a full account of what equality requires. It points in the direction of a metric that is more about well-being than it is about resources and accords with the complex and pluralistic egalitarianism that has been argued for here. So this is not a problem for luck egalitarians, other than for those who believe that equality is just a matter of economic equality. The argument of democratic egalitarians can thus be seen as a corrective to any such tendencies. While Dworkin (2000) argues for equality of resources, it is not in any simple minded way that ignores these concerns. He certainly does not think that equality is just a matter of economic resources and, while he rejects equality of welfare, he does argue for a conception of equality of resources that will equalize people's chances to live good lives according to their wishes and preferences. So for Dworkin this means supplying each person with a fair bundle of resources that will allow them to live their lives free of domination and exploitation.

On a slightly different vein Stemplowska (2011) too argues that the difference between these conceptions is not as great as it is sometimes portrayed to be. She points out that the argument is sometimes framed as a disagreement over the significance of choice to egalitarian justice. In doing this it is sometimes stated as if we can only choose between, on the one hand, a theory that says people's choices can justify disadvantage if they are made in a context of equal options and, on the other hand, a theory that says choice has only a

marginal role in egalitarian justice. Stemplowska argues that the dichotomy is inaccurate and both positions have implausible implications. She writes that luck egalitarianism, properly understood, requires that people sometimes be compensated for disadvantage that is a matter of choice and not a matter of bad luck. Similarly, democratic egalitarianism, properly understood, requires that people should sometimes have to bear disadvantage that is the result of their choices. If Stemplowska is right about this more heat goes out of the argument as the way is opened for an understanding of egalitarian justice that has a significant role for choice, but not an unlimited role. So judgements about whether people ought to suffer the costs or enjoy the benefits of their choices must be balanced against a wider appreciation of the social context within which they are made.

One way then of viewing the disagreement between luck egalitarianism and democratic equality sees it as being more apparent than real. When the two positions are properly understood, when the best metric is properly defined, when the role of choice is properly defined, then they may not be that different. But there are reasons to be hesitant about this rosy rapprochement.

Another reason for doubting that equality is best understood as an ideal of human relationships, and as an expression of the illegitimacy of one person dominating another, is again given by Arneson (1995, p. 232). He asks us to consider the case of people in geographically separate locations who have little or no contact, meaning that there is no domination of one group over the other. Imagine that one group is well off and live rich contented lives while the other people live in quite impoverished circumstances, their location may be resource poor for instance. Democratic egalitarians seem committed to saying there is no injustice in this situation as there is no domination, exploitation or demeaning treatment and there are no hierarchical social relationships involved. Luck egalitarians, on the other hand, seem committed to saying such inequality of well-being is bad and this is so even if there is no domination or exploitation, even if the groups have no knowledge of each other and even if there is nothing that can be done (the groups could be on different planets). It is unfair, they say, when people are worse off due to no fault or choice of their own. This is the idea that inequality, in the appropriate metric, is a feature of a distribution that, absent choice conditions, makes it unjust. One could quibble about the extent to which the situation should be seen as a unitary distribution perhaps, and certainly, due to practical considerations, the unfairness is unlikely to exercise luck egalitarians unduly. But there is a root belief that inequality in distribution is always of legitimate egalitarian concern and when it is a result of bad luck this always gives us at least *one* reason for trying to eradicate it – if we can.

Now, democratic egalitarians may not be concerned by this, just as some people are not concerned about differences in life chances between the poorest inhabitants of distant third

world countries and the richest inhabitants of developed nations. They may object that such inequalities are not of legitimate moral concern because they are not the result of any actual act or process of distribution. In the absence of any deity to blame, or human malfeasance, we should resist calling this unfair, unjust, and instead we ought to note this as plain and simple good and bad luck. This is a very powerful objection and it is explored further later (see chapter 8).

For now though, the import of the example is that egalitarian concerns can be piqued by purely distributive concerns. If you accept that there is something morally troubling about these differences then you are expressing a concern about distributive justice. In the same way, when a child achieves poorly at a decile one school, while another thrives at a decile 10 school, if this concerns us morally it does not seem to be because one child dominates or represses the other. Maybe it is an oppressive feature of the system, and maybe it is a future outcome as they go out into the world. But for now the concern seems to be about the fairness of the distribution of educational opportunities and resources. It may turn out that in fact there is nothing morally problematic. But, initially at least, the egalitarian seems to be responding purely to inequalities in distribution in such situations and not morally troublesome relationships. Arneson argues that in examples like the rich and poor of different countries, it cannot be differences in status or in social standing that concern us. It is quite simply differences in welfare and life chances that we find objectionable.

This argument though, at best establishes that we can have egalitarian concerns about distribution. It does not establish that they are of greater moral significance than the nature of relationships between people.

An alternative way of viewing the disagreement between luck and democratic egalitarians is to see it as a dispute over what is implied by the idea of the equal moral worth of persons. Both conceptions assert the moral equality of persons, but disagree about what that principally entails. Luck egalitarians emphasise that distributive equality is entailed while democratic egalitarians emphasise that relationships of social equality are entailed. Dworkin, for instance, sometimes takes the line that there are two principles of equality; one about the requirement of governments to treat all *as equals* (the equal moral worth of persons) and the other about the requirement that governments treat all their citizens *equally* in the distribution of some resource or opportunity, or at least work towards some such distributive equality. He claims the second principle is derivative of the first as "sometimes treating people equally is the only way to treat them as equals; but sometimes not" (1985, p. 190). So for Dworkin distributive equality is the principal implication of moral equality as it is the best way to instantiate moral equality.

To this, democratic egalitarians may object that Dworkin is treating equality as largely a political ideal whereas those like Scheffler and Anderson see it as a moral, social and political ideal and so believe it has more than merely distributive implications. They are probably correct about this, but Dworkin could perhaps ask them whether in realizing this ideal it is appropriate for a government to force certain social relations on people. This does though point to the fact that both sides think their conception has some overlap with the other. It may be that both conceptions are not mutually exclusive. It may be that one is a subset of the other or that they are complementary to each other. I think this compromise is not right either.

By emphasising the distributive implications of moral equality luck egalitarians are saying that it is by bringing about distributive equality that we can best end the marginalization and exploitation of groups and individuals in society. Racism, for example, isn't going to be eliminated by proclamations of equal social status, respectful cultural displays and telling people to listen nicely to each other and respect ethnic diversity – although these are important to assert. Racism is better countered by ensuring that people have their fair share of the benefits and burdens of social co-operation and so are less likely to be exploited, marginalized and dominated.

Now economic equality is not all that matters. But luck egalitarians ought to assert that we should first put our money where our mouths are. It is harder to dominate, exploit and look down on those who are not being denied their fair share of the products of social co-operation. Luck egalitarianism emphasises distributive equality because distributive equality is a necessary, but by no means sufficient, condition for equality of social relationships. Distributive justice takes priority because it is a prerequisite for a society of true equals. This may prompt a critic to say that it is only instrumentally valuable then, not valuable in itself. So I will put the point even stronger. An equal distribution (of whatever is thought to matter) *embodies* the idea of moral equality. It is not the way to moral equality; it is the foundation of moral equality. There can be no equality of social relationships without there being distributive equality and it is the meanest, blinkered fantasy to think a society that tolerates marked distributive inequality could be treating people as true social equals. And people know this. People living in such societies *know* that some are not seen as equals. They *know* that some are not being treated as equals. Indeed, they *know* that some are not believed to be in any way equals. In societies which tolerate large socioeconomic inequalities (ones like ours, that is) some are believed to be superior, and some are believed to be inferior, and this solely because of distributive shares which are a concrete token of how that society values them. And people resent this, even though they can sometimes come to believe that some people really are of elevated status. They resent unequal distributions that accord greater importance to the lives of others and give greater

consideration to the interests of others. This is not a politics of envy; it is a politics of deep, smouldering, bitter resentment. Democratic equality is highly implausible without there first being distributive equality.[69]

If there is a more equal distribution of advantages and disadvantages then it is less likely that some are exploiting others, it is less likely that some are suffering the indignity and loss of status that go with being less well off than others and it is less likely that some are able to easily dominate others. It is wildly implausible to suggest that citizens are in social relationships of equality when they have highly unequal distributive shares that reflect their luck and not their choices. Particularly when, as the way our society is at present, distributive shares are a concrete reflection of the value being accorded individuals.

In support of Anderson's position (particularly her views on educational adequacy as opposed to educational equality (Anderson, 2007)), Giesinger comments that recognizing "all persons as equals does not imply that goods (or opportunities) should be distributed equally"(2011, p. 52). Luck egalitarians should repudiate this position. Recognizing all persons as equals *does* imply that a person's distributive shares should not be largely determined by morally arbitrary factors. Recognizing all persons as equals implies distributions that are not largely a matter of luck and it implies that we respect the choices persons make, which sometimes have distributive costs (or benefits). There can be no treatment as an equal without first distributive equality. To think people are being accorded equal dignity in the face of unchosen inequalities in advantage and disadvantage stretches credulity. It may be an idea the very well-off find congenial, however. It could also be noted that, as a matter of observation, modern democracies do not *formally* recognize the inequalities in social position once sanctioned, those of class, race and gender in particular. Nevertheless, it is not clear that modern democracies, particularly those with great economic inequality, have any greater equality of social relationships than other societies, past and present. This is because more equal social relations can only be realized when the

---

[69] There is some interesting empirical research coming out on the effect of class differences on behaviour and attitudes (e.g. Kraus, Piff, Mendoza-Denton, Rheinschmidt, & Keltner, 2012; Piff, Stancato, Côté, Mendoza-Denton, & Keltner, 2012) . These papers give evidence that those of higher socioeconomic status tend to be less ethical, more selfish, more insular, have less empathy for others, and are less compassionate than those less well off. They also regard greed and self-interest favourably, are solipsistic and simply discount the interests of others, tending to see others more in terms of how helpful or hindering they are in allowing them to pursue their own goals. That the rich are more likely to prioritize their own self-interests above the interests of other people, are unconcerned with the evaluations of others, have feelings of entitlement, and are inattentive to the consequences of their actions on others is not likely to come as a surprise to anyone who has read F. Scott Fitzgerald's *The Great Gatsby* with its theme of the unthinking carelessness of the rich. These attitudes seem to be more the result, not the effect, of distributive inequality, although that is complex as attitudes are also the result of upbringing.

breaking down of formal structures of social inequality is accompanied by greater distributive equality.

It may well be the case that social inequalities were the immediate reason for people being motivated to fight for equality, particularly political equality, often under the banner of democracy. It also seems the case that for a while with increasing political equality, the vote extended universally and the growth of the welfare state, that economic, i.e. distributive equality, was also promoted. This was particularly the case in some countries during the post second world war years. But it is notable that a wall seems to have been hit in the 1980s and economic inequality increased again. It starts to become clear too that political equality is hard to keep secure or illusory if there are great disparities of wealth. Thus, we see concerns about the influence of the wealthy in campaign funding and demands for transparency, the women's movement starts to recognise that equal pay is an issue and Maori make demands for economic compensation, because both groups, despite having enjoyed equal political rights for some considerable time, are still less well-off and dominated by other groups. It has become increasingly clear that economic equality is needed if political equality is to cash out into a true expression of equality of relationships between people. In view of this it seems somewhat naive to think that equal relations can be enjoyed between people when there is no corresponding distributive equality. People measure status to a large extent by goods. I suspect it was ever thus and there seems no way to avoid this currently.

Anne Phillips (1999) has written that a concern with notions of democratic equality has, rightly, involved looking at racial and sexual equality, at issues of multiculturalism, difference, recognition, identity politics, cultural domination and democratic citizenship. These enquiries have been well motivated and valuable to widening our understanding of the scope of inequalities but there seems to have been a concomitant neglect of economic inequality or thinking economic inequality is irrelevant to these issues. She argues that this is not as a result of any deliberate policy, that this need not be the case, but that in practice the concentration on issues of equal citizenship, multiculturalism and related concerns has often proceeded "as if these had nothing to do with economic arrangements or the distribution of income and wealth. In the context of an unequal world, this has to be regarded as an implausible assumption"(1999, p. 15). She sees concerns about political equality and democratic citizenship as being intimately bound up with economic equality and distributive justice and argues the goal of equality as incomplete in both the political, hence the current debates about difference, recognition etc, and the economic sphere and that most struggles for equality will depend on some modification of economic conditions. She emphasises the point that democracies need to recognise citizens as equal but different. But this requires us avoiding a slide from tolerating difference to tolerating

201

inequality. Some things don't matter, others do. Equality is not sameness but it is incompatible with large differences in income or well being or power. Sometimes equality will require a convergence between two groups rather than assimilation, but sometimes it will also mean retaining differences. It all depends on what matters. Phillips offers the example of the homophobia as one inequality which appears to be purely a matter of attitude rather than distribution, the status of homosexuals appears unrelated to distributive conditions. But this is probably very uncommon. Thus, aborigines need hospitals as well as recognition, Muslim minorities in Europe need better schools as well as Islamic ones, women everywhere need to write to reclaim paid employment after maternity leave as well as to be valued for their activities as mothers. Phillips asks these questions; is it possible for men and woman to regard each other as intrinsically equal even when their life patterns significantly diverge? Would racism be eliminated if the races were numerically equal? The answer to both these is probably no and it seems hopelessly optimistic to think that relationships of equality can exist between people when their conditions are so unequal.

Luck egalitarianism emphasises that distributive equality is a precondition for justice in another way too. It agrees with libertarian ideas about the importance of people being able to choose how they live. But luck egalitarianism highlights that, to have the force required to legitimate outcomes, choice must be made from a position of substantial distributive equality where people have roughly equally valuable option sets open to them. Absent such a starting point, there is insufficient reason to think that choice can legitimize much inequality at all. As Cohen pointed out, inequalities are only permissible when they are a reflection of "patterns of choice against *a background of equality* of access"(my emphasis, 1989, p. 920).

It could charitably be suggested that the difference between democratic and luck egalitarian conceptions is more a matter of emphasising different aspects of what is entailed by the moral equality of persons, than substantive moral disagreement. In support of this one could note that both Anderson and Scheffler recognize that distributive principles are not entirely unimportant. Scheffler thinks that a proper understanding of equality will certainly have distributive implications. He argues though that to be compelling any such implications must be based on some moral ideal more significant than the "distinction between individuals' choices and their unchosen circumstances" (2003, p. 22). There are two problems with this statement.

Firstly, it is incorrect to say luck egalitarianism draws distributive implications only from the distinction between luck and choice. It is plain that it also derives this implication from the same ideal of moral equality that Scheffler espouses. Secondly, and more importantly, Scheffler is making a very arguable claim when he says that the distinction between choices

202

and unchosen circumstances is of little moral significance, it was partly the purpose of the last chapter to argue for the moral significance of choice, significance partly grounded in Scanlon's Value of Choice theory. Choice is widely thought to be critical to a number of weighty concepts such as agency, freewill, virtue, moral responsibility, and, luck egalitarians claim, distributive justice. Kant, for example, argued in the *Groundwork of the Metaphysics of Morals* (1785/1997) that the capacity for free choice, along with rationality, is essential to personhood. Indeed for Kant, not only does our humanity rest on our powers of rational choice, rational choice is the condition for all value. Rational choice has, as Korsgaard (1996) puts it, value-conferring status. This is not something of little moral significance. An individual's autonomy is critically dependent on them being able to choose, on them having control, through their choices, on their actions and deliberations. Kant argued that persons, unlike things, have the capacity to construct laws for themselves and to choose to follow them. Autonomy, a capacity to choose, is thus necessary for personhood. It is fashionable, as has been said, for some to portray choice as a mirage constructed by advertising agencies in order to promote vapid consumerism. Such a tactic is misguided as it ultimately denies individuals are agents, or persons, of any moral dignity and worthy of equal respect. Scheffler does not have to accept Kant's position, and maybe he doesn't. Whether we have chosen something or not can sometimes be morally trivial, but it is by no means always so. Scheffler therefore needs to say much more to make his statement credible. I think Scheffler is led to this view because he is misunderstands the part played by choice in luck egalitarianism. He claims that luck egalitarianism's appeal rests partly on "an implausible understanding of the metaphysical status of the category of choice" (p. 18). However, I take the appeal of choice to be ethical in nature; we ought to respect the choices of our moral equals.

Scheffler writes too that distributive principles are important to those committed to the value of equality "not because a properly designed set of distributive institutions can help to minimize the influence of luck, but rather because certain kinds of distributive arrangements are incongruous with that social and political value" (p. 23). He is to some extent right about this, and luck egalitarians say that distributive institutions that are sensitive to the influence of luck and insensitive to the exercise of choice are precisely the kind of distributive arrangement that is incongruous with the ideal of equality. Scheffler also says that "significant distributive inequalities can all too easily generate inequalities of power and status that are incompatible with relations among equals" (p.23). One can only agree with him here and point out that it is another reason why a correct reading of the ideal of moral equality must give priority to ensuring that people's distributive shares, widely understood, are more nearly equal and that there are limits on the amount of inequality that choice can justify.

203

Anderson claims that distributive principles are only instrumentally important to securing just relationships. But to say this does not mean they are of little importance, things that are instrumentally important can still be of very great importance and Anderson seems to recognize this when, after criticising the distributive fixation of luck egalitarianism, she goes on to set out five egalitarian principles of justice, all of which have something to do with the distributive implications of democratic equality (1999, p. 314).

However, even if equality is properly about social relationships this does not mean it cannot also be a distributive principle, albeit we may then have to interpret equality as being a value expressive of two different ideals. This is the path Miller (1997) takes. On this understanding equality can legitimately be employed as a distributive principle independently of the question of what sort of social relations should pertain between people. I am inclined to think they fit together though, that distributive equality takes primacy, and I therefore agree with Tan that luck egalitarianism is first and foremost to be understood as a theory of distributive justice and this in no way undermines it as a bona fide expression of egalitarianism.

This understanding is significant here for another reason; it constitutes part of the justification for believing that a luck egalitarian approach may be fruitfully applied to educational equality. It is clear that, among other things, education is a good that is of benefit or advantage to the individual. Education is also a public good, of benefit to the whole of society. But as a society is made up of individuals, this is just another way of saying it benefits individuals, albeit not just the person gaining the education. It can be argued that an educated citizenry benefits our social structures, for example, that it contributes to more robust democratic institutions. But again, this can only matter to the extent that robust democratic institutions serve the interests of citizens better than shaky ones.

As a good, it is an open question how education ought to be distributed, and in most modern states the government plays the principal role in deciding this. The term educational equality can then be thought of as reflecting a certain belief about how education ought to be distributed, namely, equally. This by no means settles the question of what an equal education is, however. Rather, this is intended to show that one way of thinking about educational equality places it within the sphere of *distributive justice,* traditionally understood as being that part of justice concerned with how the benefits and burdens, the advantages and disadvantages, of social co-operation are distributed. It is widely agreed that education is one of the benefits or advantages that a person can have, not only for its own sake, but also because of the role it plays in facilitating access to other goods and advantages and the profound effect it has on how a person's life goes. This does not preclude there being other ways of interpreting what is meant by educational equality, just as it did not preclude there being other ways of viewing equality. But the intention here

is to look at educational equality from the perspective of distributive justice. That educational equality should be seen this way is a point also made by Harry Brighouse (1998, p. 148) who has said that education is more than a public good, it is a requirement of justice in much the same way that the right to a fair trial is. This fits well with the idea I have been discussing that distributive equality is a precondition for treating people as equals. It may be questioned whether one can just take an egalitarian theory from political philosophy and apply it to education but there is at least nothing idiosyncratic in doing this; there is a tradition of adapting and applying egalitarian theories to education. But this undertaking should also be seen as testing the theory itself by seeing whether it has any power to illuminate a specific area of interest.

Conclusion

This chapter has argued that luck egalitarianism is a theory of distributive justice, focussed especially on grounding why distributive equality matters. This rather mundane sounding claim, sometimes a point of criticism, turns out to have significant implications. Luck egalitarianism makes no claims to being a complete account of justice all-things-considered and it is no embarrassment that, perhaps particularly when it comes to implementation, luck egalitarian considerations may sometimes be trumped by other principles of justice and moral values. However, this chapter has also argued that, whatever it is thought that matters for distributive justice, it will be likely be some complex good and that equality itself is an inherently pluralist value, in the special sense that it must involve a concern with equalizing the distribution of some other substantive good, also valued for itself. This is significant because education, whatever it may be, is certainly a complex good and luck egalitarianism appears well placed therefore as an account of how we ought to distribute it. I further pushed the thought that egalitarians should not shy from asserting the redistributive nature of egalitarianism and this has implications for the better-off in a system that advantages some arbitrarily and unjustly. Finally I argued that in the argument about how best to treat people as equals, distributive equality is fundamental and primary.

Chapter 8:
Unlucky or unjust?

Introducing the argument

I have described luck egalitarianism as requiring equality, in some suitable metric, variations from which are only permissible under appropriate conditions of choice and responsibility. Without these conditions inequalities carry with them the normal obligations associated with justice, in particular, obligations on governments to prevent or ameliorate them, taking due account of other values. But there is something a little puzzling about this, and we saw the worry in Young's concern about structural inequality. Why should we think that all differences in levels of advantage, differences that *no one* may be responsible for, are instances of injustice and not, sometimes, merely instances of simple misfortune?

An initial clarification is the simple observation that differences only become unjust inequalities if they are differences in something that matters, differences in some substantive good such as a person's well-being or the quality of their education. Differences between people in many areas are therefore just that; differences. As such they are of no concern to egalitarians. This is a simple point, but often overlooked by anti-egalitarians.

It still seems reasonable though, to point out that some differences in, not just trivial things, but even an acknowledged good like well-being, may merely be cases of simple misfortune, a matter of the natural vicissitudes of life; the slings and arrows of outrageous fortune if we were to wax poetical. We may rail against the unfairness of an uncaring universe at times, but really, it's just a matter of dumb luck, pure and simple. To talk of cosmic injustice is to use a figure of speech rather than to point to real injustice. One important reason for thinking this is because cosmic injustices are not the result of anyone's intentional acts or negligence. They may attract envy or charity perhaps, but they are not really matters of justice. If I suffer certain instances of bad luck, I should just stoically shrug my shoulders, observe sagely that such is life, pick myself up and get on with things. From this perspective, it is difficult to see why my bad luck, for which *no one* is responsible, should place a burden on you, perhaps through the power of a government, to compensate me. On this view, unless you, or government acting on your behalf, are the cause of my disadvantage I can have no claim for compensation, *as a matter of justice.*

This line of thought has implications for all egalitarians and particularly in an educational context where differences in the natural talents a person possesses, a matter of luck, have generally been seen to be a fair reason for differences in advantage and not instances of distributive injustice. If some inequalities are cases of plain bad luck, rather than instances of injustice, then the demands on a government, on us, for redress are seriously lessened.

Injustices are states of affairs that it is improper for a government to tolerate. One reason for thinking this is that we hold the demands of justice to take priority over other values, in general trumping them, unless those other values are of greater salience for a particular case. But claims for redress from those who have suffered some misfortune are more easily tolerated or evaded. There may still be claims of beneficence. A humanitarian perspective will deplore suffering no matter what its genesis and still recognize a duty to aid the very unfortunate. But for most people, the obligations of charity are not as exacting as the obligations of justice. To fail to act charitably may be *morally wrong*, but it is not normally thought to be *unjust*. This is because *injustice* is a subset of those things which are *morally wrong*. All things that are unjust are also morally wrong. But not all that is morally wrong is an injustice. Most people apparently believe, for example, that giving to the IHC, an organization devoted to those who are ostensibly badly off as regards the distribution of natural talents, is a matter of charity. If I don't donate to the IHC I haven't acted unjustly, although I may have acted wrongly. This means that the IHC has no strong claim against me for acting in this way. A strong claim would be one that could be pursued through a court system or which could feasibly be pursued through political processes. It is implausible to think that donating to the IHC is going to become mandatory any time soon and, while we expect the government to provide some funding to the IHC, we apparently do not expect the government to fully fund IHC activities. Normally we tolerate failures to act charitably but cases of injustice are in general not to be tolerated. The demands of justice are more stringent, more urgent and have greater force than the demands of beneficence.

A preliminary response

This may lead us in the first instance to try justifying why some inequalities can be thought of as misfortune while others count as unjust on the basis of a more general distinction between that which is *unjust* and that which is *wrong or bad.* Badness might be very objectionable indeed, but nevertheless, we may believe that it lacks the full moral force, the obligation to put it right almost no matter what, associated with justice. This account may therefore allow us to argue that, while all inequality (in the relevant variable) is bad, it is not all unjust. We might think that unjust states are a subset of bad states and for an inequality to count as unjust some further features are necessary, for example that it was caused or brought about in a certain way. If these extra qualities are lacking we are dealing with misfortune, which can be tolerated, just as we tolerate people not acting charitably but we do not also claim that those needing charity are not, often egregiously, badly off.

It may be objected that justice is not concerned with the actions of individuals acting only in their own capacity but is concerned with the proper functioning of public institutions and the actions of individuals as agents of those institutions. This would then invalidate my

worry concerning donations to the IHC. I do not think this is true. I think we can properly talk about a just or unjust person as well as a just or unjust society. However, the concept of justice is perhaps more often attached to public and political discourse. Justice is often thought of as the fundamental virtue of governments and public life, or as Rawls put it; "Justice is the first virtue of social institutions" (1971, p.3). Moreover, luck egalitarianism is specifically a theory of distributive justice and distributive justice is a core responsibility of governments. Much of the activity of governments is to do with specifying the laws and regulations which define how benefits and burdens, duties and rights, privileges and perquisites are distributed. Luck egalitarianism does not – or should not – attempt to address itself to the entire sphere of justice. Nor does it, or should it, attempt to provide a complete account of morality. Nor does it, or should it, attempt to set out complete all-things-considered principles for social life (Cohen, 2008, p. 301). So the objection has some substance and I can here reasonably limit talk of justice to mainly the political realm, while noting that justice is not entirely a public matter and also has salience for aspects of the private sphere.

Can we still then distinguish between, say, public policy that is bad and that which is unjust? Consider, as an example, the debate about government policy relating to class sizes. This does not appear to be a debate about whether large class sizes are unjust or not. Rather the debate is about the influence of class size on the effectiveness of teaching and learning. Any policy about class size can then be properly called good or bad according to how well it reflects the facts about teaching and learning and perhaps other issues to do with teacher workload. But we would not normally say that a policy of having a maximum class size of 26 was unjust or not. It might be a good policy, but calling it a just policy sounds peculiar. The issue seems to be one of educational efficiency rather than a matter of justice.

However this conclusion is vulnerable, it seems to me, to a type of counter argument that is potentially applicable to any government act. It is possible that evidence could be gathered that indicated that class size is in fact a matter of justice. Let's say, for the sake of argument, that it could be demonstrated that class size has the effect of making too great a demand on the teacher to deliver effective instruction to each child and in doing this it fails to deliver fair learning outcomes for the least well off students especially. Furthermore, the issue of class size is also about the allocation of resources. To have smaller class sizes is a money issue at heart and all government decisions about how scarce and in demand resources are distributed are issues of justice. Hence the issue of class size, while it sounds strange to say it out loud, is in fact a matter of distributive justice after all. And further, it seems to me that almost any government policy or action is capable of being viewed in this way and therefore of being a matter of justice. Even the question of government aid can become a debate about global justice. Non-governmental groups and many citizens are

208

applying pressure to wealthy countries in particular to recognize their duties to the third world as the obligations of justice. The United Nations expects countries to commit a set percentage of their GDP to foreign aid spending. There are many who argue that even the more limited example I gave earlier about an individual's obligation to give to the IHC is not invulnerable to the claim that, while we might commonly believe giving is a supererogatory moral requirement, we are actually mistaken about this and it is in fact a matter of justice (notably, this is argued by Peter Singer (1972)).

The attempt to distinguish between states of affairs that are (merely) bad and those that are unjust as the underlying characteristic that explains why some inequalities may be treated differently is not so promising then. However, the arguments above are indicative of a difficulty rather than a knock down case against the distinction. So another argument that I believe renders this an unpromising path to pursue is the claim that justice, for governments at least, is an all-things-considered value.[70] When a government makes policy or enacts laws it ought to weigh up all competing values; for example equality, compassion, efficiency, freedom etc. On this view then, as governments have a fundamental imperative to act justly, and if this is an all-things-considered value, then all aspects of a situation have been weighed up and we cannot then distinguish between badness and justice. Thus the distinction between badness and justice, which may still be possible to make in the case of an individual, is impossible to make in the case of a government. On this view justice is seen as the fundamental moral dimension within which a government must act and on the grounds of which it is appraised. It is perhaps for this reason that many writers do not distinguish between bad and unjust or unfair. If a distinction is to be drawn it is more likely to be between a situation being *less unjust* or *more unjust*. Ultimately I do not think that in practice it matters too much whether one distinguishes between badness and injustice or between less unjust and more unjust. The main difference is that degrees of injustice lie on a continuum rather than forming a neat dichotomy. Less unjust states of affairs will still be of moral concern, just as bad states of affairs would be too from an all-things-considered point of view, and ought to be rectified; but a less unjust state of affairs will obviously be of lesser priority than a more unjust state of affairs. Governments make decisions about the distribution of finite goods and services and do so in the face of competing claims to those resources. They must prioritize what ought to be done so judgements about where on a

---

[70] See for example Arneson (2008, pp. 378-380). Against this Cohen (2008) argues that justice is but one value that competes with other values when governments make all-things-considered judgements about principles of social regulation. Principles of social regulation are all-things-considered and justice has an influence on the shaping of such principles, but they are distinct from justice. Such a principle can be unjust but nonetheless one we should adopt. But as my point here is that the distinction between *bad* and *unjust* cannot be the source of the intuition about being merely unlucky I think the contradiction is more apparent than real. But I do think Cohen's argument compelling.

209

spectrum a particular instance of injustice lies are hugely significant. Such judgements are highly contestable with different groups and individuals in a society pressing their claims and making their assertions about the justice of their case. Teachers in asking for pay rises or pressing for greater funding of projects and schools are continually using the language of justice to support their claims, pointing to the government's obligation to address the demands of justice as they see them. But the demands of justice are by nature unclear. Not only is it unclear just what values ought to count all-things-considered, but even if this could be agreed upon, it is by no means clear how they ought to be weighed. Of course, I am arguing that equality is the fundamental value for justice, that it ought to have the greatest weighting in evaluations of justice, but even so I can still imagine that it will not always be the decisive value. Welfare considerations in particular have their part to play. And if further some inequalities are judged to be cases of misfortune that lie at the less unjust end of the spectrum, then that would be a point of some significance. By taking an all-thing-considered approach and labelling some inequality as of little concern, while still perhaps unjust, governments could still be acting rightly. For example it could be crippling to a government to give full compensation to the sufferers of some injustice so that, on balance, it is not wrong to ignore or only partially compensate them.

Sharpening the problem

So, much could hinge, particularly for a government, on how unjust a situation is judged to be or whether it belongs within the realm of justice at all. Now the following thought has often been thought to be significant. It could be the case that through bad luck I am worse off due to no fault of my own. But if no one has intentionally or negligently brought about this state of affairs it may be better to characterize this as simple misfortune, not a matter of injustice at all, or if it is, very low on the scale of injustice. Consider the following.

Simon wants to be an Olympic 100m runner, but he has short legs, slow-twitch muscle fibres and no matter how hard he trains, he's just not that fast. Simon is devastated by this. But surely this is just bad luck plain and simple. He really ought to adjust his dreams to reality and think about being a weightlifter instead. There can be no reason to compensate him as a matter of justice. If anything this is a matter where he is responsible to some extent for his poor situation by having cultivated his unrealistic expectations. And even if he hasn't deliberately cultivated these preferences it still looks the case that as no one else is responsible for his having short legs and the wrong sorts of muscles he has no claim to compensation from anyone else, individually or collectively.

This sort of case is really rather trivial though and is the sort of thing often used to caricature luck egalitarianism. It is a sort of *argumentum ad absurdum*. If luck egalitarianism leads us to compensate people with stumpy legs and no athletic ability as a matter of

justice, then equality cannot be a proper concern of justice. The correct response for the luck egalitarian is probably to point out that this sort of inequality is in a dimension of no significance for justice and to the extent that people are responsible for the formation of their goals and desires against a given background of their talents and attributes, no compensation is owed them. If, however, it could be shown that Simon has some sort of pathological desire to be an Olympian that he has not chosen to have and would rather not have and which is seriously affecting his well-being, then he may have a case for compensation. But this is unlikely to be the case.

A more significant case may look like this. Jim and Tim are twins and have had very similar upbringings, similar amounts of parental attention and investment in their development and education, all the same sorts of opportunities to grow and thrive. But Jim is just a little dim. He is not lazy or inattentive or different in any such way from Tim but just finds learning does not come easily. He even has extra tuition to help him. Despite all this it seems Tim is just naturally more talented and breezes through school. So Jim, due to no fault of his own, is subsequently only qualified for relatively poorly paying and unsatisfying jobs while Tim has a lucrative and successful career with a pharmaceutical company developing cognitive enhancers. The intuition of some is that this is not an example of an injustice but is just misfortune. Nobody but nature is to blame for how things have turned out. While we ought to show compassion for those less well off than us, there is no question of justice for which a government can be held to account, as long as every opportunity was provided.

So how might we distinguish between those states of affairs that are a matter of luck but are merely simple misfortune and those that are instances of injustice? One way of doing it I have already alluded to. We could say it is (merely) misfortune if someone is worse off due to no fault of their own *or* anybody else. By this standard to be born with a congenital handicap would be a misfortune (maybe a very great one, I wouldn't want to in any way diminish the *badness* of some states of affairs), but it is not an injustice. An injustice can only exist if it has come about as a result of someone's intentional or negligent behaviour or has been socially generated in predictable and easily avoidable ways by the policies, laws and norms we collectively follow. On this view we might say that injustice is socially constructed or involves some sort of misconduct or illegitimate act on the part of some someone.

This way of looking at inequalities has traditionally been defined in terms of a distinction between *natural inequalities* and *social inequalities*. In distinguishing between the two it is the causal history of the inequality that is the salient feature; natural inequalities are caused by nature, we might say, and social inequalities are caused by people. As nature has no status as a moral agent – it can't be *morally* responsible for an outcome – it seems to follow

211

that those inequalities that are the result of natural processes are examples of misfortune rather than injustice. It takes people to create injustice. It is perhaps worth noting that generally it is not the fact that people can differ along some dimension that is at issue. Sometimes it will be if the difference is such as to severely limit a person's ability to function effectively in society. But the concern is mostly about what significance there is from the standpoint of justice of any differences in well-being that can be causally linked to natural human variability. Thus if cognitive abilities are subject to innate variation, it is not that fact which is of concern. What is of concern is whether differences in well-being that can be largely attributed to this ought to be of concern as a matter of justice. The traditional answer has been to say that they are not. Parfit (2002) has written that this may be the most important question in the whole egalitarian debate and certainly it seems to be one which divides egalitarians.

This view has often been accompanied by some theory of equality of opportunity that sees the fundamental egalitarian project as being the removal of discriminatory mechanisms and practises – legal, informal and socially generated – that can prevent fair competition for positions. Rawls gives good expression to this with his principle of fair equality of opportunity;

> The thought here is that positions are to be not only open in a formal sense, but that all should have a fair chance to attain them. Offhand it is not clear what is meant, but we might say that those with similar abilities and skills should have similar life chances. More specifically, assuming that there is a distribution of natural assets, those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system, that is, irrespective of the income class into which they are born. In all sectors of society there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed. The expectations of those with the same abilities and aspirations should not be affected by their social class. (1971, p.73)

Of course, Rawls was not unaware of the effect that differences in natural abilities could have and writes soon after that: "There is no more reason to permit the distribution of income and wealth to be settled by the distribution of natural assets than by historical and social fortune" (p.74). But he devised no principle to address the inequalities of opportunity that differences in natural assets might give rise to. The difference principle is meant to soften the blow of such inequalities, but it is not clear to what extent this was a humanitarian response rather than a requirement for true equality. After all, the difference principle tells us that some inequality is not only permitted, but that it is actually just – provided it is to the benefit of the least well off. This inequality may well be the result of natural variation in the distribution of talents and is considered just because Rawls builds his

212

theory so that, whatever the outcomes, they are the result of just procedures and hence are themselves just.

We can see Hillel Steiner (2002) sharpening the distinctions further. He argues that it is a failing of many liberal egalitarian theories that they only divide disadvantage that gives rise to fair claims for compensation into that which is self-incurred, and that which is not. He points out that this fails to see that the category of non-self inflicted disadvantage can be further divided into disadvantage that was caused by particular others and that which was caused by no one. Using this three-fold division of the space of personal responsibility, Steiner claims that those responsible for a disadvantage are liable to make compensation, but that governments, and by proxy the public, have no responsibility to compensate for disadvantage that can be traced back to no one, or for disadvantage that was self-incurred. He points out too, that libertarians make a similar mistake in only distinguishing between disadvantage caused by particular others, and disadvantage that is self-inflicted. Steiner claims then that liberal egalitarians neglect the fact that some disadvantage is caused by particular others while libertarians neglect the fact that some disadvantage is caused by no one. He concludes that a proper account of choice and personal responsibility must see that our individual responsibility should not extend to include those things which were caused neither by the individual themselves or particular others. It is these he equates with brute bad luck. I'm not sure that Steiner actually endorses the distinction between natural and social inequalities, but he certainly seems headed in that direction and seems to hold that, while individuals are not responsible for some disadvantage caused by no one, neither are others liable to compensate for it.

If it seems that I have been labouring the point somewhat, this is because one area where the distinction between natural and social inequalities is of acute significance is in education. In this domain it is commonly believed that the possession and exercise of putatively innate or natural talents contributes directly to inequalities in educational opportunities and outcomes. As a consequence of that, the ultimate outcome is inequalities in earning ability and income. In this way natural inequalities appear to translate into economic inequalities via their effect on educational outcomes. However, people often draw what seem to be contradictory intuitions about the import of this. So, for example, on the one hand, it seems to be commonly believed that it is fair that those who are very badly off in the distribution of natural talents are owed extra resourcing as compensation. This seems to be the case with special needs education. But on the other hand many also seem to think it fair and appropriate that educational opportunities and outcomes – with all their concomitant consequences for life prospects – should reflect natural differences in academic ability. People who think this often hold some sort of meritocratic theory of education and believe it is fitting that educational achievement should track native talent,

although they may add riders about effort to that. Just to be clear that this is no straw man argument, here is one of two possible conceptions of educational equality that Harry Brighouse has recently employed, and which he seems to favour: "An individual's prospects for educational achievement may be a function of that individual's talent and effort, but it should not be influenced by her social class background"(Haydon, 2010, p. 28). I do not believe that many would find anything exceptional in the place given to talent in this conception. But many would also share the belief that, while people are able to cultivate their talent by their own efforts, the initial possession of talent, its degree and nature, is a matter of luck. It needs to be explored whether these beliefs are compatible and what our response ought to be to claims about the lack of significance for distributive justice of variations in natural ability.

In what follows I am going to look at various views about the distinction between natural and social inequalities. I begin with a version (Thomas Nagel's) of the view that asserts that there is moral significance in whether inequalities are natural or social in origin. I then contrast this with arguments that seek to show that not only does the question of whether an inequality is natural or social in origin have no moral relevance; it may not even be a coherent distinction. This part of the discussion focuses on natural inequalities in a largely biological sense, the sense most pertinent when we think of those cognitive talents thought to be of most importance in education. It may also be seen as a part response to a challenge that has been posed that any programme of egalitarian educational reforms must make it clear that equality is not a biological issue and further, must counter the myths that seek to make inequalities appear just or unavoidable, as meritocratic conceptions do. But there is another way to look at the distinction, coming principally from an example of Parfit's, that sees it more in the sense of inequalities that are man-made in origin versus those that are the result of naturally occurring forces or events. It capitalizes to some extent on a conclusion reached in the following discussion, that counterfactuals are of greater moral salience than causal history, and questions why we might think a distribution brought about by natural forces should be privileged over one we could intervene to bring about by redistribution anyway. It thus gives us no reason to believe that natural forces or processes could have any power to legitimate a distribution and gives us no reason to dismiss some inequalities as of little concern because they are natural.

The case for the relevance of natural and social inequalities

Thomas Nagel (Nagel, 1997) is one who argues that the distinction between natural and social inequalities is relevant when judging the justice of a state of affairs. He writes that one common way of evaluating the justice of any particular distribution is to look at the procedures that gave rise to it. Our reasoning is then that the justice of a distribution will

depend on whether the system of procedures that brought it about is just or not. But there are two very different ways in which the justice of a system can be judged – by consequentialist standards or by deontological standards. If consequentialist standards are employed then we will look at whether the system reliably produces certain sorts of outcomes or not. For example, an egalitarian may define a just system to be one that reliably brings about equal distributions of advantages and disadvantages. When employing deontological standards, on the other hand, we will assess the justice of a system on the basis of whether or not the procedures themselves have the appropriate intrinsic character.

It is Nagel's view that it is when we employ deontological standards that the distinction between naturally and socially generated inequalities becomes significant. Only those things associated with human agency – such as choice, responsibility or desert – have the appropriate sort of character to which deontological significance can attach. But natural processes do not have this character. They cause things, but are not responsible for them in a way that is morally coherent from any perspective. So inequalities that are the result of individual choices, for example, can rightly be judged as just or not but natural processes are just givens about the world and inherently outside the realm of moral concern. Therefore egalitarians ought to be most concerned about inequalities that are socially generated. Those that are the outcome of natural processes ought to be of no concern, *as a matter of justice*, although they may still be from a humanitarian perspective.

Nagel points out two obvious weaknesses with this position. Firstly, it may be the case that a consequentialist appraisal, or perhaps a mixed consequentialist/deontological appraisal of systems, is the proper one to take. Looked at from a consequentialist perspective, the causal history of an inequality is not so relevant, just its fact and whether or not the individual is responsible for the situation they find themselves in. Secondly, in many situations there will be an inextricable entanglement of social and natural factors. While social conditions may not have been deliberately constructed to discriminate between people in ways that cause inequalities, this may nevertheless be their result. Furthermore, this result may be entirely predictable. Thus a person could be born unable to walk and be restricted to a wheelchair for purely biological reasons. But his degree of disadvantage is not thus naturally fixed but dependent on a wide number of socially generated conditions to do with such things as ease of access to buildings, transportation and health services for example. Steps are not built in order to discriminate against those in wheel chairs, but this is an entirely predictable consequence of building them.

Notwithstanding these difficulties, Nagel argues that in our practises and in our thinking about cases, we place inequalities on a spectrum that goes from those that are totally social in origin to those of natural origin and this correlates with a ranking from most unjust to least unjust. In determining an inequality's position on that spectrum we generally employ a

deontological perspective to make judgements concerning the legitimacy or the illegitimacy of the types of causes of that inequality. The spectrum goes from those inequalities that are the result of deliberate intent to those that are largely the result of natural differences, although the effects of these differences may be amplified by social processes.

Now for this claim to work – and granting that social institutions are going to play a part in producing *any* outcomes – it needs to be demonstrated that the distinction between outcomes primarily due to social differences and outcomes primarily due to natural differences can coherently be drawn. Nagel sets out three conditions he sees as fundamental to explaining why some outcome is due largely to natural differences. Firstly, there has to be some underlying natural property of individuals which varies along some continuum and is causally linked to the outcomes in question. Secondly, the social institutions that mediate the outcomes are not designed to produce these differential results but have some other legitimate purpose. Thirdly, if we wanted to achieve that legitimate purpose in some other way, without the side effect of the differential outcomes, it would be much more difficult or prohibitively expensive.

So, for example, there are a multitude of congenital handicaps which can adversely affect the well-being of those afflicted by them. This can be both because of the ailments themselves and because opportunities to access the advantages of social co-operation can be restricted. But governments do not have limitless resources. A humanitarian concern to address suffering will drive the need to find cures and treat people, but to do so at any cost for all handicaps could be ruinously expensive for even the wealthiest of countries. Thus we have inequalities in well-being that nobody deliberately intended and which in origin are natural. Nagel maintains that it is plausible that a society does not act unjustly if it doesn't provide full compensation to all those thus afflicted. How scarce health resources are allocated could be open to charges of injustice if done on an illegitimate basis. It would be inhumane to ignore suffering. But it is arguably not unjust to tolerate some inequality if nature can be reasonably identified as responsible for the, often very unfortunate, situation of some. The goal of an equal society may still be a good thing, but perhaps it can sometimes be stymied by other moral and, most significantly here, practical considerations.

Nagel gives an example from education to support his contention that naturally generated inequalities may not be unjust. Say we grant, as seems reasonable, that a legitimate goal of education is academic excellence. Suppose further that all social causes of differential outcomes in educational attainment were neutralized. Even given this we would still expect the distribution of opportunities and resources within an educational system pursuing academic excellence to be very unequal, with very unequal outcomes, according to variations in effort and ability. It is Nagel's position that if we employ his three conditions this is not necessarily unjust. Firstly, the inequality is an unintended side-effect of the

pursuit of a legitimate aim i.e. educating individuals to the limits of their abilities. Secondly, the primary cause of the inequality is the variation in ability, for which nature is responsible, and thirdly, it would be impossible to have an education system with academic excellence as one of its aims that did not have this result.

An initial response to Nagel's argument is that he stresses that he is only looking at inequality from a deontological standpoint, but then points out that this might not be the appropriate standpoint (p.305). And someone who believes in the intrinsic value of equality, as I have argued luck egalitarians ought to, may well agree that it is the wrong standpoint. Egalitarians are concerned that each person is treated in accordance with their equal moral status and this gives us good reason to believe that each person should be equally well-off. Luck egalitarians only want to know whether a person is worse off due to no choice of their own. Failing that, it is only the outcomes that are significant. This implies that the appropriate viewpoint for egalitarians is the consequentialist one – a point that Nagel has made himself elsewhere and he gives here no argument for why we should change our mind over this, why a deontological standpoint should be preferred.[71] I would suggest that egalitarians are most likely to judge the justice of a system according to how well it delivers equal outcomes. The justness of procedures will be judged on the basis of how reliably they do this. If inequality is in itself bad, absent choice considerations, then it seems less relevant how it came about.

It might be pointed out that luck egalitarians are prepared to tolerate variations in well-being that are due to the exercise of choice. This seems to be to take a deontological viewpoint, to hold outcomes as legitimate or not according to the legitimacy of the acts that give rise to those outcomes, and to hold that certain acts are illegitimate in and of themselves. So this could draw us to the view that a mixed approach is most appropriate. In our moral judgements we rarely find that one form of moral reasoning is sufficient to capture the full complexity of our thinking. But even then, I'm not sure that this doesn't concede too much to a deontological approach. Lippert-Rasmussen (2004) claims that "the egalitarian objection to unfair procedures is solely, and simply, that they lead to inequality of opportunity" (p.218). This may be a little strong; there is room for some deontological reasoning. But I think that consequentialist reasoning will be dominant in egalitarian thinking, especially if inequality is held to be intrinsically bad. So when we think about the exercise of choice – often in contexts of a decision about whether to expend effort or not – we are inclined to think this legitimates inequalities precisely because it seems to us that differential effort *ought* to lead to unequal outcomes. It might also be thought that one

---

[71] Nagel has written that egalitarianism applies "first to the assessment of outcomes rather than of actions" (1991b, p.116).

reason for decrying the treatment of people as inferiors is that such treatment fairly reliably results in inequalities. It may still be true that discriminatory laws are inherently bad in character but we might wonder whether we would be as concerned if they had no effect on equality. Lippert-Rasmussen notes that such a situation is hard to imagine, but it does suggest that our concern is not entirely deontological in nature. Consider also affirmative action practices. These are commonly justified by a perceived need to remedy past injustices but they are in nature discriminatory. Individuals are treated according to the group they belong to, and this is often a matter of gender or race. If discrimination on such grounds was inherently wrong such practices would be rejected out of hand. But they are not. One reason for this is that not everyone adopts the deontological perspective. Some think affirmative action is permissible as it will (hopefully) result in a more equal distribution of advantages.

A second problem with Nagel's case arises if we just take for a moment his argument about education. While the pursuit of academic excellence may well be a legitimate goal of education, it is by no means the only one. By thinking about what some other legitimate aims of education might be his argument becomes less appealing. If, for instance, equipping individuals for maximally flourishing lives or to take their part in society as free and equal citizens are legitimate goals, then unequal outcomes will be a source of considerable concern, no matter their aetiology – and this is of course to adopt a consequentialist viewpoint. Nagel's (to be fair, brief) discussion of education reads as if the pursuit of excellence is the dominant goal of education. Maybe he was only thinking of a university context where this might be more defensible. However that may be, given a legitimate goal of pursuing excellence he next claims that differences in educational outcome that result from this pursuit ought not to concern us to the extent that they are the result of natural differences. But he goes on to qualify this by adding that this argument is best applied to educational inequalities *per se* and not to any economic inequalities that result from them. But I doubt that many luck egalitarians are much disturbed by variations in educational outcome – interpreted as academic excellence only – anyway. It would need to be shown that an individual's academic attainment *alone* has a significant effect on well-being – and this seems doubtful. And, contrary to Mill, I would be very hesitant to claim that a more intellectual life is inherently better than a less intellectual life. For one thing, this would be at least partly dependent on the nature of the society. Some degree of academic education is certainly desirable; being illiterate in a literate culture is a substantial disadvantage. But it need not be to the highest possible levels of excellence. One reason that egalitarians have for being concerned about educational equality is precisely that it does have a significant impact on things like self-respect, income levels, and thereby on overall well-being. The mere fact that individuals vary along some dimension largely as a result of innate factors –

218

some are better rugby players, better artists, better musicians, better academically – is not of concern. If this is all that Nagel is pointing out is not a matter of justice then we can all agree. But if these differences translate to inequalities in advantage through the structures a society puts in place, and this seems true, then the egalitarian will rightly be concerned. This point, that mere difference alone does not constitute inequality that need concern an egalitarian, but rather whether the structures of society discriminate on the basis of those differences, is an important one we have met before.

Is there a relevant distinction between natural and social inequalities?

But does the distinction between natural and social inequalities have the significance for justice that is being claimed for it? Lippert-Rasmussen (2004) agrees that we can make the distinction, although he suggests it may be more accurate to say that inequalities lie on a continuum from being mainly due to natural factors to being mainly due to social factors. However, he thinks that the distinction is morally irrelevant.

Lippert-Rasmussen's argument is based on an analysis of variance (ANOVA). Using this method, he brings out how our judgements about the relative injustice of naturally versus socially generated inequalities seem to be based on a comparison of possible alternative states of affairs, rather than on whether the inequality is natural or social in origin. Lippert-Rasmussen's careful argument seems to demonstrate that counterfactuals play a crucial role in our thinking about inequality. This suggests that what is of most relevance when trying to judge the relative injustice or otherwise of an inequality are the alternatives open to us, other possible ways the world could be and whether we have the power to bring those alternatives about. This is in contrast to what he shows to be the irrelevance, or lesser importance, of an inequality's causal history – which is what the natural/social distinction trades on. Adding to the cogency of his argument is that it coheres well with the claim made by many luck egalitarians that inequality is intrinsically bad. If this is so, then how it came about is irrelevant. Lippert-Rasmussen also suggests that what appears to be the most morally relevant feature in our judgements is how easily some alternative can be realized; can we easily bring about less inequality.

The salience of counterfactuals fits nicely with the earlier discussion of consequentialist versus deontological reasoning. Then it was pressed that what is of most importance to the egalitarian employing a consequentialist standpoint is that outcomes are equal rather than how a particular state came about. So if we are taking a consequentialist standpoint then, a consideration of the alternatives that are open to us will be of greater moral significance than causal history.

219

Moreover, the importance of counterfactuals has been pointed out by other writers in the course of arguments quite unrelated to the natural/social distinction. Two interesting examples of this are Temkin (1993) and Christiano and Braynen (2008). Looking at Temkin first, one of his major goals is to understand how one inequality can be worse than another. Early on in his argument he establishes that his main tool will be to use comparisons and he makes the claim that equality – or in his case inequality – is *essentially comparative.* He elaborates on this by saying that he means this not just in the sense of comparing the levels of well-being of different people, but also in the sense that our judgement of the relative justice of a situation, as regards inequality, depends on the alternatives with which we compare it and not only on features intrinsic to the situation. In other words, he also contends that counterfactuals are of most moral relevance when judging the relative injustice of an inequality, although he does not dismiss the possibility that other intrinsic features of a situation may also be important. Christiano and Braynen's purpose is different; they are interested in defending egalitarianism against the levelling down objection. In the course of their argument they make the claim that when we are evaluating the justice of a state of affairs we ought to compare the actual or current state of the world with an ideal state which, for the egalitarian, will be an equal distribution of whatever is held to be the substantive distributable good. The closer the actual or current distribution is to the ideal the more just it is and, conversely, the further the actual distribution is from the ideal the more unjust it is. Thus the salient feature for assessing distributive justice for Christiano and Braynen is once again a counterfactual, in their case the ideal distribution, and the justice of a state is measured by how far actual conditions diverge from this ideal.

As far as distributive justice is concerned then, the argument so far is that causal factors are not of great moral relevance. So, for example, we can have a situation where we can see two people are at different levels of well-being relative to each other, but in order to know just how bad this inequality is, we need to know what alternatives are open to us. But luck egalitarians argue for the moral relevance of choice too, whether either of the agents bears any responsibility for the situation. So luck egalitarianism does not hold that causal origins are entirely irrelevant, only that the natural/social dichotomy is. The idea of the accessibility of alternatives may also explain why we may tend to think that an inequality that is irremediable is unjust but perhaps not grossly unjust. If there is nothing that we can do to make a situation more equal then it seems ridiculous to berate ourselves over it and count it as a gross violation of justice.

Some cases

So let's test this claim about counterfactuals. Consider the following cases:

Case A. Billy is struggling in his learning and becoming very frustrated and negative about school. We discover that this is because his eyesight is bad due to entirely natural causes (a distortion of the cornea) but can easily be remedied with an appropriate prescription for glasses.

Case B. Millie is struggling in her learning and becoming very frustrated and negative about school. We discover that this is because her eyesight is bad due to being beaten by the headmaster (this has caused a distortion of the cornea) but can easily be remedied with an appropriate prescription for glasses.

If the causal history of an inequality were the most morally relevant fact, then that would be a reason to deny supplying Billy with glasses, or placing him way down on a waiting list, as his bad eyesight is of less concern than Millie's bad eyesight as it came about due to natural causes rather than the social factors at work in Millie's case. But this does not seem right. What seems relevant is that they both have poor eyesight that can be easily remedied. It seems wrong to give Millie glasses while denying them to Billy – "Sorry Billy, your eyesight is naturally bad and so we are not obliged to do anything for you". What is morally relevant is whether we have available to us a feasible alternative where we could imagine the social norms prescribing something like the principle that no child should be worse off because of an easily treatable deficit in their eyesight, no matter its genesis. The inequality in their *opportunities to learn* relative to normally sighted people is not less unjust in Billy's case and more unjust in Millie's case.

I suggest that what is happening is that the causal history obscures the issue about the inequality of *opportunity to learn,* as Millie has suffered a further wrong. Perhaps this could be a clarifying distinction. It might sometimes be wise to distinguish between an *inequality* and the *overall state of affairs*. Thus, Billy and Millie are suffering an equally bad injustice as far as their opportunities for learning due to their poor eyesight is concerned. But, Millie has also suffered a further wrong. So I'm inclined to think that as far as the inequality, considered only as an inequality, is concerned, causal history is irrelevant to a judgement about the degree of unjustness. But we might say an *overall state of affairs* is more or less unjust according to its causal history because added to the wrong of an inequality are further wrongs, which may well require separate redress as a matter of justice. Thus something needs to be done about Millie's headmaster, but this is more a matter of retributive justice and is quite separate to questions of equality. The significant point is that the existence of a further wrong need have no implications for the relative injustice of two inequalities, considered just as *inequalities*.[72]

---

[72] Feinberg's (1974) concept of a double injustice may be of applicability here. He argues that there are commonly cases where both comparative and non-comparative principles apply, to both our conceptual and

An objection to this is to claim that the extra wrong that was involved in Millie's type of case makes her situation more unjust as there is actually a greater inequality involved. She is not only worse-off than others because of her bad eyesight but also because of the suffering from being beaten. Because of this she is actually worse-off than Billy. But this is to claim that the inequality is worse because she has suffered a greater disadvantage, not because of how it has come about and I'm happy to concede that point.

Now consider these cases:

Case C. Lily is struggling in her learning, compared with her peers, and becoming very frustrated and negative about school. We discover that this is because her cognitive functioning is just not very good due to genetic factors and there is no way to remedy this. She needs intensive and expensive one-on-one teaching to help her make any progress.

Case D. Willy is struggling in his learning, compared with his peers, and becoming very frustrated and negative about school. We discover that this is because his cognitive functioning is just not very good due to an impoverished early childhood home environment which cannot be changed now as it lies in the past. He needs intensive and expensive one-on-one teaching to help him make any progress.

If the natural/social distinction was morally relevant we would say that Willy is owed extra help as a matter of justice but that Lily's difficulties are not of as great a concern to us. But this just doesn't seem right. The luck egalitarian will claim that the most morally relevant feature is that they are both worse off due to no fault of their own, that their situations are not the result of choices they have made and that we have the power to help them both. To give differential treatment on the basis of the genesis of their disadvantage would be a strange way to carry out justice. The difficulty of helping them is not relevant to assessing the justice of their situation either. But it may have a bearing on all-things-considered how much resources can be spent on them. If the cost of a small amount of benefit to them, is the same as a large benefit to a lot of children, such as Billy and Millie who just need glasses, this may give us reason to put more resources into what is most effective, but it does not alter the severity of the injustice suffered. And what if we could develop a drug that could address Lily's deficiency, should we not bother as her disability is natural in origin? This seems absurd. The natural origin of a learning difficulty just does not seem relevant to our moral thinking but rather what alternatives are open to us i.e. it is counterfactuals that are more morally illuminating. The difference between causing something intentionally and causing by not doing anything also becomes blurred. What is given may sometimes be unalterable, but how we respond to what is given is very much a

moral confusion. On this account, people can suffer a 'double injustice' when they are treated in contravention of both a comparative and a non-comparative principle. This appears to be the case with Millie.

matter under our control and technological advances make less and less about our situation a given.

Consider now this:

Case E. Silly is struggling in her learning, compared with her peers, and becoming very frustrated and negative about school. We discover that this is because her cognitive functioning is just not very good due to decisions she is making not to pay any attention or do any work, despite a supportive background and knowledge of the possible consequences. She needs intensive and expensive one-on-one teaching to help her make any progress.

The luck egalitarian is going to take note of this causal history, although as noted in the previous section it needs to be accompanied by considerable caveats, the most notable being perhaps that help is offered if there is a change of heart. With children the metaphysical problem of identity looms large, is it fair that the adult bear the costs of the choices of its adolescent predecessor. To some extent they must, but the opportunity for allowing for better choices later must be there. The fact of inequality is still a problem, inequality is inherently bad, but the existence of choice changes our intuitions about this case, not finally as said, but for now. Extra assistance might still be offered Silly, but she would not be high on any priority list and the assistance may be more likely to take the form of trying to bring about some better choices. Of course, the decisions of adolescents are rarely as stark as this case makes it out, but as I said all the caveats about choice previously discussed apply. We might also point out that counterfactual reasoning is not entirely irrelevant in this case either. When considering whether the inequality is just or not it is relevant to consider counterfactuals and the relevant one here is that we can imagine an easily accessible alternative, given the facts as we have them, where Silly does not make perverse choices.

More on the distinction between natural and social inequalities

Buchanan *et al* (Buchanan, 2000) have a somewhat ambivalent approach to the distinction and the relevance of the distinction between the natural and the social. They tend to accept that social inequalities are the result of injustice and we ought to correct for the effects of social structures on a limiting a person's opportunities. But they further hold that natural inequalities, while largely a matter of misfortune, can come under the purview of justice if they prevent someone from competing fairly for social goods because their level of functioning is too far below that of a 'normal competitor'. So the relevance of the natural/social distinction is blurred and they also make the interesting suggestion that it might be best "if we understand the distinction between the social and the natural as that between what is subject to human control and what is not" (p.83). This conception sees the

realm of the natural as a shrinking one as our abilities to alter and intervene increase. So, maybe at one time there was nothing to be done about Billy and his poor eyesight and it was just misfortune, but now not to act would be unjust.

Buchanan also notes the difficulty of distinguishing in practice between the natural and the social. So we might suppose that if anything were purely a matter of nature then the genetic disorder PKU – which all newborns are tested for – would be; you either have the two recessive genes or you don't. The condition prevents proper brain development and leads to mental retardation. However, this outcome is not inevitable. It can be avoided if the individual has a special diet for the first few years of life. So in the cases of Billy and of PKU, it is not clear that the biological origin of a disadvantage has any implications for justice. The morally relevant fact in each case is not the causal sequence leading to any inequality but whether there exists an alternative that it is within our ability to bring about – a pair of glasses or a special diet. However, I would still hesitate to suggest that there are any inequalities that can be shrugged off as misfortune rather than injustice just because we cannot do anything about them.

We have then a claim about the irrelevance of the natural/social distinction for justice and a view that fewer and fewer things can be distinguished meaningfully in this manner anyway. But this case has partly been built on a particular methodology. Tim Lewens (Lewens, 2010) agrees with Lippert-Rasmussen that the natural/social distinction is morally irrelevant. But he questions whether the distinction is valid in the first place and has doubts about the way in which ANOVA has been used by Lippert-Rasmussen. To begin with the methodological concerns, Lewens points out that Lippert-Rasmussen's use of ANOVA appears to be highly idiosyncratic as the normal practice is to compare how different genotypes fare over different actual environments, rather than the hypothetical alternatives Lippert-Rasmussen employs. So, for instance, a biologist may plant seeds with different genotypes in a range of environments and by looking at the variation in averages between the plots, in terms of some trait such as height, hope to disentangle the parts being played by nature and nurture. But note that what is looked at is the variation in the averages of some trait over actual genotypes and actual environments. The whole matrix in a typical ANOVA case thus represents the actual state of some society rather than possible alternative states. Lewens believes that because Lippert-Rasmussen's account of ANOVA is so substantially different from the standard account – it depends on how some hypothetical social norms and hypothetical gene distributions may influence inequality for determining the distinction between natural and social inequalities– the correct conclusion to draw may not be the irrelevance of the natural/social distinction but that the method employed is invalid. The nub of the problem, it seems to me, is that Lippert-Rasmussen is trying to make an empirical claim about the distinction between different types of inequality. But his

method cannot support this distinction as it relies, not on empirical data, but on hypothetical data about what might be the case if we altered this social norm or could alter that genetic distribution. However, what his method *does* still do is highlight the importance of counterfactuals for reasoning about the justice of inequalities.

Lewens goes further and points out that, even if Lippert-Rasmussen used ANOVA in its customary way, this still would be a bad way of drawing the distinction. Partly this will be because most inequalities are going to be an inextricable mix of factors anyway, but also because some phenotypic variations that are highly correlated with genetic differences will interact with prevailing social conditions in such a way that it looks as if only that genetic difference is significant. He describes an interesting example. Imagine two visibly different groups within a society, say males and females or dark-skinned and light-skinned people. They are in two different environments, say two different schools. Now say that both groups differ in their achievement on tests identically, in both schools. It might appear then that all the variation between the groups is due to genetic factors which may prompt us to think that as the inequality is natural in origin, it need not concern us as a matter of justice. But that need not be the case. It may instead be that, although two different schools are being compared, they are actually part of the same monolithic school system and so the environmental variation is actually quite insignificant. The teachers working in the schools are behaving in the same sorts of ways i.e. they have on average the same tendency to behave in discriminatory ways towards males and females or towards Maori and Pakeha students, say. The inequality might therefore be due largely to social causes; it is an injustice that demands a response but which is hidden by a failure to look at real alternative school environments. This may be why Lippert-Rasmussen thought his approach could be illuminating, but for Lewens the significance is that ANOVA is a poor way of determining what sort of causes are most determinative of an inequality.

According to Lewens, biologists and philosophers of biology are in fairly broad agreement that the task of distinguishing between the causal primacy of the natural or the social is unlikely to be successful. He offers us another tool that helps to clarify this scepticism and which emphasises how entangled and interdependent these factors are. The tool he uses is a *norm of reaction* which looks at how different genotypes fare in different environments. Biologists use norms of reaction to plot the relation between a phenotypic trait and an environment. Before looking at Lewens example it is worth noting some practical difficulties with norms of reaction. Environments of almost any type – and certainly educational environments – are complex and have multiple variables at play. It is therefore impossible in a rich environment to know exactly what variable or variables are most responsible for any observed difference unless further work is done to identify the influence of individual variables. This has always been a problem in educational research, being able to adequately

control for the variable of interest. Norms of reaction are never continuous functions either as there are no genes or combinations of genes that result in exactly the same expressed trait over all environments (Levy, 2011). Thus a gene 'for' tallness in one environment may well play a causal role 'for' shortness in another environment.

Now, Lewens asks us to imagine two genotypes, G_1 and G_2, which develop in two different environments, E_1 and E_2. Leaving aside any difficulties about what exactly intelligence may be, genotype G_1 thrives in educational environment E_1 but does poorly in E_2, while the converse is true for G_2. How a genotype is expressed is dependent on the environment in which it develops and Lewens makes it clear that it seems impossible in principle to say whether intelligence is therefore a result of natural or social causes, the two are intimately and inextricably linked. So Lily and Willie, who we met in the last section, have cognitive abilities which, while having a biological substrate, are nonetheless totally and unavoidably dependent on the environment in which they develop. We cannot in principle or in practice say whether their abilities are due to natural or social factors.

Lewens suggests that we can further develop this situation by imagining that G_1 is a smallish minority of the population or that E_2, which is a better educational environment for most people, is very rare but could be easily made widely available. What should we do? The best thing would seem to be to have a mixed educational environment that is able to develop the intelligence of all equally. This is the sort of conclusion that a consideration of the alternatives open to us would seem to lead. Once more, the relevant moral factors are not to do with causal history but counterfactuals. We may also think that this argument bears a strong resemblance to debates about such things as the learning styles of individuals, the type of schooling best suited to Maori or Pakeha, are single sex or co-educational schools best, or what is the place of special schools such as Rudolph Steiner. So this argument is not entirely hypothetical but rooted in current debates where we recognize that different individuals may need different environments in which to flourish. Of course, Lewens' argument, via a norm of reaction, is a highly simplified account. It may be that we cannot find environments that allow everyone to develop to the same level and some environments may be prohibitively expensive bring about. A government will weigh up such factors. But we often do have considerable ability to control our environments and if we don't do what we can to promote the interests of each equally we can be guilty of very great injustice, of preferring the interests of some over others; nature is not determinate of outcomes. Lewens points out that we may not be aware of other social possibilities, but once the seed of that idea has been planted it becomes hard not to consider that possibility and to accept inequalities as merely misfortune.

An objection to Lewens is that it is easy to imagine that there are particular genotypes that always do better no matter what the environment and that such cases would indicate

clearly that natural causes are responsible for the inequality. But this is not really the point of Lewens' argument, that nature has no part to play, but rather that we have considerable social control over the environments in which we live and therefore over how various genotypes can flourish or otherwise. Once again, what is significant is not that there might be some natural component to an inequality, but that we have the ability to determine the social circumstances that we live in and that is most relevant to considerations of justice. So two genotypes may influence the development of intelligence in different ways but that in no way implies that the social circumstances are irrelevant and we just accept whatever inequalities as bad luck. The response ought to be to look at whether the social conditions are the best that can be done and when we observe wide disparities it is reasonable to wonder if things could not be arranged better.

Taking a historical perspective would also seem to give us good reason to be wary of distinguishing between natural and social inequalities and using that distinction to justify an unequal status quo. In the past some quite egregious inequalities have been seen as acceptable as it was believed that they were due to nature. For example, slavery, unequal civil rights, paternalistic imperialist policies and discriminatory practices against women, have all at one time or another been justified as being the morally non-problematic result of natural inequalities. The various groups who suffered from these beliefs were seen as naturally inferior and little thought was given by most to the social conditions that supported the inequalities. But in hindsight, we can see that these inequalities were largely a matter of social norms and institutions based on ignorant and self-serving beliefs.

We can thus conclude that the distinction between natural and social inequalities is at best misleading, but ultimately irrelevant. This may not be a surprise to some who believe that all inequalities are socially constructed. But if this is the case it is not obviously or straightforwardly the case, it needed to be argued, and it is not quite right to say that nature has no part to play in inequality. This may lead us back to a reconsideration of the initial distinction I was drawing between inequalities that are the result of deliberate actions, of an individual or others, and those for whom no one is to blame. But I think it has been shown here how reframing the issue in this way will not avoid the problems associated with trying to distinguish between inequalities on causal grounds. It is counterfactual reasoning that this section has found most cogent and morally relevant to judgements about what justice requires. Luck egalitarians claim that inequalities are intrinsically objectionable and we are challenged by them to look at the alternatives available. If there is an alternative social arrangement that results in less inequality, then that is what we ought to pursue, and the more easily accessible that alternative is the greater the reason for pursuing it. A failure to act to reduce a remediable inequality is unjust no matter the origin of the inequality. It may be the case that an inequality exists that nobody caused and for which there is currently no

227

adequate means of rectification or compensation. But this does not entail that it is not thereby unjust and can be dismissed as merely misfortune.

An analogy may help to show how bad luck becomes injustice is this. Insurance companies redistribute to people on the basis of good or bad luck. If someone has bad luck they make a claim and money is redistributed from the lucky. This is not normally seen as grounds for complaint from the fortunate. Indeed, if the insurance company was not to act to compensate that would be unjust. A society can to some extent be fairly viewed as a co-operative enterprise that exists at least partly to protect and enhance the well-being of its members. We all benefit from co-operation. A legitimate aim of a society so viewed will be to level out the differential effects of luck. Just as those who suffer no misfortune and therefore make no claims on their insurance policy have no reason to resent the unfortunate from making claims, so those fortunate in the distribution of natural assets ought not to resent some redistribution in favour of the less fortunate.

Pure natural inequality

My discussion so far has largely been concerned with natural inequalities that are believed to be biological in origin. This is the normal context for this problem as natural assets or innate talents are generally taken as being traits of this sort and besides, in discussions of education it is intelligence or cognitive abilities that are generally seen as most pertinent. But the discussion would not be complete if I did not take into account the possibility that the major problem over the moral relevance of the natural/social distinction resides in the difficulty of isolating the causal efficacy of natural and social factors. There might still be a lingering thought that the natural/social distinction can be shown to have moral relevance if we could but remove these difficulties and consider pure cases of natural inequality. This objection though is still somewhat muddled as no natural cause operates in a social vacuum. That statement needs some qualification. It might be the case that during gestation the development of cognitive capacities, and other traits, is subject solely to biological causes; there are no obvious social factors at work. At least, it is certainly true that the only direct influences on the development of the foetus are biological. But it is also true that the mother is living within a social context and there may be indirect ways in which social factors could have an influence. For example, a mother's nutrition may affect the cognitive development of the foetus and one's nutrition is certainly open to social influences. I want therefore to try and clear away all such questions to the greatest extent possible.

The closest we can perhaps get to abstracting away from this problem are windfall type cases of the sort that Parfit (2002, p. 91) has discussed. Following his model, consider these cases:

Natural inequality: We have a pile of cash that nobody has a claim to that we can distribute as we see fit. But before we have a chance to do so a gust of wind blows it around distributing it very unequally.

Social inequality: We have a pile of cash that nobody has a claim to that we can distribute as we see fit. But before we have a chance to do so a capitalist appropriates it and hands it out to his friends and family, distributing it very unequally. The resulting distribution is as for the previous case.

The distribution of cash in the first case is completely arbitrary from the moral standpoint; there are no good reasons for it, just a brute natural cause. It is a matter of pure chance, but more than that, there is no good reason why we should accept the resulting distribution as just. The wind blowing your way does not stack up as a good way to justify anyone's share of the cash, tempting as it is to believe it does if you happen to have more than anyone else. This is partly the problem; people often seek to justify inequalities when they are the beneficiaries of those inequalities. But the wind, an inanimate natural force, seems a poor and inappropriate arbiter of entitlement. We can ask; was anyone wronged by the wind? Was any wrong action committed in bringing about this distribution? Was the process inherently unjust? However, these deontologically loaded questions are plainly nonsensical in relation to our judgement of the moral status of the situation.

Luck egalitarians argue that the morally relevant features are the fact of inequality, in some dimension which matters, and the lack of any suitable condition of choice that could make that inequality permissible. From the previous discussion, it is also morally salient whether we are able to act to reduce or eliminate an inequality, whether there is an alternative distribution, easily achievable, that treats people more fairly. In this case there is; we could collect up the cash and distribute it equally. In the absence of any prior legitimate claims to the cash (i.e. choices from initially equal option sets) then it seems, *ceteris paribus*, that a fair distribution will be an equal one. Even if nothing could be done to reduce the inequality – the recipients of the cash are in geographically separate locations with no communication between them – it still seems perfectly intelligible, legitimate and not beyond common usage of the term, to call the situation unfair and because of that unjust, even though no injustice was involved in bringing it about and nothing can be done to rectify the inequality. Luck egalitarians will urge that such situations reinforce their claim that it is unfair when some have less than others due to no choice of their own. It is irrelevant that no wrong has occurred in the process of distribution, the fact of inequality is all that is required to make this situation unfair in the absence of some suitable legitimating circumstance such as choice.

Some will resist this conclusion and want to say it is not unfair if the wind has made some less well off than others, it is just bad luck. Of course it is bad luck, but luck egalitarians make the further claim that it is unfair if some are less well off due to bad luck alone. This is because they claim that inequality is intrinsically bad and that inequality requires the sort of justification which arbitrary factors cannot supply. This example does not show that they are correct in asserting the intrinsic value of equality, but it does show that arbitrary natural factors, like the wind, do not have the sort of character that could legitimate a distribution. We can say that any wind-determined distribution, while maybe not unjust, is certainly not just. Intuitively we do need some justification in order for us to accept the outcomes of such natural events as not unfair. It would be odd to just shrug your shoulders over this distribution and accept it as mere bad luck.

Consider it from another angle. Say we started from the unequal distribution only it is legitimate for whatever reason you might consider sufficient to make a distribution permissible e.g. suitable conditions of choice and responsibility, a true reflection of people's deserts, a distribution that doesn't violate Rawlsian principles or a distribution that satisfies Nozick's principles of historically just acquisition and just transfers. Now say everyone carelessly left their cash outside and an unexpected wind came up and blew it all around resulting in an equal distribution. This equal distribution is, in this case, as unacceptable as the wind assisted unequal one and for the same reason (although egalitarians may secretly be not that upset by it!). The wind, a natural event, lacks any legitimating power and other types of reason are needed to make a distribution just. If a distribution was permissible before the wind came along, there is nothing that the wind can do that will change that fact. All sides can agree on this while disagreeing about what exactly *will* make a distribution just. We can agree that forces like the wind haves no power to override previously just entitlements without agreeing on what exactly will.

So if no one had a prior legitimate claim to the cash then we have good reason to act to redistribute the cash; that would be the fair thing to do. It may be objected that this is really a matter of the prevailing social and legal norms. But this is precisely what is in question i.e. what should our norms be for the fair distribution of benefits? In answer we can see that the wind – or random natural forces in general – does not seem to fit the bill as a fair distributive mechanism. Reflect too that many societies have laws around windfall gains so that, for example, there is no automatic right of ownership to minerals or treasure you might find under your land, there is no automatic assumption that because something blows your way it is yours. It might be asked, do piles of cash lie around to which no one has a legitimate prior claim? Well yes. Governments lay claim to many physical resources, they do from time to time get windfalls from things like oil and gold and they do own various assets and enterprises that are common property. How should any benefits that result from

230

such things be distributed? The lesson is that distribution ought not to be any which way the wind blows.

The case of natural disasters seems relevant here. No one deliberately brings these about, by definition. But we seem to collectively believe that the distribution brought about by a natural disaster, while certainly bad luck, is not therefore of no moral concern. On the contrary, many people seem to be tacit luck egalitarians, believing that people disadvantaged in this way due to no choice of their own are owed government aid. That is, the victims of natural disasters have a valid claim on others in their society, as a matter of justice and not as a matter of charity, although humanitarian considerations are often initially at the forefront of considerations. This of course means that resources are redistributed from those who have more to those who have less. The criteria that seem relevant to such a judgement seem quite clearly to be ones where the causal history of the inequality is irrelevant. Instead, we employ counterfactuals, what alternatives are open to us that we might bring about, what ought the government to do? The justice of a government's response is judged by thinking of what it could have done and we judge it to have acted wrongly if it has not acted quickly enough and comprehensively enough, if it has treated people fairly, normally to bring those disadvantaged at least back to where they were prior to the event. The thought that a government, and fellow citizens, would blithely dismiss the consequences of a natural disaster as mere bad luck because it is not socially caused is implausible, and sad. It would suggest that the society does not feel itself a co-operative enterprise in which all have responsibilities for each other.

Consider now the second case where the same unequal distribution is brought about by human agency, of a rather nepotistic kind. Is the resulting inequality – considered just as inequality – any worse than in the first case? No. The relevant moral fact about the justice of the distribution of the cash is the same in both cases: that there is an easily accessible alternative where the cash is distributed equally. Our sense that both cases could be otherwise is of most salience.

Nozick and Rawls both claim that how something comes about is critical for the legitimacy of a distribution. It may be the case that how a distribution comes about is critical when it is a result of justice-making processes. But this connection between the justice of processes and the justice of distributive outcomes is by no means secure. It relies on a fairly deontologically loaded commitment. Sometimes a fair process will result in a fair outcome. This is the case with lotteries where it does seem to be the case that it is the very process itself that lends legitimacy to the outcome, the immediate outcome at least. However, a lottery cannot lend legitimacy to any outcome; for example, we would not think that a lottery had the power to confer legitimacy on the distribution of children. We would not consider a lottery to have the power to confer legitimacy on people's income. In other cases

it is even less clear that there need be any connection between the process and outcome in this way. So it seems entirely possible for bad acts, reprehensible in themselves and deserving of censure, to nonetheless have good results. Perhaps Robin Hood actions are of this type, robbing the rich to give to the desperately poor. We can deplore Robin's methods; but applaud the outcome. This could obviously provoke different intuitions. But that some may accept the resulting outcome shows that many of us do not always find the way in which a distribution comes about as relevant. And this will be the case with those who think equality intrinsically good.

Similarly, good actions could have bad distributive outcomes. This is precisely the case with doting parents lavishing resources on the education, a noble goal, of their children. The result can be quite extensive educational inequality. Even the parents helping their children could agree this is bad because they can see others are not as well served as their children and they may sincerely wish all children to be well educated. But they might nevertheless reason that, just because others are poorly served, that does not mean that all should similarly skimp on care for their own children. They reject levelling down in other words. But that is not the case here. It is morally irrelevant *how* the distribution came about in both our cases and the natural/social distinction seems to play no part in our judgement of the legitimacy or otherwise of the inequalities. Both distributions are the result of factors which do not appear to be of the right nature to impart legitimacy on their outcome. Neither the wind, nor theft and partiality, make any difference to the justice of the distribution.

Yet it is very difficult not to think that the social inequality is somehow worse. The temptation to conclude that in the second case the inequality is more unjust is because the second case involves a further wrong and we conflate the two things; the injustice of the distribution and the unjust acts, in this case theft. But this doesn't make the wrongness of the *inequality* any worse, although it makes the *overall state of affairs* worse. There is an additional question about what is to be done in the second case above and beyond any considerations of egalitarian justice. But that further action more likely belongs in the realm of *retributive justice*.

It might be objected; is the distribution of natural assets – assuming for the sake of argument that, contra-Lewens, we can make sense of this – at all like the wind distributed cash? I believe it is. Like Temkin (1993), I think it is unjust that some are born blind whereas others are not. Both outcomes are random distributions and arbitrary from the moral standpoint. Natural assets are not as redistributable as cash though – barring the odd eye, kidney or lung. And if some are born blind we may not think it appropriate to redistribute eyes from the sighted because of other values we hold about bodily integrity or the effects on a society of forcibly taking body parts from some to give to others. But this need not be a major difference of any moral significance as regards our judgements about the inequality.

232

It only means that there are further moral, and practical, considerations about how we ought to act to redress the inequality, like what alternatives are open to us, and many of these will involve changing our institutions, rather than people. With inequalities, redistribution is not our only tool of remedy. We can also sometimes rectify or compensate for them. If natural assets cannot be redistributed, either rectification or compensation may still be possible, for example, wheelchairs, glasses, extra resources, and extra teacher time. Also, a wind assisted distribution of paper is not in itself a source of inequality unless that paper can be turned into advantage by the institutions of society which see significance in its possession. Likewise the distribution of talents/genes can be non-problematic unless the structures of a society are such that there is differential advantage to be had from the possession of those talents/genes. If a talent for playing rugby well is an advantage, it is only relatively recently that this has become so as rugby has become a professional sport and allowed some to earn a living at it. So the ability to gain advantage from being good at rugby depends, like most things, on social structures.

Conclusion

It has been argued in this chapter that it is conceptually impossible to distinguish between inequalities on the basis of whether they are of natural or social origin. Such a distinction is illusory and misleading. But even if it could be coherently made, it would not have the moral relevance that some have argued for it. Instead, it was argued that it is the alternatives available to us that are of greatest moral relevance and that natural processes do not have the power to legitimize a distribution; they do not have the appropriate moral character – as luck egalitarians believe choice does. This does not imply that the natural and social aspects of inequality are of no importance. Rather, it suggests that when thinking about the permissibility of inequalities, it is not so much their causal history which is relevant, but whether it is in our power to bring about more equal, and hence more just, alternative states of affairs. To this extent then the social aspects of inequality are highly relevant. For any unequal distribution we need to ask, not whether it is the outcome of social rather than natural factors, but how social structures may be interacting with natural features in such a way as to distribute advantages unequally. It should be added here though, that while the underlying causes of an inequality may have little bearing on its permissibility, unless to do with someone's choices, they may still be relevant when it comes to considering *how* inequality can be prevented or ameliorated. When we want to improve an undesirable feature of society it is probably a good idea to think carefully about how it comes about.

Rawls wrote the following:

233

A further essential distinction is between the unequal distribution of natural assets, which is simply a natural fact and neither just nor unjust, and the way the basic structure of society makes use of these natural differences and permits them to affect the social fortune of citizens, their opportunities in life, and the actual terms of cooperation between them. Plainly it is the way that social institutions use natural differences, and allow accident and chance to operate, which defines the problem of social justice. (Rawls, 1980, p. 551)

This is a statement quite compatible with the arguments of this chapter. And while Rawls is not a luck egalitarian, it is clear from passages like these why some point to him as laying out many of the motivating intuitions that are foundational to luck egalitarianism. On this view then, even if there is natural variation in the talents and abilities that people possess – and it is worth pointing out that this is true, regardless of whether or not we can meaningfully disentangle what is due to natural factors from what is due to social and environmental factors – this fact should be no concern of justice; the appropriate concern of justice is instead the way in which the structures of society deals with natural differences and allows them to affect the life chances of citizens. Rawls' view therefore fits a belief that it is irrelevant whether an inequality can be meaningfully said to be natural or social in origin. We need only observe that people differ because of various chance and therefore morally arbitrary facts. Consequently, if our social institutions are to be just, they ought not to be sensitive to these natural differences when it comes to the distribution of benefits and burdens. Now, luck egalitarians argue that Rawls is correct but did not follow his line of thought through consistently. Instead he adopted a position where he considers some inequalities just, provided they are necessary to maximize the position of the worst-off in society (the difference principle). But, as argued earlier, doing this means social institutions are then sensitive to a person's luck in the natural lottery, while being insufficiently sensitive to her choices.

Tan also quotes approvingly from the above passage and argues that luck egalitarianism ought to accept Rawls' position that the appropriate subject matter of distributive justice is the basic structure of society and not natural contingencies. He thinks that luck egalitarianism ought not to concern itself with whether some are naturally faster runners than others or whether some are naturally more intelligent than others, but with how institutions handle these differences. The goal of luck egalitarianism should be "to ensure that institutions are not arranged so as to convert a natural trait (a matter of luck) into actual social advantages or disadvantages for persons" (2008, p. 671). Being a faster runner entitles you to win the race and being better at mathematics may provide good reason for you to secure a position as a mathematics teacher. But saying that implies nothing about the rewards that should accrue to those things or that you ought to be in any substantive

way better-off than others without there being much more said. They set up no prima facie reason for one person being better off than another, apart from enjoying the satisfaction of winning the race or securing a well suited position. The thing of relevance here then is not so much the origin of inequalities, but rather how we structure our social and political institutions to deal with human variability. It may be thought that to carry out this goal we need to be able to meaningfully distinguish between talents that are natural in origin and those that are social in origin, but I don't think it need have that implication. All that need be acknowledged is that people differ in ways often assumed to be natural, and which are truly to *some* extent natural, but the mere fact of difference has no moral relevance. Rather, the locus of moral concern ought to reside in how institutions deal with difference, natural or otherwise. The legitimacy of this position rests independently of whether human variability can coherently be divided into the natural and social or not.

Imagine two 5 year olds, Jennifer and Tabitha. Jennifer is slower at learning to read than Tabitha. Such observations about children, particularly younger children, reflect the child's good or bad fortune and are rarely (never?) to do with any sort of choice for which they can be held responsible. We could catalogue all sorts of factors that have combined to determine this. For example, there will be differences to do with the availability of books in their homes, what activities are encouraged, how often their parents read to them, how articulate their parents are, the emotional climate of their home life, their temperaments, the acuity of their eyesight and apparently birth weight correlates very strongly with cognitive skills (Hattie, 2009, p. 51). But as far as each child is concerned, all of this is a matter of luck, quite beyond their control. So the really important thing here is not how this came to be but the simple fact that Jennifer is slower than Tabitha.

However, Jennifer is not disadvantaged because of this brute fact. In a pre-literate society this may not matter at all. Jennifer is disadvantaged because our education system and society is structured in ways that mean those who learn to read at a quicker rate are advantaged compared to those who learn at a slower rate. If Jennifer cannot master certain skills by around the time she turns 18, then it is more difficult for her to complete her secondary education and gain a university place, for example, and that in turn has consequences for her life prospects. There may well be reasons, perhaps of educational efficiency and productivity or availability of resources, why all-things-considered this has to be. But that does not make the outcome through and through just, there remains an unjust inequality. And if it can be changed easily at little cost to other values to produce a more equal outcome then that is what ought to be done.

Further, our institutions and social structures are to a large degree responsible for which talents are nurtured and do more than just discriminate between putatively innate talents. They are, to a large extent, and starting with the family, responsible for the very

235

development of those talents. Jennifer, who learns at a slower rate than Tabitha, is not merely unfortunate, but unjustly served, if we can easily realise alternatives that make it easier for her to learn, that ameliorate the educational disadvantage of learning slower than others. Variation in advantages ought not to be the result of how our institutions are structured and whether an inequality is natural or social in origin is irrelevant to this.

An objection to the case of Jennifer and Tabitha may be to say that the entire point of education is to find and promote the fast to learn, the gifted and talented. This may well be *an* aim of education, but I think it would be difficult to defend it as the *only* aim or even as the principal aim. Education is one of the distributable goods of society, and it is a good that can benefit everyone, even granted that it may also be a positional good. Luck egalitarians are precisely concerned with the distribution of benefits and believe this ought to be as equal as possible reflecting choice and not lucky attributes. The cognitively worse-off can benefit as much, and arguably more, from education than those to whom learning comes easily and, as education systems are also the environments in which talent is developed, it is by not clear that they can also serve as impartial filters of talent. It is not that we should discriminate against the talented. But we should not structure our education system to primarily promote their interests, to the disadvantage of the less well-off. There is nothing new in this thought and, to show its venerable pedigree, and as a former mathematics and classics teacher, I cannot resist here a quote from Plato; "and even the dull if they have had an arithmetical training, although they may derive no other advantage from it, always become much quicker than they would otherwise have been" (Republic VII).

A final question here is does our education system deliver unequal outcomes, to some extent at least, because of variations in some human traits or characteristics? It seems undeniable that it does; indeed it can be argued that this is what it is designed to do, to sort people according to how they vary in certain traits. From the arguments of this chapter though, we can see that this variability cannot be clearly and unambiguously resolved into natural and social components, and it would be of no moral significance even if it could. What seems to be of moral relevance is the fact that our educational institutions, unjustly, convert human variability into actual advantages and disadvantages for persons such that persons have very unequal educational outcomes and consequent on that, life prospects. What is morally salient is that there are alternative ways we could structure our education system, that how we structure our education system has a large impact on whose and what talents are developed, and that we have a large degree of control over the extent to which there is educational inequality. What we should do is identify and change the social circumstances (widely understood) in which children are educated. The luck egalitarian claims that no inequalities are permissible if they reflect anything other than the choices of

agents, and children significantly lack much choice over the circumstances of their education.

But has this then become a reductio ad absurdum? It might be argued, we cannot expect equal educational outcomes in the face of the obviously vast differences in talents people have. This depends to some extent on what exactly is meant by educational outcomes, and this is no minor cavil, but it would indeed be ridiculous to assert that at the extremes any sort of equality of educational achievement in the academic sense is likely or that it is even possible. However, what we can say is, not that there are these clear and large natural differences that we can shrug our shoulders over as being mere bad luck, but that we currently have institutions that produce, nurture and grow these differences. Two claims of the chapter are that we have to be very careful about judging things to be natural and that this judgement has little or no moral import when it comes to inequality anyway.

And there are observations we can make that seem to offer some empirical support for this. One is that different education systems around the world do not produce homogenously similar unequal outcomes. According to the PISA report of 2009, for example, the NZ education system produces less unequal educational outcomes than Israel, but more unequal than Canada. There is no reason to believe there are any intrinsic differences between the people in these countries that could account for this and so the outcomes must be a function of the social conditions of these countries and the structure of their education systems, things that are subject to a great deal of control. Think also of how it used to be thought that females were inherently cognitively inferior and hence less able to benefit from education, and the educational outcomes seemed to support this belief. But in response to the arguments of feminists changes have occurred in the tertiary sector and now almost two thirds of university graduates in NZ are female. We used to think only a few particularly special and talented people could benefit from a university education and as evidence only a few percent were university educated. Now over 30% of the population have a university education, and it is rising. What changed in these cases were not people's innate natural abilities but the social structures *and* the social ethos that allowed these inequalities. There were alternatives to how we did things and there are alternatives to how we do things now and some of them will have less unequal outcomes. There are certainly variations in people's cognitive abilities, but these are not set in stone, or genes, but develop according to the environment. To say that differences in IQ are natural is like saying that differences in languages are natural. Both have a biological substrate, but how they turn out depends crucially on the environment they develop in. We might not know what alternatives there are, but once the idea takes root it is difficult not to start thinking that we should be looking for them. There were alternatives to how we taught girls, different countries do have different systems, it turned out that more people than we thought could

benefit from a university education, and those with Down's syndrome can pass NCEA.[73] There are very likely to be many ways of educating that do not nurture excellence for the few at the expense of the many.

There is nothing particularly original about most of my conclusions about educational inequality, although it may be of some interest that the route I have taken to them is somewhat different. I take it as a point in favour of my conclusions that others have come to similar conclusions from other perspectives. Kevin Harris (1982), for example, writing from a Marxist perspective has noted that differing outcomes are often said to be about some being too dumb to educate properly. Harris suggests that, barring extreme cases, what we rather have is that some learn some things slower than others at certain times in their life, some are less motivated to learn certain things at certain times and in certain places, some do worse in certain tests at specific times, but all this does not mean that they cannot be educated. Structural features are thus often represented as personal faults – or, we might add, as natural features. He says too that this argues more for a range of environments. It is unjust that we have environments that benefit the few and condemn many to failure in education and then claim that their subsequently being worse off is legitimate because they had a chance.

---

[73] The Press, January 24, 2007 gives the case of Andrew Oswyn, a student with Down's syndrome, and someone I taught for one lesson, passing NCEA level one.

Chapter 9:
Educational Equality

There has been a long build up to this point where I now want to look at the more specific idea of educational equality. This has been deliberate and necessary. It has been firstly necessary to clarify what luck egalitarianism is before applying it to educational equality. In doing this, I hope to have also headed off some possible objections to the conception of educational equality I am going to propose. For example, it has been established that luck egalitarianism can be applied to the distribution of any substantive good. I then argued that, while education may also be other things, it is significantly a distributable good. The discussion of complexity and pluralism was an indication of why I do not think I need to engage deeply in the debate over whether educational equality is best conceived in terms of access, inputs, opportunities or outcomes. The *equalisandum* of educational equality will be a substantive and complex good, so all of those aspects will be of legitimate egalitarian interest and how they are balanced will be a matter for further debate. This is in keeping too with my stated aim to articulate and defend principles of distributive justice for education; implementation is not the focus of this thesis. I also thought it necessary to establish that equality is a particularly weighty value and that it is what matters the most morally, not priority or sufficiency, as those latter two values have some currency in educational debates. The structural objection, highly relevant to the educational context it seems to me, also required careful consideration.

Egalitarians claim that equality and educational equality are values of the utmost significance. As a consequence, there is some obligation to be clear about what is meant by these complex and contested values. The preceding chapters have been an attempt to be clear about equality and now it is time to be clearer about educational equality. There is a range of uses of the term *educational equality*, varying not only in how the value is understood, but also in how explicitly the writer explains what they mean by the term. These tend to reflect the underlying practical and theoretical commitments of the writer. Sometimes a vague notion of what a term means is quite sufficient. So in some contexts, educational equality may stand for a belief in social justice, or that education should be free and universal or that every child should have a good education and so have a fair chance in life. My intent in this chapter is to achieve a little more precision and advance a conception of educational equality that is informed by luck egalitarianism.[74]

---

[74] Much of the material in this and the next chapter has been presented at the 2011 PESA Conference in Auckland, the 2013 PESGB Conference in Oxford, and appeared in Calvert (2014) .

This chapter will first look at what has been called the basic principle of educational equality and then point out some major challenges to the ideal of educational equality. A major part of this chapter's argument will then be that equality of educational opportunity is not the best way of cashing out the basic principle of educational equality and ought to be abandoned. I will focus particularly on Harry Brighouse and Adam Swift's particularly well worked out conception (Brighouse, 2010; Brighouse & Swift, 2008) and argue that it is irretrievably flawed. I believe they should have followed up on the other conception they mention, the radical conception, which they do not appear to favour. I will then develop their less preferred conception into an explicitly luck egalitarian conception, understood as pluralistic and complex in nature. I finally argue that such a conception goes some way to accounting for the appeal of equality of opportunity, fits with other values in education and meets the challenges, thus reasserting that equality matters morally in education.

The basic principle of educational equality

Ronald Dworkin (2000) has said that to be legitimate, a government must give equal care and concern to the interests of each citizen, and one of those interests is in education. Similarly, Harry Brighouse (2000) states that the value of educational equality rests on a belief that "social and political institutions should be designed or reformed to realize equal respect for the value of all individual persons"(p. 116). The fundamental claim is that the equal moral status of persons places an obligation on governments to treat citizens as equals; this entails distributive equality, specifically here, an equal education. I think the following passage expresses these beliefs extremely well. Notwithstanding its use of male pronouns, it can be viewed as an attempt to articulate a principle of educational equality, one that grounded substantive government policies:

> The Government's objective, broadly expressed, is that every person, whatever his level of academic ability, whether he be rich or poor, whether he live in town or country, has a right, as a citizen, to a free education of the kind for which he is best fitted, and to the fullest extent of his powers. So far is this from being a mere pious platitude that the full acceptance of the principle will involve the reorientation of the education system. (Peter Fraser, Minister of Education, 1939)[75]

Peter Fraser is here appealing to an ideal that has considerable popular and rhetorical appeal. He is appealing to what has been called the basic principle of educational equality. The principle is beguilingly simple and has strong intuitive appeal. It is the simple but morally puissant idea that each child should receive an *equally good education* (Brighouse & Swift, 2008).

---

[75] Quoted in Renwick & Beeby (1986, pp. 2-3)

One reason for its appeal, and what one would expect a politician to be sensitive to, is that, while some parents may desire an education for their child better than everybody else's (and are able to pay for it), for many parents, the principle is likely to sound warmly reassuring. To a parent, the idea that the education of their child is as important as the education of anyone else's child, and that their child is therefore entitled to an equally good education, is extremely powerful. It perhaps explains the longstanding attraction of educational equality as an educational ideal.

The challenge to the ideal of educational equality

Each child should receive an equally good education. Whatever the principle's rhetorical appeal and simplicity, there is a feel-good vagueness to it. Problems soon appear when we start to ask what grounds the principle, what it means and what it implies for educational policy and practice. All the objections that apply to equality *per se* also apply to educational equality. But in addition, as Randall Curren (2006) points out, beyond the normal problems facing the grounding of any egalitarian theory, there are problems specific to educational equality. He notes that educational equality is not easily reduced to some simple ideal form, but crosses a number of dimensions and is sensitive to disagreement over questions such as the role of the state and the aims of education. There are other difficulties that could be added. It matters too whether education is thought to be of intrinsic or instrumental value. If education is thought of instrumental value only, perhaps as a mechanism for building a more equal society or allowing the fair distribution of jobs, or that it enables a society to match rewards to talents, then the case for educational equality is going to be harder to make. All these factors, the objections to both equality and educational equality, lack of clarity in the ideal, and lack of agreement over how educational equality should be understood, have had the effect of calling into question the viability of equality as an educational ideal.

Objections focus particularly on the dominant conception of educational equality, namely, equality of educational opportunity. They range from a simple questioning of this particular way of looking at educational equality, to more cutting objections that question what grounds educational equality, whether it is a desirable value in education, whether it is relevant, and whether it is even coherent. These have worked to undermine confidence in educational equality, perhaps not so much popularly, but certainly for many theorists. So it has been argued that equality has little value as an educational ideal and ought to be "jettisoned"(J. White, 1994). Some claim that educational equality is an illusion of largely rhetorical value (Cooper, 1980) and others suggest it may be a historical relic, one of "Yesterday's Dreams" (Freeman-Moir & Scott, 2003). Some sidestep talk of equality altogether, as if embarrassed by it, and talk instead of equity (e.g. Haas, 2009). Maybe

equity sounds like something solid from the world of business and perhaps fits better with treating children as human capital in need of rational investment. And of course, educational equality, like all forms of egalitarianism, is at odds with the temper of our times. There has been a profound shift to the right in political discourse, and in policy, and the liberal value of equality has suffered under this, both in theory and in practice.[76]

The objections gain greater force when we see that they need not involve the wholesale rejection of equality. John White, for example, acknowledges that equality is operative at a general level. He accepts that it is a universal and fundamental ethical principle "that all human beings' interests are equally worthy of consideration"(1994, p. 174). He just doesn't think this principle is of any help when it comes to the actual practice of education. Perhaps most telling of all though, it is possible to be an egalitarian in general, but to reject educational equality in particular. This is the case, for example, with some egalitarians, writers who have made substantial contributions to egalitarian thinking, who argue that justice requires, not an equal, but a sufficient or adequate education (Anderson, 2007; Giesinger, 2011; Gutmann, 1987; Satz, 2007). This also appears to be so for Gina Schouten (2012b) who argues for a prioritarian principle of educational justice. These writers all appear to favour sufficiency (which I take to be the same thing as adequacy) or priority, not for reasons of political feasibility or feasibility of implementation, but because they believe these principles of distributive justice better enunciate what really matters in education and more accurately reflect what we really care about.

Educational equality has its defenders however (e.g. Brighouse, 2000, 2010; Brighouse & Swift, 2008; Harris, 1997; Howe, 1993; Leicester, 1996; Nash, 2004). I believe it also retains its popular appeal. Yesterday's dreams have not faded entirely and educational equality retains a rhetorical power that policymakers, in most liberal democracies at least, find difficult to ignore. This is evidenced by the genuine concerns many governments have about achievement gaps. It is also difficult to ignore the substantial influence of this ideal on educational policy over, at least, the last century. The building of largely free and universal schooling systems in many nations has been a considerable achievement.

But even advocates of educational equality have doubts over its status. Kenneth Howe writes that the problems with equality of educational opportunity are such that it must either "be fundamentally reinterpreted or abandoned"(1993, p. 329). Worse still, Harry Brighouse, a longstanding champion of educational equality, in a more recent work sounds somewhat equivocal on it. He writes that, while educational equality is valuable, it is not the only value or even the most important value (2010, p. 44). He believes the values of family life and benefiting the least advantaged are more important. I do not disagree that

---

[76] Dworkin writes that "Equality is the endangered species of political ideals" (2000, p.1).

there are other important moral values in education and I certainly do not deny the moral urgency of the claims of the least well-off. My difficulty is that Brighouse ranks benefiting the least advantaged, a prioritarian principle, ahead of equality. To my mind, this is an odd and unnecessary thing for an egalitarian to do. It is odd because, as I have argued, priority is a distinct and competing principle to equality. But it is unnecessary too, perhaps because of the pluralistic nature of equality that binds the concerns for well-being and equality together. It is unnecessary because it is implicit within a principle of equality that the interests of the least advantaged will often take priority. This must be so for reasons such as the greater moral urgency of their claims and diminishing marginal utility, a benefit will matter more to the less well-off than the better-off (Hirose, 2009, 2011; Nagel, 1991a). In education we know that good teaching makes more of a difference to the less advantaged in society (Hattie, 2009).

Equality of educational opportunity

In responding to the array of objections it is important to first get some clarification of the basic principle that each child should receive an equally good education. As with discussions to do with equality in general, the focus of much debate has been on the appropriate *equalisandum*, what should be equalized? And as with equality, I would suggest that this is not the most important question, although we need to start with it. It can be argued that educational equality involves the allocation of equal educational resources to each child, or it is equal achievement outcomes, or that children should be equally well educated to live flourishing lives, or that they should be able to realize their full educational potential. All these have some appeal and speak to something valuable about education (I suggest too, this speaks to the complex nature of the *equalisandum* of educational equality). However, the most common, and influential, thought is that educational equality is best understood as *equality of educational opportunity*. In fact, such is its widespread and popular appeal that it is enshrined in our education policy as one of ten National Education Goals (NEGs) set by the New Zealand Government. NEG 2 boldly states that we should aim for "Equality of educational opportunity for all New Zealanders, by identifying and removing barriers to achievement"(Ministry of Education, 2009). There are a couple of interesting aspects to this.

First, we see equality of educational opportunity being framed with an eye on the outcome, namely, achievement. While the value being enunciated is described in terms of opportunity, what ultimately seems to matter is the educational outcome. The thought is that if opportunities are equal, then inequalities in outcome will be permissible. Within a context where education is thought of as a private good that one competes for, that is perhaps perfectly reasonable. Another thought is that there is a big space between having

access to education and experiencing educational success. Educational outcomes depend to quite some extent on decisions made, or not made, by the learner. After all, a person can choose to not take advantage of an opportunity. There will be many factors influencing an individual's choices for which they are not responsible, but this does not alter the fact that they will make choices that have a profound effect on the outcomes. Who has the opportunity to go to university may well be a matter of justice. But It can be argued that who actually enjoys the ensuing benefits is not, at least to the extent that this reflects a person's choices and not any barriers to achievement (Miller, 1999, p. 7). Kenneth Howe (1993) notes too that in education, what is at one stage a desired outcome, such as knowing your times tables, is later a prerequisite for having a meaningful opportunity, such as learning calculus. He writes that "because certain educational ends (or results) must be accomplished in order for certain other educational opportunities to have worth, educational opportunity is inherently 'outcomes-based'"(p. 331).

The second thing to note about NEG 2 is that a great deal hinges on how we identify "barriers to achievement". Howe (1993, 1994) distinguishes three versions of equality of educational opportunity. These could be described as lying along a continuum that recognizes an increasing number of barriers to achievement; barriers which must be removed or mitigated for there to be equal opportunity. The least demanding conception is a formal one that requires little more than the absence of legal barriers to an education. This could be satisfied by what many would think was the minimal requirement on a state; to provide a universal and more-or-less free education. But few think such a minimalist concept of equality of educational opportunity is adequate and Howe identifies two further conceptions. The compensatory conception recognizes the barriers to education posed by the various ways in which individuals can be disadvantaged due to facts about themselves and their backgrounds. Most demanding is the democratic conception. This acknowledges that, as well as disadvantages due to social and personal causes, there are also disadvantages due to who has the power to define what is of educational worth. The idea here is that, historically, what has been deemed worth knowing, and is reflected in things like school curricula and assessment systems, has been defined by the dominant group in a society – usually white, wealthy, straight and male – and to their advantage.

The general idea then, is that equality of educational opportunity requires the removal or mitigation of barriers identified as irrelevant to someone's educational entitlement. Barriers can be legal, facts about individuals and their backgrounds, overtly economic and social, less visible barriers of culture and motivation or facts about who has the power to define what is of educational worth (Howe, 1993, 1994; Nash, 2004). The thinking here is that, if there are no unfair barriers (thought of as broadly as you like), then outcomes must be just, as they are then most likely due to choices for which persons can properly be held responsible.

244

A further interesting aspect of conceptions of equality of educational opportunity, and Howe explicitly acknowledges this, is how much they have been influenced by the work of Rawls. This is not surprising, Rawls' work is extraordinary. It is especially not surprising when you look at his principle of *fair equality of opportunity*. This states that:

> those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system, that is, irrespective of the income class into which they are born. (1971, p. 73)

For Rawls then, a person's prospects for success should not be influenced by factors (barriers) such as a person's race, sex or class. The main reason he gives for this is that such circumstances are historically and socially contingent and for that reason, from a moral standpoint, they are arbitrary and so should be irrelevant to determining a person's distributive shares.

Rawls' principle easily lends itself to a parallel principle of equality of educational opportunity. This impression is further strengthened when it is seen that, in the paragraph straight after the one quoted above, Rawls goes on to say that fair equality of opportunity can only exist under political and legal institutions which support appropriate social conditions. So, a person's prospects for acquiring knowledge and skills should not depend on a social contingency such as class, and the education system "should be designed to even out class barriers" (p. 73). Using the principle of fair equality of opportunity as the basis for a principle of equality of educational opportunity is exactly what Howe and many others in the liberal tradition have done. The resulting principles have considerable intuitive appeal, and, coming from Rawls, philosophical appeal. This may account for their widespread support and appearance in official documents like the National Education Goals. It also rather clearly, by reference to talent and ability, lends itself to conceptions that are meritocratic in nature.

Why equality of educational opportunity should go

Equality of opportunities or equality of outcomes

A problem with equality of opportunity conceptions was pointed out nicely by Bernard Williams (1973). The normal thought with such conceptions is that, if opportunities are equal, then outcomes will be more equal too. Williams therefore observes that ensuring equality of opportunity seems to require an ever increasing range of remedial and compensatory measures being applied until it eventually becomes indistinguishable from equality of outcome. This appears to make equality of opportunity incoherent, or at least redundant, because it seems we can only ever know we have equality of opportunity when

we have equality of outcomes. And if this is the case we might as well dispense with equality of opportunity altogether and just go straight to equality of outcomes.

Now, some may not be too perturbed by this, and Howe (1989) for one seems happy to defend an outcomes-based conception of equality of educational opportunity. But there are reasons to be wary of this approach. Firstly, James Coleman (1975) thought that if educational equality is a form of equality of outputs, then it looks hopelessly utopian. It is implausible to think that the State can equalize educational achievement given the diverse backgrounds people come from and the fact of human diversity. Coleman therefore believed the ideal mistaken and misleading as it tries to portray equality as something achievable in a system which could never compensate for the broader effects of the world outside the school. This argument may not be thought fatal to equality of opportunity as it could be pointed out that this is more an argument against equality of opportunity in practice than it is against the principle.

So secondly, and a stronger objection, is one made by Nicholas Burbules (1990). He argues that we need to carefully distinguish between equality being *outcomes-based* and it being *outcomes-sensitive*. Unequal outcomes do not necessarily mean that opportunities were unequal, because there are intervening choices (subject to scrutiny as to background conditions) about whether to take opportunities. This means that, while outcomes can alert us to possible inequalities of opportunity, they cannot be fully constitutive of inequality in themselves.

Lastly, there is a large question as to which outcomes we are referring to and which ones should count as being a function of opportunities and not choices, a possibly hopeless task to disentangle. Answers to this will also partly depend on what outcomes you think are the essential ones for education.

The meritocratic conception

Brighouse and Swift's conception of equality of educational opportunity largely avoids these difficulties; it does not require equality of outcomes and leaves some room for choices about effort. For that reason, and because I think it is the best thought out and most robust conception of educational equality going, it is the one I am going to concentrate on now. They argue for an elegantly simple version of equal opportunity, strongly influenced by Rawls, which they call the *meritocratic conception*. This states that:

> An individual's prospects for educational achievement may be a function of that individual's talent and effort, but they should not be influenced by his or her social class background. (2008, p. 447)

I will focus in what follows on three main things: their grounding of the conception, its meritocratic nature and their Rawlsian reliance on a further principle that gives priority to the interests of the less advantaged.

Before doing so though, it is worth noting that the case Brighouse and Swift build for educational equality makes little use of any intrinsic value to education. It is grounded largely on the instrumental value educational equality has for gaining access to socially produced goods. Brighouse has argued elsewhere for this focus (Brighouse, 2005). It seems to be based on a belief that equality does not require the equal distribution of income and wealth, so education will always have competitive value, and that the case for education's intrinsic value is not as strong as for its instrumental value. Both these claims are questionable and besides, as he notes, in practice the intrinsic and instrumental value of education cannot be disentangled. The focus on the instrumental value remains a little surprising to me though and I wonder if the case for the intrinsic value of education is perhaps a little stronger than Brighouse, at least, seems to think. If education has intrinsic value then it would be even more unfair to distribute it differentially to children based on arbitrary facts, unrelated to educability, and over which they have no control such as their race or sex or their parent's ability to pay. Such facts do not seem to provide a relevant reason for discriminating between recipients, although other characteristics of the children themselves, such as their natural talent, may do.

Fair competition

Brighouse and Swift ground their meritocratic conception on the idea that inequalities in the distribution of socially produced benefits – income, wealth, jobs, status and the further opportunities that possession of these allows – can only be legitimate if they are the result of fair procedures. This claim is similar to Rawls' notion of *pure procedural justice* which says that we have no independent way of determining a just distribution, so instead, we ought to aim at designing a social system based on fair procedures such that, whatever the outcomes, they are similarly just (1971, pp. 83-90). Brighouse and Swift then observe that, as education plays a key role in the competition for socially produced goods, it is unfair if some get a worse education than others due to no fault of their own. A worse education would put them at a competitive disadvantage and mean the resulting distribution is inherently unfair. Educational equality therefore appears to be required for the competition for socially produced goods to be fair. Presumably too, unless there is fair competition, it is unreasonable to expect the losers in the competition to accept the results. So the moral basis of the case for educational equality that they build is the idea of *fair competition* for the distributable goods and benefits in a society.

This is in some ways similar to the general claim made by luck egalitarians that the structure of option sets open to people is critical if it is thought that people should have to pay the costs or enjoy the benefits of their choices (N. Barry, 2006; Dworkin, 2000; Stemplowska, 2009). This is an acute problem if it is thought that one's education has a crucial role in influencing the choices one makes. The validity of holding people responsible for their choices would then rest on the condition that all had an equally good education that equipped them equally well to make genuine choices of a responsibility conferring nature. While this is not a procedural claim, it does link the legitimacy of some distributive outcomes to one's prior education.

Grounding a theory of justice on fair procedures is often a good strategy and the idea of fair competition has considerable intuitive appeal. A difficulty with this account though, is with what makes an inequality legitimate. There are other accounts of what it takes to make a state of affairs just and therefore what it would take for inequalities to be legitimate. A consequentialist, for example, may not be too concerned with how a state of affairs has come about as long as it accords with some independently worked out notion of what constitutes a just state. Of particular relevance here, luck egalitarians are not so likely to be concerned about issues of procedural justice and will say that inequality is intrinsically unjust. They say a just distribution is one which is insensitive to a person's luck but sensitive to their choices.

But what I find most troubling about the moral basis for educational equality that Brighouse and Swift offer, is their reliance on the idea of competition. While it is true that we live in a society that has notably competitive aspects, it is not at all clear that this is the dominant feature or the most morally relevant feature of people's lives. Life is not obviously a competitive venture, and it is hard to say how much inequality losing a fair competition could legitimate anyway. The idea that we are all in competition for socially produced goods and benefits makes it look like these are prizes to be competed for. However, it might rather be said that distributive shares are just entitlements that are owed to equals. It is not obvious why we should accept the outcomes of a fair competition as just. Competition has all sorts of features, like the element of luck for example, that make one sceptical that it can confer legitimacy on whatever results. It has been the argument here that a just distribution is defined by the correct principles of distributive justice. Competition also makes it seem fairer that there should be losers. But we should resist ever seeing people this way in the context of distributive justice; people's distributive shares should not be dependent on how successfully they can compete. Further, it is logically impossible, and undesirable, to claim that educational equality is needed to ensure fair competition for positions that are unequally rewarded. It looks fraudulent as it appears to support that unequal distribution and legitimate it. One can have a fair competition and the reward structure can still be

unfair, as it is set independently of the nature of the competition. Think of the argument surrounding the payments to men and women at professional tennis tournaments. There was no suggestion that there was anything unfair about the competitions, it was the reward structure itself which was unfair. And having a fair competition for unequal rewards did nothing to legitimate that reward structure. Ultimately, an idea of what is just based on competition seems wasteful; it means that there will be losers.

Brian Barry (1988) offers another argument against the idea of fair competition. He concedes there are many competitive aspects to society, many little competitions. But he argues that characterizing life as a big competition in which we are, beyond our choice, enrolled at birth, means there is an inbuilt bias towards seeing fairness as equal success for those of equal talent. This, however, seems to assume that we all should have the same ends and the same preferences regarding those ends. Barry thinks that such an assumption can only come from the claim that fairness requires that all participants in the great competition of life should have an equal chance of winning. This looks a dubious assumption and luck egalitarianism assumes no such thing. In fact, it denies this idea by holding inequalities permissible if they are the result of genuine choices people make about how to live their lives. Of course, the freedom of people to do this is undermined by social structures that build in certain pattern of rewards. So choosing to teach children is not rewarded as much as choosing to find corporate tax loopholes.

Against the competitive view it can be objected that people, as members of a society, are simply entitled to some fair share of what has been socially produced. Egalitarians could then argue for some idea of equal shares based on a notion of equal citizenship. This view sees society as more a co-operative enterprise and the equal participants in a co-operative enterprise are entitled to an equal share of the fruits of their co-operation. The heart of this argument would then come down to justifying why people's participation in society should be seen as equal, when it appears that people do not in fact participate equally. But I do not need to defend this thesis here. Rather, my point is that the fact of social co-operation is more basic than that of competition and so should be prominent when thinking about principles of distributive justice. Rawls took it that to develop a conception of justice for democratic regimes "the idea of society as a fair system of social cooperation" is fundamental (2001, p.5). Rawls also argues that the problem of political justice is partly to work out what the fair terms of social co-operation between citizens, characterized as free and equal, should be. This is especially the political problem of democratic societies as places where citizens are necessarily divided by profound differences in their comprehensive moral, philosophical and religious doctrines (Rawls calls this the unavoidable fact of reasonable pluralism). And co-operation should not be confused with coordination. Co-operation is for mutual benefit, on fair terms, involves reciprocity between mutually

respecting equals, and is rational. Fair terms of co-operation are also dependent on fair background conditions as provided for by the political, legal and social structures and citizens desiring justice (Rawls, 2005).

The relatively constrained competition that some favour (not necessarily Brighouse and Swift) is actually parasitic upon a much more fundamental framework of extensive social co-operation. Without this co-operative foundation we would have, not a free market, but rather some sort of Hobbesian war of all against all. I believe that co-operation is a more apt and accurate characterization of much of life's circumstances, and more morally defensible. Particularly if you think people are moral equals with equally valuable lives to lead.[77] Mark Pagel (Pagel, 2012) argues for the unique significance of co-operation in human history, an aspect of our natures and our cultures that has been significantly responsible for human progress. Humans beings have found that, when we co-operate, everybody benefits and outcomes are superior to what can be done alone. A lot of social learning depends profoundly on co-operation and allows individuals to specialise in a way that has enormously amplified what humans can achieve. Now, I take an implication of this to be that the proper distribution of the products of social co-operation should also make use of fairness, but more the idea of fair shares. Equality has been characterized as a value to do with comparative fairness and claims that fair shares are equal shares, not the spoils of competition.

Brighouse (2010) does point out that society is not actually a race, but he claims that it *is relevantly like* a race. It is a race that we do not choose to participate in and which is structured to reward people differentially according to how well they compete. This is certainly true to some extent, and indeed there is much rhetoric to the effect that life is a competition. But that is what much political discourse is, unargued rhetoric, generally serving the interests of those who would appear to be the winners and unmindful of the fact that most of us go about our business every day in a more-or-less co-operative way. But even if society is structured competitively, we still need an argument for why it ought to be or why we should accept it this way and therefore why correct principles of distributive justice should be grounded on the idea of fair competition, rather than on other ways society could be.[78] I would also suggest that inequality in a society undermines the co-

---

[77] On a slightly cynical note, you might say that capitalist societies are not based on competition, so much as being large co-operative enterprises where most co-operate in order to produce wealth and benefit for a few. In fact, most societies look like co-operative enterprises for the benefit of a few. Hegemonic power is used to convince everyone that their co-operation is good for them.

[78] It is noteworthy too that there is considerable evidence that we have an evolved predisposition to cooperate. For example, Axelrod and Hamilton (1981) famously wrote of the conditions of reciprocity under which cooperation could evolve, and the evolutionary stable nature of the tit-for-tat strategy.

250

operation that underpins so much of what we can achieve together. If citizens are denied their fair share of the social product, then they seem justified in withholding that co-operation. It could be speculated that this might be what the findings of Wilkinson and Pickett (2009) reflect.

Meritocratic

Consider now the explicitly meritocratic nature of equality of educational opportunity in Brighouse and Swift's conception. The idea that talent and hard work legitimate differences in educational achievement has strong intuitive appeal and is probably in accord with what many think. Talent and effort seem like exactly the sort of things that may have moral relevance for the distribution of educational advantage. However, I would observe that this appeal lies partly in the fact that the meritocratic conception has been worded in terms of educational achievement. If Brighouse and Swift had said instead that "an individual's prospects for a *good education* may be a function of that individual's talent and effort, but … not … social class background" then it looks a little less attractive. It would need to be carefully argued then why the talented should get a better education than others because of their luck in the natural lottery. I am not suggesting that people should be penalised for having talent. My point is rather that it is not clear that the educational interests of the talented are more important than the educational interests of everyone else. But my main purpose here is not to argue about their focal variable, although the point will arise again later.

Meritocratic conceptions have a well-known weakness which Rawls confronted in his work; they are inherently unstable. He wrote that there "is no more reason to permit the distribution of income and wealth to be settled by the distribution of natural assets than by historical and social fortune"(1971, p. 74). The place of effort in a meritocratic scheme is insecure too when we notice that "the willingness to make an effort, to try, and so to be deserving in the ordinary sense is itself dependent upon happy family and social circumstance" (ibid.). Further on Rawls says that persons are not treated equally if we "weight men's share in the benefits and burdens of social co-operation according to their social fortune or their luck in the natural lottery" (p.75). It was partly because of his recognition that luck, arbitrary from the moral viewpoint, plays a part in both the natural assets a person possesses and their social circumstances that he added the difference principle. This was to be read in conjunction with the principle of fair equality of opportunity and states that; "Social and economic inequalities are to be arranged so that they are... to the greatest benefit of the least advantaged"(1971, p. 83). The difference principle is intended to mitigate the disadvantage suffered by some, while still allowing inequalities that would act as an incentive to the talented to be more productive and thus maximize the

position of the least well-off. Without the difference principle "equality of opportunity means an equal chance to leave the less fortunate behind in the personal quest for influence and social position"(pp. 106-107).

I have quoted Rawls extensively because there are those who think Rawls' solution to the problem posed by the natural lottery is inconsistent with the underlying intuition and that the difference principle cannot fully mitigate the deficiencies of equality of opportunity. Will Kymlicka (2002, pp. 57-60) says that the traditional ideal of equal opportunity has seemed intuitively fair to many people because it means a person's life is shaped by their own choices and efforts rather than the circumstances they happen to be born into. How our life goes ought to be a matter of what we choose to do rather than a matter of our luck in what social environment we are raised in. This traditional conception of equal opportunity is normally given a meritocratic interpretation. Distributive shares are fair, are merited, if they reflect talent and effort and not things like class, race, religion or sex. But Kymlicka argues that this prevailing idea is unstable, for the reasons given by Rawls, and that equality of opportunity which permits distributive shares to reflect talent and effort, but not things like class, race, religion or sex, is therefore incoherent. The natural talents people are born with, and the social contingencies people are born into, seem equally a matter of luck, and therefore equally arbitrary from a moral standpoint. If our argument is that morally arbitrary factors, factors that are a matter of luck, ought not to affect life chances and we then admit that one type of these (social circumstances) ought not to affect our life chances then, to be consistent, we have to allow that the other type (natural talents) are also illegitimate as a source of inequality.

Peter Singer (1993) has commented that equality of opportunity is not an attractive ideal as it rewards the lucky and penalises the unlucky. Dworkin has been even more scathing in his assessment of this position. He has said that the traditional meritocratic conception of equality of opportunity – equal opportunity for those of equal talent and diligence – is not so much unstable as fraudulent, "because in a market economy people do not have equal opportunity who are less able to produce what others want" (1985, p. 207). It may be thought that people are able to cultivate their talent, to some extent, by their own efforts. But the initial possession of talent, its degree and nature, is a matter of luck, as is the environment people find themselves in which is so significant in the nurturing and development of that talent. And, as I argued in chapter 8, it is unclear how true it is even to speak of natural assets. Talent, when looked at closely, looks more like something that is as dependent for its development on a nurturing environment as anything else.

Kymlicka points out too that Rawls response to the instability of traditional notions of equality of opportunity, the difference principle, has the problem that it is sensitive to *all* inequalities and does not therefore necessarily follow from an argument that is only about

252

some inequalities, that is, those that are the result of bad luck. Some may be among the least advantaged because of the altogether more morally relevant reason that they have chosen, in some way, to be in those circumstances. It appears therefore that the difference principle would have the consequence of imposing unfair costs on some, in order to subsidize the choices of others.

A further difficulty for me with the meritocratic conception is that ideas of competition and merit mesh with each other around the concept of desert. One can be said to deserve or merit what one earns in a fair competition. But I have argued now in a number of places that desert is a poor basis for a theory of distributive justice that seeks to determine what persons are owed on the ultimate basis of their equal moral status and equal standing as citizens in a society where co-operation is fundamental. So I find the principle of fair competition problematic for the further reason that it makes a link between one's distributive shares and what one merits on the basis of how well one competes.

Priority to the least advantaged

Brighouse and Swift are fully aware of the weaknesses in meritocratic conceptions and, in Rawlsian fashion, add a principle of benefiting the less advantaged to their conception: "concern for benefiting the less advantaged all things considered should indeed trump our principle of educational equality" (2008, p. 451). In his later work, Brighouse even more explicitly develops their theory of educational equality so that, just as Rawls combines a principle of fair equality of opportunity with the difference principle, so too he combines the meritocratic conception with a principle of benefiting the least advantaged. He states this as; "social institutions should be designed to benefit those who have the lowest prospects for a flourishing life" (2010, p. 41).

My argument with this is that, firstly, it is redundant, for the reasons noted earlier about equality's implicit concern for the less well-off anyway. Secondly, doing so does not rectify the deficiencies of a meritocratic principle of equality of opportunity. It will not because luck egalitarians claim that what equality really requires is that no one should be worse-off than another due to bad luck, but only if there are appropriate conditions of choice. This is why luck egalitarians must ultimately reject Rawls' theory. Thirdly, adopting something like a difference principle is not a good strategy for an egalitarian. While a principle of benefitting the worst-off may have the effect of reducing inequality, it is not a distinctively egalitarian value. Rather, it is prioritarian and so is really concerned with giving priority to the worst-off rather than with equality itself (chapter 4). Egalitarians value equality for its own sake. The fact that it improves the lot of the worst-off is very important, but it is not the whole of equality and misses the distinctive value that is equality.

One last reason for rejecting the Rawlsian path comes from Cohen (2000, 2008). Cohen argues that we must be very clear about what the difference principle, and by inference Brighouse's principle of benefit to the least advantaged, is saying. It tells us that some inequality is not only permitted, but that it is actually *just*, provided it is to the benefit of the worst-off, who are better off than they would otherwise be if the inequality were removed. Cohen challenges this. Given certain facts about people (e.g. we can be selfish) and given the nature of markets, it may well be that it is *sensible*, all-things-considered, to accept some inequality. But we should not mistake this with justice rather than what it is; a realistic and reasonable social arrangement. According to Cohen, the difference principle, if interpreted as it often is, as justifying incentive payments to some in order to induce greater productivity which benefits everyone, describes not a just condition, but more a regrettably unavoidable state of affairs. Partly this is because of what happens when the difference principle is invoked by the talented to justify their greater rewards for being more productive in a way that improves the lot of the worst-off. When the talented do this, the truth of their claim that they require inequality causing incentives is true because they make it so. It is their choice not to expend greater effort unless given greater reward that makes the need for incentives true. Cohen argues their claim is like that of a kidnapper who reasonably argues that unless you pay the ransom, your child will be killed and so this matter is beyond his control. It is entirely up to you and your choice about whether to pay or not. It may be true that if you choose not to pay, the child will be killed. But this is not because of your choice, but rather the choice of the kidnapper to make this true. In the same way, those who are capable of being more productive but aren't unless they receive greater rewards, are themselves responsible for making it true that they require incentives.

Conclusion

There are other reasons why one might still hold the meritocratic conception of equality of educational opportunity despite its infelicities. Brighouse (2010) is also concerned about what is politically more palatable or more feasible. This is reasonable, particularly if you take the view that theories of educational equality are more about ameliorating the worst aspects of current systems than realizing ideals. Brighouse is clear that, while sweeping radical reforms may be morally justified, without a broad consensus and the political will to make such changes, it makes more sense to advocate for small feasible reforms that can correct the worst of current educational practices. As we are far from meeting the demands of the meritocratic conception, then advocating for anything even more demanding may seem strategically ill-considered. After all, there are real children to be taught, real parents to be placated and real politicians to be persuaded. This argument has a lot of force, but practical feasibility does not constitute an argument of philosophical soundness and nor does it count in favour of what the fundamental principles of distributive justice may be.

Much criticism has been directed at meritocratic conceptions along the lines, as stated by Dworkin, that they are fraudulent and really serve to legitimate an unjust status quo (e.g. Bowles & Gintis, 1976; Harris, 1979, 1982). They do this by equating desert with effort and talent and tying this to conceptions of equal opportunity in our schools. This in turn is used to explain why the hardworking and talented succeed, and so deserve their wealth, and the lazy and dumb fail, and so deserve their poverty. It is instead the case that wealth correlates with staying at school, which correlates not with talent and effort but with all manner of factors like sex and race, and especially with class, and only minimally with talent, as measured, say, by I.Q. tests. My point is not this. The meritocratic principle may well be used to legitimate inequality, as sociologists tell us. But my point is that it is not a valid principle anyway, as effort and talents do not have the appropriate nature to legitimate distributive inequalities that they are often taken to have. Effort is often conflated with desert, and I have argued that desert is not a good basis for distributive justice. Talents are largely a matter of luck, and so morally arbitrary. It seems to me that it is not so much that social structures or economic systems cause inequality. Rather it is the faulty philosophical principles that are thought to warrant them, such as a belief that talent legitimates inequality. That is why getting a correct account of distributive justice is fundamental.

Matt Cavanagh (2002) suggests that the idea of meritocracy is confused with another principle; that it is a shame for talent to go to waste. This seems plausible and certainly speaks to a worthwhile value; but not to equality. The deficiencies of meritocratic theories as articulations of egalitarianism, confusions about opportunities and outcomes, and the unsatisfactory nature of prioritarian principles, from an egalitarian perspective, leaves many of the objections encountered at the start of this chapter unanswered. Equality of educational opportunity so valuably articulated and defended by Brighouse and Swift, should regrettably be rejected as the best way to conceive of educational equality.

Now Brighouse and Swift also identify another conception of educational equality which they call the radical conception. Unfortunately they set it aside without explaining why (2008, p. 448). But Brighouse (2010) discusses the radical version in a little more detail. His argument for it is essentially the one we saw from Kymlicka. If it is unfair for some to get a worse education than others because of their social origins, then it is equally unfair for their educational achievement to be influenced by their natural talents. Both social circumstances and natural talents are beyond a child's control and they cannot therefore legitimate inequalities in educational achievement. They instead *both* undermine educational equality, a necessary precondition for fair competition. This argument sounds very luck egalitarian and seems to support the radical conception. However, while Brighouse avoids committing himself explicitly to one conception or the other, in his discussion it is clearly the meritocratic conception he favours.

I think the radical conception, clearly infused with the spirit of luck egalitarianism, shows promise and Brighouse and Swift should have pursued it further. In the next chapter I will follow up their second conception and develop it in closer alignment with luck egalitarian principles.

Chapter 10:
Luck egalitarian educational equality

In this chapter I will begin with a brief look at the radical conception of educational equality and use it as a springboard to a luck egalitarian conception. I will then consider how this conception meets many of the objections that were raised to educational equality and gives a better account of our intuitions about educational equality. I finally consider its significance as a theory of educational justice.

The radical conception of educational equality

The second conception of educational equality mentioned by Brighouse and Swift, but put to one side, states:

> The Radical Conception: An individual's prospects for educational achievement should be a function neither of that individual's level of natural talent or social class background but only of the effort she applies to education. (Brighouse, 2010, p.29)

This conception is clearly influenced by luck egalitarian principles. The logic of the argument that leads to it – that if it is unfair for a child's prospects for achievement to be influenced by her social origins, then it is unfair for them to be influenced by natural talents too, as both are morally arbitrary – seems to imply that the radical conception is to be preferred over the meritocratic. And we have also seen other arguments that tell against the meritocratic conception. But for reasons already alluded to, they do not pursue it further. Principal among those reasons is perhaps the pragmatic one that the meritocratic conception, already demanding and beyond what we now have, is more plausibly able to be pursued in the face of cold hard political realities than this even more demanding conception.

We may discern another reason for their reluctance to follow up the radical conception in an argument given elsewhere by Brighouse. Brighouse discusses a common objection to egalitarianism, and one that he has with luck egalitarianism; the "bottomless pit problem" (Brighouse, 2005, pp. 6-7). This argues that some individuals may be so badly off that luck egalitarianism requires the transfer of enormous amounts of resources to improve their position, and possibly only a small amount. This would have the consequence of soaking up all, or almost all, available resources, to the grave disadvantage of everybody else. This is a difficult problem. That there are difficult problems does not disprove a theory, although it would add to their implausibility if there were too many. But this problem is difficult for any account of distributive justice and Amy Gutmann's (1987) *democratic threshold principle*, which Brighouse cites as a more plausible response, is no less troubled by it, as Gutmann

tells us. I would also note that holding a threshold principle is to hold a non-egalitarian principle. Threshold principles are sufficiency principles, not egalitarian principles.

However, the bottomless pit problem is not as fatal to luck egalitarianism as Brighouse believes. For one thing, luck egalitarianism is not an account of the whole of justice or morality and considerations of distributive egalitarian justice are separate from those of humanitarian assistance, as I have argued. Secondly, luck egalitarians can be value pluralists. They can point out that, while unchosen inequality, in the appropriate *equalisandum*, is always unjust, other values, such as efficiency, will sometimes outweigh considerations of egalitarian justice. It should not be thought that the just thing to do is invariably the right thing to do all-things-considered. Cohen (2008) notes that our education system should be just in how it distributes educational benefit, but if this sometimes conflicts with educational productivity then justice may not always be preferred. But most importantly, I have argued that, whatever the correct equalisandum is, it is a complex variable. Now this has an important implication for just this bottomless pit problem. Following Carter (2202), I argued in chapter 7 that, rather than being obsessed by strict equality in one dimension, egalitarians are actually opposed to inequality across a number of dimensions. Egalitarians actually have a view that combines, at least, equality of resources, welfare and average level of utility (this last also relates to the pluralist nature of egalitarianism). As it is generally not possible to balance these all simultaneously, trade-offs between different dimensions are to be expected. We must therefore notice that egalitarians will object to inequalities in the distribution of the parts of equality. So in this case, while the inequality in welfare between some very badly off individuals (think of the severely impaired here) and the rest of us may be very great, we are not obliged to transfer resources endlessly to them. Doing so would create another large inequality in resources, also objectionable to egalitarians. It would also cause a large drop in average utility, also objectionable. Looking at equality as a complex whole then, egalitarians can easily avoid the bottomless pit problem. Egalitarians oppose inequalities in welfare, resources, or average utility viewed *separately*; but not to the extent that the cost of achieving equality in any one of these dimensions is substantial inequality in another dimension, or at too high a cost to average utility.

Luck egalitarian educational equality

Applying luck egalitarianism to the idea of educational equality implies that no one should be worse off or better off educationally, solely because of good or bad luck. This suggests that the egalitarian project in education is to ensure that we set up structures and act in ways that will neutralize, compensate for or ameliorate the effects of luck on the distribution of education. So the quality of an individual's education should not be a function of their natural talents, sex, ethnicity or social class background. However,

differences in the level of educational advantage held by different persons are legitimate if those persons are suitably responsible for those levels (c.f. Knight, 2009). Educational inequalities may be permissible (not just) if they are the result, say, of choices about the effort made to learn or what to learn.

Now, taking the radical conception as a model, a luck egalitarian conception of educational equality states:

> **The Luck Egalitarian Conception**: An individual's education should not be a function of those aspects of their condition and circumstances which are for that individual a matter of luck, but only of the genuine choices they make about their education.

It is commonplace to accept that luck has no moral relevance. So the idea that luck does not legitimate educational inequality is unlikely to be controversial. But the disqualification of natural talent as a relevant factor may be. It is sometimes observed that student achievement is bound to vary as a result of the fact of human diversity. It is then argued that this fact undermines educational equality as a sensible ideal. Christopher Winch writes: "radical egalitarianism is not only impractical but it is also internally incoherent given the highly plausible assumption of human diversity" (1996, p. 117). The root idea he is making use of here is that it is neither practically possible, nor desirable, to make everyone the same in some respect, such as performance in a test, and this is taken as a *reductio ad absurdum* against educational equality.

This argument shows that we need to distinguish carefully between difference, a matter to be established empirically, and inequality, which depends on a theory of justice (Nash, 2004). In a similar vein Cohen writes that "Sociology tells us what the effects of various candidate rules would be, but a normative philosophy that lacks sociological input is needed to evaluate those effects and thereby to determine, jointly with sociology, what rules we should adopt" (2008, p. 266). So, sometimes mere difference is inequality. This could be the case with severe impairments. Luck egalitarianism holds it is unfair to suffer disadvantage due to any unchosen lottery, natural or social, and it remains so even if not the result of human agency and even if mitigation of that disadvantage is not possible. It seems right though, that much human diversity should not be thought of as unjust inequality for which egalitarian redress is required. But this does not defeat egalitarianism.

We met in chapter 7 Tan's (2008) argument that luck egalitarianism is not about equalizing all the chance variations that contribute to human diversity, but instead is concerned with how our social institutions deal with natural contingencies. He argues that the goal of luck egalitarianism "is to ensure that institutions are not arranged so as to convert a natural trait (a matter of luck) into actual social advantages or disadvantages for

persons"(p.671). So hair colour, for example, is not normally a concern of luck egalitarian justice. But it could be if our social institutions and practices distributed benefits in such a way as to favour those of a certain hair colour over those of another colour. A fact about human hair colour, not in itself either just or unjust, would then be converted into actual disadvantage for some because of how our social structures are interacting with it. It is not human diversity that is at issue here, but how our institutions and practices interact with that diversity to bring about some distribution of socially produced goods, like education.

Saying that talent or ability are irrelevant to the fair distribution of education does not mean they are irrelevant when it comes to all educational decisions however. How someone is taught does depend on facts about their ability. But to say ability is relevant to pedagogy is not in conflict with egalitarian requirements; indeed it is highly relevant as it may mean that as a matter of egalitarian justice some require more resources or better teachers. The point is rather that talent and ability are morally irrelevant to the *quality* of education someone receives. That the intelligent and industrious may achieve more academically is not in dispute, as Cooper (1980) has claimed. But that they should get a better quality of education is. It is not obvious that the unintelligent and less industrious will derive less benefit from an equally good education and it is a very dubious claim that their interests in education, widely understood, are less than others. Natural, and social, traits should not be the basis for the *differential distribution* of educational benefit. Regardless of talent, luck egalitarians should assert that each person should have an education that equips them as well as possible to live their lives.

The other aspect of luck egalitarianism, choice and responsibility, so long the preserve of the anti-egalitarian right, can raise the hackles of those concerned about educational equality. So I will repeat that I believe that what someone can properly be held responsible for is very, very constrained. If we accept Susan Hurley's (2003) account of *thin luck* as simply the inverse correlate of responsibility, then if responsibility is impossible (assuming we have a clear idea of what is required for responsibility), all is a matter of luck and no inequality is permissible. However, this extreme is at odds with the powerful intuition that choice does have great significance and if we are to be held responsible for anything, our choices are a very good candidate. But in education, and particularly at the primary and secondary level, the choices of students are likely to hold little force to legitimate inequalities. Age is generally held to be relevant to the degree of responsibility that someone has for their choices and the value that choice has for them. We have seen too that luck egalitarians often consider the fairness of inequality from the perspective of agents making choices from initially equal states where each person has an equally valuable and accessible set of options. We know in education this is often not the case and so we will judge the permissibility of any inequality accordingly.

260

Complex and pluralist

It will have been noticed that the luck egalitarian conception I gave replaced Brighouse and Swift's *prospects for educational achievement* with the vaguer *education*. This is because the correct focal variable for equalizing must be more complex than simply *prospects for achievement*. It must reflect all that matters for someone's education. Talking in terms of *prospects* may also be fine for a theory of equality of opportunity, but I am trying to move away from this and, while it may be reasonable to view the distribution of education predominantly in terms of achievement, this needs further argument. As it stands, I think there is a risk of mixing educational equality with the separate value of educational excellence, which can in turn be thought of quite narrowly as just academic achievement. Our idea of educational achievement needs to be broad and more than just a matter of academic excellence. If it just had that meaning it could have the absurd consequence of requiring someone to be a university lecturer in order to be called properly educated.

A luck egalitarian conception of educational equality will reflect both the highly probable complexity of the educational *equalisandum*, and that egalitarians about education are very likely to be inherently pluralist. That is, they will hold both that educational equality is intrinsically valuable and that education is intrinsically valuable – it is better in itself if people are better educated. This must be so because if they cared *only* about equality then they would be indifferent between a state where all are uneducated and one where all have university degrees. Educational *equality* cannot therefore be considered in isolation from educational *quality*. This is not because educational equality is derivative of educational quality, but because equality is comparative and only makes sense in the context of a distribution of education across two or more people. Equality is an inseparable property of a pattern of distribution. Take some distribution of education. Holding education as a value implies a concern with maximizing the aggregate or average levels of education. Holding equality as a value implies a concern with minimizing the spread across those levels. This understanding means judgements about how to weigh up these, not conflicting, but intrinsically linked values, are unavoidable.

The arguments made in chapter 7, about the complex and pluralist character of luck egalitarianism, are thus very apposite for educational equality. Some of the scepticism about the ideal of educational equality and claims of incoherence has, I suggest, been due to a failure to notice these points. Egalitarians about education will likely believe both that education is a good in itself, or an instrumental good, or a positional good, or all three, and that a fair distribution will be an equal one. This will involve, not incoherence I would claim, but certainly internal tensions.

Now another implication of the complexity argument for educational equality is that we do not need to decide whether it is inputs, outcomes, or opportunities that matter, they all do. In the definition I gave to the luck egalitarian conception, the vague term *education* was meant as a grab-all term that includes all you think matters to the quality of someone's education, all that makes for a good education. We often think here only of academic achievement or years of schooling. But what makes an education good includes many more dimensions than these. Each dimension need not be of equal importance, and their importance may well vary with context. Let me attempt to list some of the myriad factors that could be thought to contribute to the quality of someone's education. There will be resources, access to quality schooling at all levels, government funding, years of schooling, ability to learn, teacher quality, achievement, qualifications, richness of curriculum, opportunities to learn a range of skills, extra-curricular opportunities, the development of a capacity for free thought, the ability to make decisions about how one wants to live one's life, having an understanding of the sciences and the humanities, love of literature and music, having a thirst for knowledge, respect for truth, the development of empathy and compassion, a sense of justice, a sense of humour, a critical faculty, respect for others, appreciation of art and employability. Education is a complex *equalisandum* indeed.

It may be seen as obfuscating that I use the term *education* as the *equalisandum* of educational equality in this loose and very general way. I do not think so. Recall that it was argued that luck egalitarianism is not committed to any particular *equalisandum*. The luck/choice principle is a grounding principle, not a substantive principle, and therefore compatible with a range of answers as to what ought to be equalized. I think it a point in its favour that luck egalitarianism leaves it open what exactly matters in education and what we should be equalizing. It allows a luck egalitarian conception to fit a range of interpretations of what constitutes or is valuable about education and educational achievement. For instance, we could include measures of how much education a person has, in terms of years and institutions, and how good their education is, in terms of grades and qualifications. Someone who has not finished high school on this understanding does not have as much education as someone with a tertiary degree. However, other comparisons should give us pause before we conclude that this is all that matters for education. For instance, it is not obvious that someone who leaves school at 16 and trains for a number of years to become a diesel mechanic is educationally worse off than someone with a law degree. They may be if we mean having the credentials to command high wages. But this is a matter of how the market rewards skills, not a matter of education. They may be if we mean a certain sort of academic training. But it is implausible that education is just a matter of a certain sort of academic achievement. I think it likely that a good education encompasses ideas about people's ability to make their way in the world as autonomous

adults and live flourishing lives as they understand them and in ways they value. But all this remains to be argued in much greater detail. For now, the vagueness of *education* is its strength.

What I have discussed may be thought to have some greater resemblance to equality of outcomes conceptions. Equality of outcomes has traditionally been rejected because of the thought that it is utopian, impossible because of the obvious inequalities in natural endowments and family circumstances and perhaps because of a belief that ability is the decisive factor in learning. But this partly depends on a simplistic view of what counts as outcomes. It also may help explain the preference for meritocratic equality of opportunity conceptions. The problem with these has been that merit has turned out to be a function of factors like ethnicity, sex and socioeconomic background and not ability. A luck egalitarian conception does not tempt us in this direction as it sees ability as no more reason for inequality in educational distribution than other morally arbitrary factors. However, I repeat that my conception is not about equal inputs, outcomes or opportunities. It is about an equally good education, and all those things are aspects of that.

Outcomes are often going to be of interest to luck egalitarians though, and particularly when determining the extent to which they have flowed from the suitable choices of agents and are ones for which they ought not to be held responsible. But opportunities are also important as they form part of the background conditions that incline us whether or not to accept choices as inequality permitting. A lesson we can heed is that concentration on outcomes alone – qualifications, grades, jobs – can pervert the educative process which is also about a love of learning. If educational equality is seen as being the precondition for fair competition, this could have the effect of enhancing the outcomes focus which has the danger of encouraging things like cheating to just get the grades. An outcome focus which distracts persons from thinking about learning and what is worthwhile, or fun, to learn thus leaves learners ill equipped for the future.

James Coleman (1975) argued that equality of educational opportunity is not meaningful as it fails to adequately steer a path between equality of inputs and equality of outcomes. Christopher Jencks (1988) argued that equality of educational opportunity is validly interpreted in a number of contradictory ways, all of which have some sort of seemingly inegalitarian consequence. John Wilson (1991a) argued that equality is incoherent as an educational ideal because of the obviously unequal ability of individuals to learn and the impossibility of distributing equally all possible educational resources. My claim is that these arguments of incoherence are the result of not recognizing that educational equality is pluralist and irreducibly complex. Some things are just complicated and incapable of being reduced to a point where all tensions and conflicts are removed.

263

It is likely also that education is of both intrinsic and instrumental value, valuable for itself and for what we can get with it. Reading and playing sport are joys in themselves, but clearly can be used to serve other more mercenary ends too. This creates another tension. If it is emphasised that education is the means to a high functioning economy, then the importance of educating the individual, for all sorts of other reasons, can be lost sight of. The dominating principle under such conditions is likely to be about how education can contribute to maximizing economic productivity, not wrong in itself, but not the only thing, or even perhaps the most important thing, about education.

Now add another consideration. It is not clear that everybody derives equal benefit from education; in fact, at the extreme it is clear that some certainly derive little benefit. Further, education can be a scarce resource. This is arguably not the case at primary and secondary school level, but may reasonably be suggested to be the case at tertiary level. And if education is not absolutely scarce, it can be pointed out that good teachers are, and as the research suggests it is teachers that have the biggest impact on education, beyond facts about the child, then in this sense too there is a scarcity. The upshot of these considerations is that utilitarian arguments, about maximizing the educational benefit we can get for the resources we put in, have some real purchase. They may lead one to think that, as some seem to derive little benefit from educational resources, then we are justified in not wasting resources on them, with resulting inegalitarian consequences.

This may be a problem for a pluralist luck egalitarian conception. This is because pluralist egalitarians are simultaneously concerned about the value of education, and hence want to maximize it, and the value of equality, and hence want to minimize inequality. It will sometimes be possible to achieve one of those goals only at a cost to the other goal and there may be no principled way of resolving this conflict (although recall Christiano and Braynen (2008) in chapter 7 had a promising take on this). It is commonplace to dismiss utilitarian arguments in some quarters. But this is mistaken. They have a real purchase as the idea that a scarce resource should be invested so as to produce maximal returns is not an irrational or unreasonable one. Neither is it irrational or unreasonable to want to maximize an acknowledged good. So the luck egalitarian conception accounts for why we have these conflicts, but only gestures at a resolution. However, what it does make clear is that this is not fundamentally incoherent; it is rather an unavoidable tension.

Advantages of a luck egalitarian conception

A better theory should be able to account for the appeal of an earlier theory. So a feature in favour of the heliocentric theory was that it could account for the geocentric theory. In the same way, if a luck egalitarian conception of educational equality is an advance, it should be able to account for the appeal of equality of educational opportunity conceptions.

It should show that what is appealing about equality of educational opportunity is a consequence of luck egalitarian educational equality, rather than an alternative to it.

A luck egalitarian conception does account for some of the appeal of equality of educational opportunity. It does this in two ways. Firstly, if we look at the barriers normally identified by such conceptions – e.g. sex, ethnicity and class – the property they all share is that they are not things that the individual has control over; they are a matter of luck. So the luck egalitarian conception explains why they are not legitimate reasons for inequality. It provides a unifying reason, around luck and choice, why the various and diverse barriers to education that have been identified need to be removed, and do not legitimate inequality.

The second way in which the appeal of educational opportunity is accounted for is by the place given to choice in luck egalitarianism. Burbules (1990) noted that it has seemed to many that it is a necessary feature of opportunities that they can be taken up or not, and what separates these possibilities is often a choice, whether fully autonomous or not. The problem of uptake also played a role in Wilson's (1991a, 1991b) argument that equality is incoherent as an educational ideal. He equated becoming educated with learning and, as this involves uptake by the learner, it cannot be guaranteed by the mere distribution of resources or removal of barriers. But the idea of choice neatly explains why opportunities have been thought important. Choice is morally potent, but it has little value for a person if they have no opportunities to exercise it and it legitimates little inequality if people do not have similar option sets open to them.

Another advantage choice gives luck egalitarian educational equality is that it provides a compelling justification for a widely supported aim of education, that of developing agency or autonomy (e.g. Brighouse, 2000; Strike, 1991). Indeed, I think this is the most significant implication of the place of choice and responsibility in luck egalitarianism for education. It suggests that children be taught in such a way that their agency and sense of responsibility for their own life is developed. Choice is thus intimately related to the liberal values of freedom, individual liberty and autonomy. Liberty, as Gutmann (1982) points out, provides a good standard for thinking about what and how to teach children. It implies that education programmes and policies that promote and nurture a child's development towards an adulthood, where they must make substantive choices about their lives, and will be held responsible for those choices, are to be preferred over others. Neoliberalism uses choice in the sense of one's freedom to buy and sell in the free market. Luck egalitarianism is more concerned with the freedom to make choices about how to live one's life.

This idea means too that a luck egalitarian conception of educational equality strengthens the case for education being more than just an instrumental good, useful only for enabling access to occupations. This is because of the prominence given to

responsibility. This prominence, it seems to me, generates a strong obligation on governments to build education systems which help people develop the ability to exercise and accept responsibility. It seems unjust that an education system should focus only on developing those skills thought useful to the market and then, suddenly at 16 or when people leave education, start holding them responsible for their choices about how to live, and to quite a high degree. Kymlicka (2002) points out that it seems an egregious case of bad faith to hold people responsible for their choices if they have not been provided with a decent education. Christine Korsgaard (1996) further notes that an education that leaves some ignorant, lacking in imagination and self-respect, limits not only their options, but undermines the very power and value that choice may have for them. This all implies a duty on governments to provide the social conditions, among which are educational conditions, which enable people to come to make choices that are autonomous and free. This gives us good reason to believe that a principle aim of education should be to nurture the skills and dispositions that enable people to see that they have choices, are able to choose life paths and ways of living, able to decide how they want their life to go, and are able to be held responsible, as equals, by their fellow citizens.

Interestingly, there is some empirical support for this too. Choice would seem to not only be a motivator that teachers can use; it may also be an important way in which autonomy is developed. For example, Patall et al (Patall, Cooper, & Wynn, 2010) found that providing choice to students was a way of enabling them to feel autonomous. In their experiments involving relatively simple choices, like choices among homework tasks, they found that the experience improved motivational and achievement outcomes and that choice was an important part of creating a classroom environment that supports autonomy and intrinsic motivation.

Now the place of choice in educational equality also has its difficulties. Suitable conditions for holding young children responsible for their choices will be quite constrained and may legitimate only very minor and temporary inequalities. But it is not unreasonable to expect that even very young children must sometimes bear the costs of their choices. Burbules (1990) gives choice quite a prominent place in his writing, in line with the value of developing a child's autonomy and self-respect. He claims that children's capacities for choice are greater than we normally grant, perhaps because we sometimes do not like their choices. But we should be very hesitant about overriding all their choices, even possibly detrimental ones, if we are genuinely concerned with nurturing autonomy. We do punish children, which entails holding them responsible for some of their choices. We do also think children should – to some small extent – be free to choose things in line with their developing tastes and preferences (would you like to do some finger painting or listen to a story?). In doing this we do not believe them fully responsible for their choices but rather,

this is how we develop agency and teach them to deliberate on their choices (Schouten, 2012a). Jencks (1988) points out that it would create a moral hazard for children if we never held them responsible for the consequences of their choices. There would then be no incentive for them to learn to take into account consequences when making decisions. The adult world would come as a very nasty shock to such children, when suddenly they are expected to bear the costs of their choices.

Now it could be objected that, while a luck egalitarian conception avoids the problems of meritocratic conceptions, it suffers from the just as serious problem that choice could be used to legitimate inequality by blaming people for their poor choices (and commending others for their superior choices). But the understanding of choice and responsibility that I have argued for should militate against this tendency and the luck side of luck egalitarianism has a way of eroding our confidence in judgements of responsibility and thus acting as a corrective to any victim blaming tendencies.

With children, it is clear that the costs of bad choices need to be limited, particularly any long term costs. It is disproportionately harsh to have people paying high costs for poor childhood choices for the rest of their lives (it is also deluded for others to applaud themselves for how clever their childhood choices were). This requires that our schools not be structured in such a way as to lock in the negative consequences of bad choices (or, as Howe (1990) puts it, non-choices). On the contrary, the possibility should always be there of turning around the poor outcomes of bad choices and schools should be structured to respond to bad choices in a way that encourages students to make better ones. For example, one of the many problems with ability grouping is that it locks in not only bad luck, but also bad choices by narrowing the education and range of choices offered to some. The New Zealand policy of allowing anyone over 20 to attend university is also apposite here. It is a policy that means that some poor choices about education are not irrevocable, as far as tertiary education is concerned.

A distinction can be drawn here between how the libertarian right uses the concept of choice and how luck egalitarianism does. The libertarian right says that the fact of voluntary choice is enough to make permissible any outcomes. Against this the egalitarian left focuses on the background conditions of choices. In order for it to be fair to hold people responsible for the outcomes of their choices and have them bear the costs, choices must not only be voluntary, but also made under favourable conditions. Without this they lack any legitimating force. Childhood is not a favourable condition for choices of grave import and we must thus limit the costs of choices made at this time. Scanlon (1988) argues that the value choice has for us is undermined if background conditions are not suitable and once its value is undermined we are indisposed to think it carries much legitimating force for any outcomes. The fact of youth need not mean that we should not take at least some of a

child's choices seriously. It need not mean they cannot be held to some extent responsible for those choices. But there should be a strict limit on the cost they can be expected to bear for their choices. So for these reasons I do not think luck egalitarianism is open to any charge of victim blaming.

The significance of a theory of educational equality

Bowles and Gintis (1976) argued that the meritocratic nature of equality of educational opportunity supports the reproduction of stratification already existing in society and legitimates economic inequality by making it look the result of a fair and equal process of education. The influence of their work, and others, has been such that Nash (2004) claims that critical sociology has given up on equality of educational opportunity as it has become a piece of ideology that "serves principally to sustain the myth of equality in an unequal society"(p. 361). Luck egalitarian educational equality is not meritocratic in nature, but the claim could remain that educational equality is irrelevant because, as long as there is inequality, the education system will perpetuate that inequality and educational equality does nothing to change this.

There is something to this argument, and certainly education needs to be examined in its social context. But equality and educational equality are conceptually distinct, although with substantial interaction between them. Brighouse makes the point this way:

> in itself the claim that people should be equally educated, or have equal opportunity in education, does not have any bearing on how much they should be paid after the point at which they leave full-time education. It states, instead, a condition on how they must be prepared for the quite possibly unequal material prospects which they will face in the world after the age of majority. (2000, pp. 114 - 115).

Wider social inequality makes it harder to achieve educational equality, but educational inequality also makes it harder to achieve social equality. Educational equality gives us an additional reason for tackling wider inequality. The idea that all children should have an equal chance has broad appeal and provides a reason for equalizing the contingent social and family circumstances that undermine a child's prospects in education.

Inequality in the distribution of social goods places pressures on schools to provide equally valuable educations that give students a rich set of options for the future. This should not be interpreted to mean that those educations must all be academic. It is implausible that educational equality should require higher education for all and it is impossible, and undesirable, for schools to provide educations aimed only at securing high status occupations. Educational equality should strictly only be thought to apply to younger lives, those learning how to make their way in the world and growing into responsible adults

and free and equal citizens (Brighouse, 2000). Egalitarians need not then be so concerned about the educational choices of young adults and neither should they think that the point of educational equality is to create a more equal society. Educational equality is instrumentally valuable certainly, but it also has value independent of the remunerative structure of a society. Differential incomes are not a matter of educational inequality itself and it is implausible that education should equip everyone to be a doctor or university lecturer. Therefore it is no criticism of educational equality as an ideal that it does not achieve this. Both radical critics and governments too, at times seem to place on education and educational equality the entire burden of bringing about a fairer society, coupled with the unrealistic demand that the fact of an unequal society should not affect educational outcomes. Educational equality is an important moral ideal, but it cannot carry the whole responsibility for justice in education, or in wider society, which sometimes seems demanded of it.

The fact that we live in a world where advantages are unequally distributed is not entirely irrelevant to education; it is something that must play a part in people's educational decisions. But it should not dominate our perception of what educational equality requires. It is true that if you hope for a more just world this may make you think it is the structures of society that first require change. But the education system is one of those structures and so a concern with educational equality will always involve advocating for more than just educational changes. However, just principles of educational equality are not contingent on what the prevailing distribution of advantages happens to be.

Conclusion

In this chapter I have articulated a luck egalitarian conception of educational equality. I have argued that it is well-founded in wider egalitarian thinking, avoids the fatal problems of meritocratic equality of educational opportunity conceptions and richly accounts for many of our intuitions about education and what children are owed in a fair society.

White (1994) argues that egalitarianism in education is misguided, "a will-o'-the-wisp". He thinks the answers offered for "why equality?" are inadequate and it is not what we really care about anyway. Rather, we care that people have enough. His argument is largely that the undesirability of equality *per se* entails the undesirability of educational equality. This argument has been refuted in two ways. Firstly, by showing that educational equality and equality are conceptually distinct, although intimately related, and secondly by showing that equality is in fact a well-grounded ideal of substantial value. Justifications of educational equality typically appeal to two sorts of idea. One is that educational equality is entailed by the fundamental moral belief in the equal moral status of persons. The other is that to be legitimate a government must give equal care and concern to the interests of

each citizen (Dworkin, 2000), equality of education is a requirement of equal citizenship. I think it is difficult to reconcile these ideas with an adequacy requirement but, as White demonstrates, these justifications may not seem decisive. Luck egalitarianism provides further grounds for equality and further grounds for educational equality. Tan (2008) has argued that luck egalitarianism should most properly be seen as supplying a motivating or grounding principle that tells us *why* distributive equality matters. It matters because people's lives matter and they matter equally. Taking this seriously means not leaving the distribution of those things, such as education, that are important to how a life goes to the vagaries of luck and that only the choices for which people can properly be held responsible can legitimate inequalities.

Chapter 11:
Ability Grouping and Educational Equality

This chapter is about two things. Firstly it is about the puzzle of ability grouping, a puzzle that I described in chapter one as being partly responsible for prompting my thinking about equality. So in chapter one I started with my some experiences in the classroom and now I return to those experiences. Secondly, this chapter is about testing the luck egalitarian conception of educational equality. Can it throw light on an everyday and ubiquitous educational reality that is believed by many to be unjust because it is in some way inegalitarian?

The puzzle

Placing students in classes according to their ability is a widespread practice internationally and the norm in New Zealand intermediate and secondary schools. Schools appear to work on the assumption that ability grouping is both educationally sound and socially benign and it is therefore a default setting for the vast bulk of them. Schools, in New Zealand at least, also operate according to both tacit and explicit egalitarian principles. It is commonly accepted that all children should receive an equally good education – whatever that may mean – and schools are formally required to provide "Equality of educational opportunity for all New Zealanders"(Ministry of Education, 2009). But there are many puzzling aspects to this.

One is that there is no compelling evidence that ability grouping has any positive effect on educational achievement (Hattie, 2009; Hornby, Witte, & Mitchell, 2011; Ireson & Hallam, 1999; Slavin, 1990). In his review of the effects of ability grouping on student achievement, Slavin carefully distinguishes two types of research. One type looks at the achievement of students who experience some form of grouping compared with those who have no grouping while the other type compares the achievement gains made by those in high ability classes with those in low ability classes. Slavin finds no evidence from either type of research to suggest ability grouping leads to any achievement gains, or losses.[79] John Hattie's work is a synthesis that covers 14 meta-analyses of ability grouping involving 500

---

[79] Slavin does however note two important caveats for the second type of research. Firstly, high ability groups gain if they experience accelerated programmes. But then it is not grouping but acceleration that leads to achievement gains. Secondly, while in terms of achievement there may be no gains to high ability groups, or losses to low ability groups, this finding is for those taking the same course. So this cannot be interpreted as meaning there are no differential consequences, particularly in terms of courses taken and the significance of those courses for future opportunities. This point is relevant and will be returned to.

individual studies. It is in complete accord with Slavin's finding but Hattie highlights just how surprising this is. The lack of any evidence for an effect on achievement seems contrary to the results of a good deal of qualitative research that shows low ability classrooms can be rather educationally depressing (and just plain depressing) environments in comparison to high ability classrooms. Many researchers have found that those in low ability classes suffer greater disruption, are less engaged, learn at a slower pace, experience an impoverished curriculum and are taught by fewer well-trained teachers who employ more limited pedagogies (Boaler, Wiliam, & Brown, 2000; Hattie, 2009; Oakes, 2005). And yet, as Hattie finds, the quantitative research is clear: ability grouping has essentially zero effect on overall student achievement, a consistent finding going back over some decades now.

A second part of the puzzle is that, despite its near universality as an educational practice and its longstanding and ongoing status as a staple of empirical research, ability grouping seems largely to have dropped out of sight as a matter of educational concern to both the public in general as well as to philosophers of education. This is puzzling, not just because of the lack of evidence for its effectiveness and the widespread presumption in favour of it, but also because there is a good deal of other research that suggests ability grouping has educationally and socially unjust – because unequal – outcomes. If one looks, one finds no shortage of educational researchers claiming that ability grouping is an egregiously inegalitarian practice. Slavin (1990) comments on "the antidemocratic, antiegalitarian nature of ability grouping" and that it may "perpetuate social class and racial inequities". Hattie (2009) states that ability grouping "has minimal effects on learning outcomes and profound negative equity effects" and (citing Oakes and Wells, 1996) that it "exists to guarantee the unfair distribution of privilege in that white and wealthy students benefit from access to high-status knowledge that low-income students and students of color are denied". Oakes (2005) who has probably made the most sustained attack on ability grouping, writes that it exists because society "expects schools to sort, stratify, and treat students unequally"(p.244). We can sum these comments up by saying that a substantial body of researchers claim that ability grouping exacerbates, legitimates, perpetuates and is a cause of educational and social inequalities. Indeed we could say that, in contrast to the position of schools and the public, the default position for many educational thinkers is that ability grouping is an unjust and unjustified practice because of the unequal way in which it treats students and the unequal outcomes it helps to generate.

Now this is a big claim, especially in light of how commonplace ability grouping is, and only deepens the puzzle about what schools are doing. It would be very surprising if any school used ability grouping with the deliberate intention of disadvantaging those already doing poorly and advantaging those already doing well. It would be very surprising if schools were deliberately using ability grouping to reproduce and legitimate existing class relations.

272

Indeed, most schools have some quite egalitarian intent in mind when adopting ability grouping and sincerely believe they are doing the right thing by their students. A common justification for the practice proceeds from the innocuous premise that we should provide the conditions that are most conducive to maximizing everyone's learning, adds that ability grouping does this by making it possible, or at least easier, for teachers to attend effectively to the different learning needs of each individual student, and therefore concludes we should use ability grouping. The second premise would appear to be the one at issue here, but the first premise expresses the egalitarian sentiment of most in education, and most policy makers too.

The claims of inequality are perhaps even bolder when we recall, from the last two chapters, all the difficulties with articulating a satisfactory concept of educational equality. We saw that there is no shortage of critics claiming that educational equality, particularly in its equality of educational opportunity form, is either incoherent or undesirable or irrelevant or some combination of these. This is why an examination of ability grouping must also involve some consideration of what we mean, or ought to mean, by educational equality. If the claims about the inegalitarian nature of ability grouping – contrary to the intent of most educators – are to have substance, then we will need to be clearer about what is meant by this surprisingly slippery concept.

A final large piece of the puzzle is the idea of ability. As this is not my focus I'll say a little about this aspect now. There is a lot of research on ability grouping in the English speaking world and to a slightly lesser extent Europe. But Ireson and Hallam (1999) raise an interesting question about this focus by pointing to evidence which suggests that Western, and especially Anglo-American, education systems are over-concerned with differential ability, to the detriment of the attention that other cultures give to the importance of student, teacher and parental effort. They suggest that a belief in differential ability can work to set an upper limit, a boundary, on what is expected from each child rather than encouraging a belief that, in learning, there are many challenges which can be overcome with effort.

Now some of this is familiar as it resembles a common argument made by researchers about ability grouping. It has often been pointed out that when a belief that ability largely determines learning is combined with ability grouping – a structural expression of the belief in differential ability – then the conditions are created for a self-fulfilling prophecy (Boaler, et al., 2000; Nuthall, 2005; Oakes, 2005). So, beliefs about the ability of students influence the expectations teachers have of them. This affects the quality and content of what is taught which in turn influences the beliefs students form about their abilities, and their sense of self-worth. It is therefore not surprising, so the argument goes, if students subsequently achieve according to expectations. Closing the loop, this is then

273

misinterpreted as confirmation of the original belief that it is ability that largely determines achievement.

There is in fact a web of commonly held beliefs about ability that are often thought to support ability grouping. Along with the belief that it is differences in ability that accounts for much of the differences in achievement there are also beliefs that ability is innate and largely fixed. This may seem a rather surprising belief in an educational setting which one might have thought was precisely a place for changing what someone is able to do. Such beliefs could also be quite de-motivating if they encouraged an impression that the outcomes possible for any given student are fixed. In so doing they would rob the various actors in education of a sense of their own agency and efficacy.

But there is good reason to doubt that ability (or related concepts like intelligence) is even a particularly relevant, let alone the most relevant, factor in learning at all. Prior learning and knowledge certainly are relevant, but ability as it is commonly understood, and commonly measured, may not be (Nuthall, 2005, 2007; Oakes, Wells, Jones, & Datnow, 1997). Graham Nuthall (2005) describes what seems to be a standard belief teachers have about learning: if everything else is the same – teaching, engagement, time on task – then achievement differences are explained by differences in student ability. But Nuthall argues the research shows that basic conceptual learning processes are the same for both high and low ability students. Differences in what students learn, and differences in how they perform in tests, are instead the result of differences in their engagement with classroom learning and testing activities. And engagement appears to be more a matter of the students' interests, motivation, and understanding of the purposes and beliefs of the teacher rather than a matter of ability. It might be objected that ability tests correlate highly with school achievement tests. But this, according to Nuthall, is not because of the role that ability is supposed to play in the learning process, but because scores on both ability and achievement tests are determined by the same interests and motivational and cultural factors. The standard belief about ability that teachers have is rarely challenged though, and its self-fulfilling nature, mediated by practices like ability grouping, only reinforces it. Nuthall's conclusion is that we need to be much more critical about all our beliefs and routines concerning teaching. He describes many of them as rituals and traditions sustained by myths, one of which is that differences in ability explain differences in achievement. We need to search out independent evidence that widely accepted presumptions and teaching routines, such as ability grouping, are actually doing what they are supposed to be doing.[80]

---

[80] See also (Blackwell, et al., 2007; Mueller & Dweck, 1998). These have interesting evidence and discussions of the effects of our beliefs about ability on learning and student motivation.

There is much more to this aspect of the puzzle but its resolution really lies with further empirical research. However, the foregoing suggests we have good reason to exercise caution when thinking about ability and learning and good reason to question the assumption that it is ability that accounts for achievement differences. This in turn should make us very hesitant about how prominent a role we give it in the organization of schools. The concentration on ability in an education system may be justified; particularly if we think that the nurturing of academic excellence is the prime aim of an education system. However, if we have some other aims in mind, such as meeting the individual learning needs of each student, then a concentration on ability will deflect attention from other things that are just as important for learning, things like school structures, teacher pedagogy, social and cultural background and the nature of the relationship between teacher and student. It will work instead to focus the blame for failure to learn on the student rather than on the complex interaction of all the factors relevant to learning. And if we are interested in lifting the achievement of all, then a simple minded fixation on ability would appear quite misplaced, as even if it were relevant, it looks like the sort of factor that might be beyond the control of schools and teachers and beyond the reach of policy makers to change.

So the claim made by Ireson and Hallam that belief about the centrality of ability to learning not being so prevalent in other cultures is supportive here. They write that in countries like Japan and Taiwan differences in achievement are not accepted as an inevitable consequence of differential ability. Rather, there is an expectation that students, supported by their parents and teachers, will work harder. This is interesting and clearly at odds with a belief that ability is fixed and determinate of learning. One could speculate that such a practice must be supported by a belief that ability is at least partly a function of the educational environment. This would seem a reasonable belief to hold for people hoping to bring about changes in what their students know and can do. It would also be consistent with part of the justification given for ability grouping i.e. we *should* provide settings which will best serve the learning needs of individual students. But if ability is not the most significant factor affecting learning then ability grouping is going to be a questionable practice, despite any good intent behind it. Ireson and Hallam also suggest that in many European countries the approach is to believe that all students will meet similar levels of achievement and teaching proceeds accordingly in the expectation that the whole class moves forward together. This too would seem to be more in accord with a belief that ability is not fixed and suggests that, as with Japan and Taiwan, it may be desirable to have a system that emphasises the agency of students rather than ability.

I am not going to explore these cultural issues further here, but it neatly illustrates the further fact that educational questions are situated in cultural and social contexts and it is hard (impossible?) when thinking about education to do so in isolation from the structure

275

and values of the society an education system is embedded in. This is in some ways an obvious point when we consider that societies quite deliberately use education to perpetuate themselves and initiate children into their ways. That it needs continued re-stating is indicated by the strong tendency of governments and politicians to think that they can fix any problems in education, such as achievement gaps, solely by fixing schools and teachers with no reference to the wider social context. However, that something may be culturally bound says nothing about its efficacy or justice. But Ireson and Hallam have at least done us the service of pointing out that there are other ways of doing things. In light of this it would seem sensible to examine the assumptions we may have about ability and how best to organise schools.

The puzzle about ability grouping can be summarized then in this way. On the one hand; it is a practice that has no empirical support for its educational efficacy, it is believed to contribute to educational and social inequality, and it relies on questionable beliefs about ability. On the other hand; it enjoys the almost unchallenged support of teachers and parents, is a default method of organization for most intermediate and secondary schools, is the subject of little or no public debate, and is seemingly of little interest to philosophers of education. There is a clear tension between these positions. Maybe they can be reconciled but at the very least there is much here to warrant further examination.

Unfortunately, having set up this puzzle I must confess I cannot completely solve it. This is because explanations for why ability grouping continues relatively unchallenged and unexamined must lie partly in the realms of sociology and psychology and I can only speculate on these. My aims here are therefore more modest. They are, firstly, just to revisit the topic of ability grouping, which I believe, has unjustifiably fallen out of interest, and secondly, to probe further the claim that ability grouping is inegalitarian in nature or outcome. But if we are going to label something inegalitarian it would be best to be as clear as we can be about what we mean by the sometimes muddy concept of educational equality. I am, of course, going to use the luck egalitarian conception of educational equality to probe the puzzle. Ability grouping presents itself as an ideal candidate for testing ideas about educational equality as it brings up many of the difficulties that critics have with the concept. In looking at ability grouping I will be probing just as much at the concept of educational equality as at the practice of ability grouping. My major focus then is on examining the claim that ability grouping is inegalitarian.

Ability grouping has received relatively little attention from philosophers of education, in stark contrast to the attention given to it by educational sociologists and researchers, and despite its ubiquity. The philosophical literature devoted solely to ability grouping is fairly sparse, and somewhat dated now (e.g. Bailey & Bridges, 1983; Shaw, 1984; Strike, 1983). There are doubtless many reasons for this, some to do with the way things have their time

and then interest wanes. But I think it will prove profitable to place ability grouping under philosophical scrutiny, particularly from the point of view of educational justice. And it will at least be a good test for the luck egalitarian conception. First though, it is necessary to clarify a few aspects of ability grouping before examining whether it is inegalitarian in nature.

The unit of distributive concern

Ability grouping can refer to how students are assigned to schools, where Germany would be an example with its three-tiered system of schools (Schofield, 2010). This form is not the most common and in many countries selective school systems have been abandoned or are being reformed. So this form of ability grouping will not be the focus here. However, ability grouping could also refer to the common practice, particularly in primary schools, of putting students into groups within a class. In his examination of fairness and ability grouping Kenneth Strike (1983) takes the division of an elementary class into reading groups as his paradigm case of ability grouping. He then considers what constitutes a fair distribution of the teacher's time between the groups. Christopher Jencks (1988) similarly chooses an elementary class as the focus of his discussion of equal educational opportunity. He takes a third-grade reading class taught by Ms. Higgins and looks at how she should divide her time and attention among the pupils, given that she believes this should be done in an egalitarian fashion.

There are certainly features that are common to both inter-class and intra-class ability grouping. However, there are reasons for doubting that intra-class ability grouping should be the paradigm case or that the level of the classroom and the distribution of a teacher's time and attention is the best focus for questions of distributive justice. One has to do with the fact that there are differences between the two forms of ability grouping that may be significant for learning outcomes. If this is so we cannot validly compare the outcomes of one form of ability grouping with the other. So, for instance, groups within a class can be fluid and temporary, they can be re-constituted according to the subject being taught or the progress a student is making and they do not have to be based always on ability. By contrast, the class a student is in tends to be fixed, often for more than one year, and many versions of ability grouping have students in these same classes across most of their subjects.

A second reason for thinking this focus ill-advised is that, Strike implicitly and Jencks explicitly, take it that the fundamental variable of distributive concern is a teacher's time and attention. However, this is to concentrate on only one aspect of importance to someone's education and overlooks the pluralist nature of educational equality. The amount of a teacher's time and attention that a student receives need not correlate with

the overall quality of their education. Some children may thrive on just a small amount of direction, while others may need much more guidance. This does not constitute educational inequality though if it is just what is required to further each child's learning and is not advantaging some relative to others. Further, a teacher's time and attention is not the most significant factor influencing achievement. Plenty of research indicates that the greatest factor that accounts for variance in achievement is what the students themselves bring (Hattie, 2003; Snook & O'Neill, 2010). Focussing on the teacher's time and attention will miss these other factors and some, for instance a student's class background, may be far more worthy of an egalitarian's attention. A teacher's division of attention between students is going to have some effect on a student's education, but it is going to be but one among many factors, not necessarily the most important factor and probably of variable significance for different students. For example, the effect of a teacher on learning seems to be greater for students of lower socio-economic status than for students of higher socio-economic status (Nye, Konstantopoulos, & Hedges, 2004).

A third reason for believing a focus on intra-class grouping misplaced is that it is much closer to the actual teaching and learning process. This makes decisions about intra-class grouping much more a matter of appropriate pedagogy than a matter of distributive justice. It needn't be denied that there are some questions of distributive justice for a teacher to consider. It would be wrong if a teacher was systematically denying some students her time and attention based on reasons irrelevant to learning. If this were so though, it would not be a problem with ability grouping per se; rather it would be a problem with the conduct of the teacher. G.A. Cohen (2000, 2008) argues that the subject matter of distributive justice is the pattern of advantage which results from both the basic structure of society and the choices agents make within that structure. But when we are looking at ability grouping then our primary interest is in a structural feature of schooling and only secondarily on a teacher's choices within that structure. We will be interested in whether the structure has an effect on the sort of decisions a teacher makes. But the decisions about how to allocate her time that a teacher makes at the classroom level are more relevantly made on a pedagogical basis and not on the basis of distributive justice. One simple example of this is that students require less teacher time and attention when they are developing fluency in a newly learned skill than when they are in the acquisition phase of a skill. To see a difference in teacher input between these cases as inequality reveals confusion about how people learn and what they require at different phases of their learning.

Many factors of relevance to distributive justice in education are set outside and prior to children entering the classroom. To give a few examples, the nature of the community a school is built in, the resources a teacher has available to her, the availability of quality early childhood education, the nature of the curriculum and, far more important than the

278

allocation of a teachers attention and time, is the actual teacher herself and how teachers are distributed across classes. The quality of the teacher is the most important factor in student achievement after the student themselves. It is therefore far more morally relevant to look at the school-wide and system-wide distribution of teachers than the intra-class distribution of a teacher's time and attention. It is the teachers themselves that are best thought of as a distributable educational good rather than their attention. Of course, if a teacher was distributing her attention in some grossly unfair way that would be a violation of justice. But this is more about the quality of the teacher. It raises questions about her selection, training and ongoing professional development. Choices about intra-class grouping look to be much more about how a teacher interacts with students on the basis of the judgements she makes about how best to advance the learning of individuals.

Of course, inter-class grouping, it is claimed, is also about how best to promote the learning of individuals. But decisions about ability grouping are much more remote from the actual immediate decisions about learning that a teacher makes. When we consider the sort of data used to by schools to allocate students to classes, the decisions look more like intelligent guesses than well-informed pedagogical decisions. The sort of global ability measures typically used by a school as the basis for assignment to classes are much rougher measures than what a teacher needs to know in order to advance a student's learning. A teacher needs much more finely grained data to determine what an individual student will benefit most from. Decisions about inter-class grouping are quite removed from the actual teaching and learning process while intra-class grouping is so much more intimately involved with the learning process. Inter-class grouping is more a structural decision than a pedagogical one. Whether a teacher is addressing a class, an individual student or a group of students seems a more intimate part of teaching and learning than the assigning of students to classes where the teacher still has the same choices about how to interact with students. Now of course, ability grouping is putatively about trying to meet individual needs too. But it is a more distant application of this idea and not immediately or directly to do with teacher student interactions.

To make this clearer, imagine a class working on a project about The Musket Wars. The teacher judges that Jenny and John will best be left to research it themselves. Matt and Maddie really need help to find the books and some good websites, but then can do the reading themselves. Sally and Sam need to be sat with and helped to read some teacher provided material, but they can be happily left to cut and paste some pictures. Fred and Frank really cannot be left to work together as they will waste time so they need to be kept separate and an eye kept on them that they are working and not disrupting others. These might be some of the judgements a teacher could make and they are essentially pedagogical in nature. However, there is an underlying egalitarian concern and that is that each child's

learning needs must be taken as equally important. But this does not reduce to a concern about how to divide up time and attention; it reduces to a commitment to do what is humanly possible to advance the learning of each child. It may be that some grouping will do that, I wouldn't put Fred and Frank in the same group, and it may or may not be the case that ability is relevant. But the overwhelming feature of the judgements is pedagogical, and behavioural, not distributive.

What problem is ability grouping the answer to?

Ability grouping is an answer to a concrete problem. The students in a school differ in myriad ways relevant to their learning. For example, they differ in terms of the ease with which they learn, what they already know and can do, their motivation and interests, the teaching methods which work best for them, their confidence and expectations of their own learning, the degree of challenge they are comfortable with, their physical and mental development, their social skills and how well they form relationships with their peers and teachers. In other words, each student in a school has unique learning needs. The problem is that this gives us a reason for some degree of individualized teaching (Strike, 1983). But it is not feasible to provide each child with their own teacher. We have to group them in classes and by so doing we place a constraint on the degree of individualized teaching each student gets[81].

Ability grouping is a response to this problem of providing teaching that matches individual learning needs as much as possible, while having to group students in classes. It seems to be based on the belief that the individual learning needs of each student are best met by a teacher if classes are composed of students of roughly similar ability. There are a number of obvious difficulties with this. I have listed multiple ways in which students may differ in their learning needs, and ability is only one. It could be countered that ability is the most salient one, but I have already pointed out how this claim looks dubious. However, it may be that what so-called ability grouping does is not group according to ability, but according to prior knowledge or prior learning, and this is educationally relevant (Hattie, 2009). The problem now is that, given how ability grouping is actually carried out (across a number of subjects for instance) and how highly individualized a student's prior knowledge is (Nuthall, 2005, 2007), it is doubtful that in practice ability grouped classes are much more homogenous in terms of prior knowledge than mixed-ability classes. All this does though is add to our initial puzzle over why schools are using ability grouping and doesn't necessarily get us any closer to claims about educational equality. So let's set aside these problems for

---

[81] A similar claim is also made by Nuthall (2005) who argues that teaching involves certain ritualized action sequences that have evolved in order to enable teachers to cope with the complexity of dealing with 25-35 students while not being able to give much individual attention to each child.

now and go back to the idea that ability grouping is the answer to an organisational problem.

Effectiveness versus educational equality

Seeing it in this way suggests that we could employ two criteria by which to judge ability grouping, both of which are well represented in the literature. The first is whether ability grouping is effective. Does it maximize student learning (as measured by achievement)? This seems a relatively straightforward criterion and as the empirical evidence indicates that the answer is no – there is no difference in achievement between mixed ability and ability grouped classes – this seems to imply that on the grounds of educational effectiveness there is no reason to prefer one method of organisation over the other[82].

The second criterion we could employ is whether ability grouping is fair or equitable. This is not so straightforward. There are many ways in which we could consider fairness. Strike (1983) looks at it in terms of how fair ability grouping is as a classification system and the fairness in the allotment of resources to different groups and the distribution of outcomes between groups. Hattie (2009) means by it the uniformity with which any gains or losses in achievement are distributed across various subgroups. It could be about whether there is fair competition for educational success and social advantage, or fair provision of education, or whether each child's learning needs are treated in such a way as to value each child equally as a purposive agent (Bailey & Bridges, 1983). There is something in all of these, but I am interested here in equality, which is an understanding of distributive justice as *comparative fairness.*

However, having delineated efficacy and equality arguments for ability grouping, I do not think that they can actually be separated as neatly as this suggests. Cohen (2008) argues, contrary to many, that normative principles, such as those of luck egalitarianism, may ultimately not depend on any empirical facts. But even if this is not correct, normative principles are not applied in a fact vacuum and for this reason it is unlikely that we can separate neatly efficacy and justice arguments. The principles of justice may not themselves depend on any facts, but any normative requirements resulting from them can only be in the context of a situation, and in education, educational efficacy is always going to be pertinent, if by efficacy is included whether someone learning or not. But there is another reason why efficacy and inequality arguments are not separable. We can have a fundamental principle that is not dependent on facts, like no one should be worse off due to luck, but our judgements of equality cannot be separated from the distribution of

---

[82] This is a global, statistical finding and does not exclude the possibility that for some students, some classes, some schools or some subjects there could be benefit in one system over the other.

education. I have argued that equality is intrinsically pluralist. Equality is a property of the distribution of all those things that go into making a good education. Achievement is an aspect of education we care about, that is, it is a factor that contributes to the quality of someone's education, not the only factor certainly, but one of them. That means that judgements of equality must take account of empirical facts about achievement. Educational equality is at least partly a function of educational achievement as it is a property of the distribution of the good of education and so cannot be separated from such facts as educational effectiveness.

Both Bailey and Bridges and Slavin write that there should be a presumption in favour of mixed-ability classes and the burden of justification lies with those who want to group students according to ability[83]. Slavin says this is because there is no evidence for ability groupings educational effectiveness, and as anti-grouping arguments are based largely on democratic and egalitarian values, he considers them immune to considerations of effectiveness. However, he gives no argument why ability grouping should be considered antidemocratic and inegalitarian in nature. But a reason for claiming that ability grouping is inegalitarian is precisely because it allegedly has differential educational effectiveness for different students. So absent any sort of argument about inequality it is possible to claim that, as the evidence is that it makes no difference to achievement whether we group or not, compelling arguments are needed to change what is the status quo.

Bailey and Bridges (1983) write that the distinction between educational and social reasons for mixed-ability grouping is confused but nonetheless think that social principles or values underlie most of the major arguments. So their work is an attempt to justify mixed-ability grouping using social values and principles. But an example should serve to show how difficult it is to do this separately from considerations of educational effectiveness.

Ability grouping subject dependent

The typical practice in New Zealand is to use ability grouping for subjects identified as core or compulsory subjects. There can be variation here, but English, Mathematics, Social Studies, Science and Physical Education are often in this category. Other subjects, often called optional subjects, are chosen by the students and are rarely ability grouped. As schools almost never make their rationale for ability grouping public, it is unclear whether there is any principled reason why schools consider some subjects more appropriate for

---

[83] Bailey and Bridges argue for "the desirability of having a basic presupposition of mixed ability grouping, divergence from which needs arguing"(1983, p. 44) while Slavin writes that "Given the antidemocratic, antiegalitarian nature of ability grouping, the burden of proof should be on those who would group rather than those who favor heterogeneous grouping, and in the absence of evidence that grouping is beneficial, it is hard to justify continuation of the practice" (1990, p. 494)

ability grouping than others. Partly it seems to be a matter of tradition but it also partly seems to be a reflection of the status a subject has (Bailey & Bridges, 1983). So, along with the default setting in favour of ability grouping, one can discern in this practice a tacit belief that the more important the subject the more reason there is for ability grouping. This is supported by the observation that whether a subject is compulsory or optional seems to correlate largely with perceptions of subject importance. In other words, we only consider students competent to choose that which is not thought to be too important. In this category, for example, we can place the less academic subjects and those, like modern languages and Maori, which in New Zealand do not seem to be valued too highly. I am aware of no argument for why more important subjects are more suited to ability grouping but it seems reasonable to suppose it must be based on some belief about the educational effectiveness of ability grouping. The idea would then be that when important things are at stake then we should employ the most effective means to achieve those ends.

Bailey and Bridges (1983) argue that there is a good reason for ability grouping in some subjects, but note that this doesn't line up with actual practice. They claim ability grouping may be justified for subjects which, by their very nature, require groups of students working together in order to learn. So in mathematics students may work together, but there is nothing about mathematics that requires this and the learning process can proceed quite individually. There are other subjects though, where no learning can occur without a high degree of co-operation. We can think here of subjects which involve a lot of discussion, team sports, music played in ensembles and drama. Such subjects, Bailey and Bridges suggest, require some degree of homogeneity in student ability for meaningful learning to take place. Consider Roger, who has played tennis for a few years and is really quite good at it, being paired up with Richard, who has never held a racquet before. The teacher sets them to work on their tennis skills together. Neither would be very well served by this.

Now Bailey and Bridges interpret the ideal of equality as a principle of distributive justice which requires that people be equally valued as purposeful agents. There is nothing in this to upset the luck egalitarian if equal valuing is interpreted as implying that students are equally valued when they receive an equally good, or effective, education and they ought not to be worse off due to bad luck. When it comes to the distribution of the good of education then, Bailey and Bridges say it should be done in such a way that students are being equally valued. Valuing them equally means attending equally carefully to the learning of all students regardless of their ability or other personal characteristics. This leads Bailey and Bridges to conclude that students are not equally valued if they are placed in situations where they cannot learn. Therefore ability grouping will be required in some subjects if that is what is required to learn in them. Most subjects do not fit this criterion as learning essentially takes place individually. But those subjects which inherently demand co-

operation will require ability grouping. Bailey and Bridges also add that ability grouping may be a requirement for those students who cannot learn in the normal classroom setting. This could include deaf students or those with severe cognitive deficiencies.

So they get to a place where they seem to be saying there is nothing intrinsically wrong with ability grouping, it depends on things like the subject and the student and the skills of the teacher too. In this way they undermine their argument that on the grounds on fraternity and equality there is something inherently wrong with ability grouping. However, it could also be argued that if ability grouping has little effect on learning, and if the negative effects are contingent rather than inherent, then we should work to fix those problems, as they are evidence of poor teaching practices by and large, and stick with the status quo. This position would therefore put the burden of proof on those who would abandon ability grouping to demonstrate that it is a better option, that it would at worst, mean no diminution in achievement and would have the positive social effects desired. If we consider also that Bailey and Bridges in the context of arguing the case for mixed ability grouping acknowledge that some subjects may well be better taught with groups, and they mention things like sport where it is hard to see that two players of widely divergent ability in tennis could both learn much from playing together, then this point has some cogency. Another reason for holding this position is that there is some evidence that the effects of ability grouping are variable for different students and different subjects (Catsambis, Mulkey, & Crain, 2001).

That we care about placing students in situations where they can learn seems true. We can also agree with Bailey and Bridges that it is unfair if we put students in learning contexts that are unlikely to promote their learning. So it is plausible that whether ability grouping is fair (in the egalitarian sense) or not may well depend on context, in this case the subject. So their argument seems plausible. It also appears open to empirical testing and I am unfortunately not aware of research that looks at whether ability grouping's effectiveness is related to the subject being learned in the way Bailey and Bridges suggest. But it is also notable that their argument is really about efficacy. In some subjects ability grouping will be irrelevant but in others it will be educationally ineffective and therefore unjust. However, this is not really an argument about inequality as it would seem that all are disadvantaged if ability grouping is done in some subjects and not others. I think the argument is probably correct, but it does not seem to lie behind the division into compulsory and optional subjects that most schools currently operate. Count this as one more puzzle about ability grouping as practiced.

Where is the inequality?

Educational equality can be summed up as the idea that no one should be educationally advantaged or disadvantaged due to unchosen circumstances, circumstances over which they have no control and which are for them largely matters of good or bad luck. Luck should have no influence on the quality of education each child receives. If ability is a trait which we do not choose for ourselves, if our talents are, as Rawls says, largely a matter of the natural lottery, then luck egalitarianism disqualifies it as a legitimate reason for some to be worse off educationally than others. This does not mean that ability grouping is intrinsically unjust. It means that it is unjust if it is the reason for some being worse off educationally than others. Ability, understood for now as an unchosen and lucky feature of a person, is invalid as a reason for favouring the education of some over others and so ability grouping will be judged unfair if it facilitates this. To be clear, it may still be the case that ability grouping is all-things-considered the best policy to pursue because of other moral concerns. But it will not be through and through just.

Saying that ability is irrelevant to the fair distribution of education does not mean ability is irrelevant when it comes to all educational decisions however. How someone is taught will depend on facts about their ability, or prior learning and knowledge anyway. But to say ability is relevant to pedagogy is not in conflict with egalitarian requirements; indeed it is pertinent as it may mean that as a matter of egalitarian justice some require more resources or better teachers. Ability may be relevant to how one is taught; but it is not relevant to the overall quality of one's education.

The goal of luck egalitarianism is to make sure that our institutions and social structures do not convert lucky and unchosen differences between persons into advantages and disadvantages. If ability grouping systematically works to the advantage of some and disadvantage of others, it is to be condemned. Systematic disadvantage would mean that they would do better under a different system. Now so far it is not clear, in terms of achievement that there is any disadvantage to some.

Differences in achievement

According to much research, ability grouping has a negligible effect on student achievement. This immediately raises the question, where is the inequality? If ability grouping has no effect on student achievement, how can there be any inequality? Ability grouping would appear to be neutral.

One possible reply to this is that quantitative researchers tend to focus primarily on the average effect size of ability grouping on student achievement. That there is no difference in average effect size does not rule out there being a greater spread in achievement. International comparisons of student achievement suggest that countries with ability

grouping experience greater variation in student achievement than those without, and this is after controlling for other possible influences (Hanushek & Woessmann, 2006; Huang, 2009; Montt, 2011). Hanushek and Woessmann (2006) conclude that ability grouping increases achievement inequality while having little effect on mean achievement. They also note that there appear to be no economic efficiency gains in having a stratified educational system. And other researchers, contrary to what Slavin (1990) claimed, have found that ability grouping has a differential effect on the achievement of low as compared with high ability students. Schofield (2010) finds that the evidence supports the claim that the achievement of low ability students is undermined by ability grouping and Oakes claims that ability grouping "widens the inequality among students in what they learn in school" (2005, p.236). So there is no contradiction in saying that ability grouping has no effect on average student achievement while at the same time saying it leads to greater inequality in achievement.

A second reply is that researchers frequently focus on only one aspect of education, student achievement. It is quite possible that other important aspects of a student's education not captured by achievement tests are adversely affected by ability grouping. The luck egalitarian conception of educational equality that I have been formulating is explicitly pluralist and acknowledges that many factors count towards the quality of a person's education. Achievement, as measured by standardized tests, is not the measure of all that matters in education and the results of standardized tests are too often used as if they tell us all we need to know about student learning, teacher efficacy or school quality. Achievement results can certainly serve as a flashing alarm that there are problems, but cannot be the sole variable in judgements of educational equality, nor indeed of other aspects such as teacher quality. They do not tell us about the resources, teachers, teaching, curricula, and opportunities a student had or the choices they made. It is plausible that someone who is said to be failing has in fact been very well educated in all sorts of senses. A student who gets a 'D' may have been taught very well and gained a lot from the course, but not in ways captured by the grade.

Let's just look for a moment at some of the difficulties that are thrown up by achievement differences for luck egalitarian educational equality. According to that conception some inequality is permissible if it is a result of authentic choices for which a student can properly be held responsible. Bare achievement results tell us nothing about the nature of the choices being made by students. It is possible a student deliberately chooses not to learn and is therefore properly held responsible for their poor achievement. But great care is needed with this interpretation of choice in the luck egalitarian framework. For one thing, it is obvious that a student is in some sense responsible for poor achievement. But it is quite another thing to suggest that they should bear the ongoing

costs of that choice, particularly when very young. Choice in luck egalitarianism should be seen more as giving salience to the background conditions under which choices are made. In order to make some inequality permissible, choices must be genuinely reflective of a person's interests and preferences, they must be an expression of agency. Agency is developed by education, it is not fully formed. Therefore the costs of choices that a student should properly have to bear will be very tightly constrained. Genuine choice is contingent on things like a person's age and the opportunities and option sets available to them. Option sets need to be relevantly equivalent in order to judge choices as having moral purchase. Luck egalitarian choice should not be mistaken for the sort of concept that the libertarian right use to blame the victims of injustice and bad luck for their position. It is rather choice as closely connected to the ideal of personal freedom. People should be free to choose the lives they want to live and for such choices to be valid there must be relevantly equivalent option sets for them to choose from. Without that the moral grip of choice is rendered null. Finally though, when it comes to ability grouping, there is little sense in which students could be said to choose this school organization so if ability grouping did lead to differences in achievement that would constitute impermissible inequality. There is little room for choice here then but choice does have a role and increasingly so as people proceed through their schooling.

To make the problem with just looking at student achievement clearer still, imagine two students called Tessa and Tom. Tessa learns easily, she plays the violin in the school orchestra and has made many friends there. She has a supportive home environment, educated parents and with modest investment from her school and moderate teacher input she performs well in tests. She is learning and feels she is doing well. She thinks she would like to be a doctor for which she has been well prepared to go to university. Tom struggles at school, his family are not very encouraging of his education, but during his time at school he has had some excellent teachers, extra tutoring, extra time on the computers and gone on some great outdoor education trips. He enjoys playing in the school rugby teams where he has made many friends. He is learning and feels he is doing well but he is not doing anywhere near as well as Tessa in tests. He thinks he wants to be a plumber for which he has been well prepared to get an apprenticeship.

We could add to this scenario, but *ceteris paribus*, and despite what could be quite substantial differences in test results, it is hard to say that there is any substantive educational inequality here. Tom is not achieving as well as Tessa academically, but he has received a good education and one that is equipping him for what he wants to do. His education has involved a greater share of resources to compensate for his less fortunate beginnings, as it should. Both seem to have had equally good educations seen as a whole. This judgement could change however if we knew more about how the choices of

287

occupation were made. It is relevant how Tom and Tessa have come to make their career choices. Can we say that they had appropriately equal option sets? We do not know, and it would be very difficult to judge, but, to be fair, they both need to have had equally valuable option sets from which to make their choices. If ability grouping has the effect of limiting choices, that would be impermissible from the luck egalitarian perspective. If their choices have been constrained by contingencies of background our confidence in the genuineness of their choices would be undermined. Their choices also need to fairly reflect their tastes, interests, preferences and wishes about what they want for the future.

Note though, that some of these difficulties about choice do not reside with their education, but with societal structures. It is not clear that any future possible inequality in income for Tom and Tessa should count as evidence of educational inequality. The value our society places on different jobs is wildly different, probably wrongly so. But it is not right to think that educational equality only pertains when everyone can be a doctor or university lecturer. Some think that these differences in the status and rewards of occupations are a fatal stumbling block to educational equality. They think that the pursuit of educational equality is pointless in practice, that theorizing about it a pointless academic exercise, when society is structured so as to unequally distribute rewards and status. But this is not right. It means rather that educational equality cannot be viewed in isolation from wider society and a concern with educational equality will coincide with a concern for equality in general. Holding educational equality as a separate ideal provides further reason to push for things like early childhood education and the equalizing of contingent social and family circumstances that undermine a person's ability to take up educational opportunities effectively. Inequality in the distribution of the benefits and burdens of social co-operation increases the onus on schools to provide equally valuable educations that give students a rich set of options for the future. But this does not imply identical academic educations and it is impossible, and undesirable, for schools to provide educations aimed only at the high status jobs. Educational equality is instrumentally valuable certainly, but it has value independently of the remuneration structure of a society because education has value independently of remuneration. Education should also not be seen as having the goal of producing greater equality in society. It may have this effect, but it is not the reason for pursuing it. This rests on independent grounds to do with the equal moral status of persons and the value of education.

Returning to how much can be taken from the negligible effect of ability grouping on student achievement. A lot of qualitative research does show that ability grouping has inegalitarian outcomes when we look beyond student achievement. Strange though it is that there is apparently no effect on average achievement, there does appear to be a difference in the quality of the education received by those in low ability classes relative to those in

high ability classes. Oakes (2005) in particular has amassed evidence that those in low ability classes experience a poorer quality of content, poorer teaching from poorer teachers with a higher turn-over rate, learning time lost by teachers having to deal with more challenging behaviours and classrooms with less positive climates and fewer resources. There is also evidence that the type of education students receive in low ability classes does not aim to give them higher status knowledge, or to develop their higher order thinking skills but rather concentrates on routines, knowing the 'basics' and having the sort of employment and life skills suitable to relatively mundane and intellectually unchallenging occupations. This difference is evidence of inequality as ability grouping appears from this to be a structural feature of schools that systematically and predictably disadvantages some students relative to others in terms of the quality of education they receive.

Now it might be objected that the negative outcomes observed of ability grouping are not necessary but entirely contingent outcomes. There is nothing about ability grouping that makes it inevitable that students in low ability classes will receive a poorer education than students in high ability classes. What if low ability classes were given the best teachers, rich and interesting content, stimulating curricula, more resources, positive affirmation of their value and an extra input of varied educational experiences in the widest sense? Maybe this is what schools intend when they set up ability grouping. But this is what, according to researchers like Oakes, high ability classes currently enjoy. Worse, it is what luck egalitarian justice requires for the low ability classes. If circumstances were reversed in this way though, we can imagine there might be significant improvement in the achievement of the lowest ability students and probably with very little if any loss to high ability students. It may well be that if ability grouping worked like this it is precisely what justice demands in order to efficiently deliver extra resources to those who are most disadvantaged due to no fault of their own. As education is a complex good, giving more resources to some in order to raise their achievement is required as long as other aspects of educational weight, such as the average level of achievement, are not adversely affected. It is not a requirement of luck egalitarianism that unlimited educational resources be directed to the worst-off. Minimal achievement gains for the worst-off are not required if at a high cost to the quality of everyone else's education. That is not to say that redistribution is not required. It is, and particularly when the reason why some are advantaged is because others are being disadvantaged.

But this is not in fact what happens and when some outcome is contingent, but nevertheless fairly reliably and predictably follows a practice, then it might be wise to change that practice, despite good intentions. Luck egalitarianism is a distributive theory; it says no one should be worse off as a result of unchosen circumstances. It is irrelevant to this

whether the distributive outcomes of ability grouping are contingent or necessary. It is only relevant that distributive shares should not reflect someone's good or bad luck.

There are reasons why ability grouping tends to play out the way it does. We know of the effect of labelling, we know how ability grouping works on expectations, we know how difficult it can be to teach the type of children who are often in low ability classes, we know of the negative peer effects, we know teachers tend to prefer teaching the more able (easier) students, we know our society has negative attitudes towards those who do not perform well according to the norms of our schools and we know how stigmatizing it can be to be thought stupid. The peer effects in particular look very difficult to overcome. Children have a large effect on each other's attitudes to learning, work ethic, motivation to tackle challenging tasks and can also act as resources and support for each other's learning and model what it is possible to achieve. These influences tend to be positive among more able groups and negative among less able groups who are also less engaged with school and tend to have a range of other behavioural problems that deflect from learning. This is the reason why middle class parents sometimes agitate to have their child placed in a higher class. Concentrating the disadvantaged into class lots may set up negative conditions that are very hard to counteract, let alone make major learning gains with. Likewise, it may be very hard to counteract the ideas about themselves that children form in such groups. All this would seem to tell against any positive effects that may be gained. So, absent an enormous societal change it is unlikely that the effects of ability grouping are going to change. There is a possible argument that it is not ability grouping that leads to poor achievement results, but time. If students not only received a better quality of education but also stayed at school longer they would receive a better education. There is something arbitrary about everyone having to reach certain marks by a certain age. This may be right but it is also a bit disingenuous as the way ability grouping works it has the effect of de-motivating and alienating those identified as less able and so does not encourage them to want to stay. Who wants to stay in a place that constantly reminds you that you are at the bottom of the heap?

Some have argued that the fact of human diversity tells against educational equality. It has been argued here that it does not, that what is required is that unchosen human diversity not be the basis for the differential distribution of the fruits of social co-operation. Contrary to what luck egalitarianism requires, ability grouping appears to work to distribute educational benefit in such a way that those with talent are advantaged educationally while those less favourably endowed are systematically disadvantaged. There is a question about the extent to which we can describe ability as a natural trait. This is not important here though, as we can say that ability is not sensibly described as a chosen attribute of a person (especially of a young person) but seems rather a result of a vast number of social and

natural contingencies over which we have little or no control. So on this understanding the fact of human diversity in abilities is not telling against luck egalitarianism and luck egalitarianism has a coherent account of one reason why ability grouping is inegalitarian. Mere diversity in achievement does not constitute inequality; it becomes inequality when our institutions distribute education in such a way as to convert higher achievement into distributive advantage or disadvantage. It is worth repeating that achievement is relevant to the teaching one gets, not the quality of it.

I think these arguments are the heart of the luck egalitarian case that ability grouping contributes to and exacerbates educational inequality and is because of that an unjust practice. But there some other arguments I also want to briefly consider.

Unequal opportunities for higher education and social rewards

A claim made against ability grouping is that it reduces the opportunities and life prospects of low ability students by assigning them to subjects and courses that are less likely to lead to higher education and the access to higher paying and higher status jobs that provides. Many studies have found that the diverse course structures of schools and the ways in which students are placed in courses locks students into different opportunity structures so that students can graduate from high school unable to access higher education, particularly university education (Ireson & Hallam, 1999; Oakes, 2005; Santa Cruz, Siles, & Vrecer, 2011; Spade, Columba, & Vanfossen, 1997). This is often viewed as being of concern primarily for the role played by higher education in determining who gets those positions in society which are more richly rewarded in status, power, income and wealth.

Differences in achievement are inherent to education and are not themselves necessarily evidence of inequality. As was argued, they only become inequalities if they are transmuted into distributive advantage or disadvantage. The argument then is that achievement differences at secondary school lead not just to inequalities in educational provision, but also to inequalities in access to higher education which can subsequently become inequalities in income, wealth and occupational status. This counts against ability grouping, so the argument goes, because it works to magnify this effect by increasing achievement inequality and by narrowing the subject choices of low ability students, thus funnelling them into courses that do not lead on to higher education.

But it is not clear that this is specifically a problem of ability grouping, or of education. The most that ability grouping could be said to do is to shuffle around the actual people who are affected in these ways. The problem of inequalities in access to university is complicated. It is partly to do with funding regimes and to remove this obstacle it would need to be shown that justice requires that everyone should receive higher education. It is

291

not clear however that it is desirable for everyone to seek higher education. That would appear to rest on some substantive conception of the good. It seems more plausible that justice requires access for those who desire a higher education, but this has nothing to do with ability grouping. It is not clear also that certain levels of achievement are illegitimate requirements for access to some sorts of higher education e.g. medical. The fact that not everyone can become a doctor is not inequality. But most of all, it is not clear that educational equality is only desirable or coherent as an ideal if it means everyone must have higher education. Education is at least partly about equipping people for flourishing lives of their choosing and it is a big jump to say that this always requires higher education. That would be like saying people without higher education have a diminished life. It may be diminished for some, if they are unfairly denied access. But it is implausible that to have a good life you need a university degree.

Further, subsequent inequality in social rewards has nothing to do with ability grouping itself. Take away ability grouping and the problem is still there. The problem here lies with societal attitudes and structures that give greater status and rewards to jobs requiring higher education qualifications. This does not make educational equality irrelevant, as some claim, but has distorted thinking about it by assuming that if everybody cannot proceed to higher education and high status jobs then there has been educational inequality.

One justification for this view depends on a conception of educational equality that sees educational equality as a requirement for fair competition for the social rewards such as income, wealth and status. This is the view that Brighouse and Swift argued for. Competition is only fair if education is equal as education provides a critical pathway to accessing the social rewards which are so unequally distributed. If the education system is not fair then the competition for positions is unfair and subsequent inequalities in the distribution of social rewards are illegitimate.

This view of educational equality, based on the notion of fair competition, should be resisted, as already argued. The luck egalitarian view is that distributive, and educational, equality are about people getting their fair share of the benefits of social co-operation and this depends on the correct and independently arrived at principles of justice, not on the outcomes of a competition, fair or otherwise. Fair distributive shares are compromised when luck becomes a major determinant of those shares or people are made to improperly bear the costs of choices made under malign conditions that undermine the legitimating force of choice. Luck egalitarianism then, does not support the idea that an equal education can legitimate the unequal distribution of the fruits of social co-operation or that an equal education is about regulating through competition access to those rewards.

I argued in the last chapter that the fact that we live in a world where advantages are unequally distributed is not irrelevant to education; it is something that must play a part in people's educational decisions. But it should not dominate our understanding of what educational equality requires. The remunerative structure, and class structure, of our society is not an educational problem in itself but to do with much wider political and social realities. It is reasonable to think that if we want a more just world, then structural and institutional changes are required first. The education system is itself one of those structures and so a concern with equality will always involve advocating for greater educational equality. But the argument also goes the other way. It is very clear too that educational equality requires more than just tinkering with the education system as the unchosen disadvantages and advantages that children arrive at school with have causes that lie well outside the education system. It is profoundly and negligently mistaken to think that educational equality can be achieved without a great many changes to wider social circumstances. As Richard Rothstein writes; "the influence of social class characteristics is probably so powerful that schools cannot overcome it, no matter how well trained are their teachers and no matter how well designed are their instructional programs and climates" (2004, p. 5). The demands of educational equality require more than just educational changes and provide an argument against those who want to ignore social inequality and just blame schools and teachers for any shortcomings in student achievement. However, differential incomes is not a matter of educational inequality itself and it is implausible to suggest that educational equality requires that everyone can become a doctor or lawyer. It cannot be correct either that the just principles for educational equality are somehow contingent on whatever distribution of advantages in wider society happens to be prevailing.

A good education does need to provide for working life. A theory of educational equality entails an education that must prepare children for employment because employment provides them with a necessary prerequisite for being able to make choices about the sort of life they wish in a society where many valued goods and activities come at a cost (Gutmann, 1982). But that is not all education must do and it is logically impossible and undesirable, to claim that educational equality entails fair competition for positions that are unequally rewarded. It looks fraudulent as it appears to support that unequal distribution and legitimate it. Brighouse says inequalities in reward are only fair if there has been fair competition. But one can have a fair competition and the reward structure can still be unfair as it is set independently of the nature of the competition. I earlier compared this to the argument surrounding the payments to men and women at professional tennis tournaments. There was no suggestion that there was anything unfair about the competitions, it was the reward structure itself which was unfair. And having a fair

competition for unequal rewards did nothing to legitimate that reward structure. So it is true that educational equality cannot be considered in isolation from wider social inequality. But the two are conceptually distinct, although there is substantial interaction between them. Wider social inequality makes it harder to achieve educational equality, and educational inequality also makes it harder to achieve social equality. The two are interdependent in effect but nonetheless conceptually distinct.

Segregation

The problem of differential access to higher education and subsequent disparities in the distribution of social goods was rejected as an inequality caused by ability grouping per se. But the objection could then be that the inequality in educational quality and the inequality in access to higher education associated with ability grouping falls unequally on different socioeconomic groups and ethnicities. This is because ability grouping results in the segregation of students along class and ethnic lines because of the educational disadvantage that correlates with socioeconomic disadvantage. Thus sociologists tell us that ability grouping contributes to stratification and works to "reproduce socioeconomic and cultural inequalities"(Santa Cruz, et al., 2011). Those from lower socioeconomic groups start off disadvantaged and schooling works to accentuate this difference over time, ability grouping being one of the mechanisms that achieves this. This happens because "differences in curriculum, teaching, and classroom atmosphere that usually accompany ability grouping can result in unequal opportunities to learn. These practices place poor and minority students at a greater disadvantage since they are disproportionately found in low-ability classes – those with the most restricted learning opportunities" (Oakes, Quartz, Gong, Guiton, & Lipton, 1993, p. 466). This then "reinforces social class by providing differential opportunities to students. Students from middle- and upper-class backgrounds are typically found in a track where they are exposed to "high-status" content (including science, mathematics, and foreign languages), while students from working-class backgrounds are often placed in the lower-track, where they are presented with a sharply limited range of topics and skills" (Spade, et al., 1997, p. 109). These claims would come as no great surprise to any reflective teacher in New Zealand. Higher ability classes tend to be composed of largely Pakeha children from middle class homes. Lower ability classes in contrast tend to have more Maori and Pasifika children from working or beneficiary class homes (Jones, 1991).

However, this is not an objection on egalitarian grounds, but more one about who is advantaged and who is disadvantaged. Other values lie behind these claims such as those of community, fraternity or the need for social harmony. One could imagine ability grouping being used to target more resources and better teachers going to disadvantaged groups. In

294

this case segregation would not be a factor in reproducing inequality but in ameliorating it. Segregation matters if it leads to inequality but is not itself an instance of distributive inequality. The objection to segregation is about the desirability of social mixing, the value of community and fraternity. Brighouse (2007) discusses the socio-economic segregation of schools and argues that it is not in itself a social injustice but instead is an indicator that there may be some social injustice. As far as inequality goes, segregation itself is not a cause of social injustice as it is not what makes some worse off than others. As Brighouse takes care to point out, segregation is probably not at all desirable, but on grounds other than social justice, it rather violates values of diversity and community. It is worth noting too that as a matter of observation people seem to prefer mixing with others that are similar to them.

To say that the effects of ability grouping fall unfairly on some groups rather than on others is really to say little more than that ability grouping is unfair in how it works to the disadvantage of some. There needs to be another argument for why it is particularly unequal if ability grouping tends to affect some groups, say Maori and Pasifika or working class, more than others. The one offered is that ability grouping may be one of those mechanisms by which class inequality is reproduced. This does appear to make it worse. However, it can be countered that inequality is inequality no matter how its manifests itself across groups. It is unjust if some are worse off than others due to no choice of their own, regardless of who they are. Consider this question: would the unequal effects of ability grouping be more acceptable if they fell on a more ethnically and socio-economically diverse mix of students, one that was more representative of the general population? This looks a dubious proposition; there would still be the same inequalities in quality of education, just falling on a different mix of students.

It seems very unlikely to me that ability grouping will have much effect on the differential outcomes of different socio-economic groups. Take away ability grouping and it would be surprising if there still weren't substantial differences in educational outcomes correlating with socio-economic class. The most we can perhaps say is that ability grouping does nothing to mitigate the inequality in educational achievement of low income and some ethnic groups and is perhaps just another factor locking in this finding. But against this, Broaded (1997) has interestingly found that in Taiwan ability grouping does not work to accentuate the influence of family background on achievement. It instead appears to reduce this influence on achievement. It remains strongly meritocratic however, but those of higher ability do well no matter what their socioeconomic background. This suggests there must be something else about education systems in the West as this Taiwan evidence does not support the claim that ability grouping reinforces social class inequalities.

Elizabeth Anderson (2007) offers an argument why socioeconomic mixing of classes may be of more than fraternal value. The argument is not however in terms of educational equality. It may be that mixed grouping does little for educational equality but it may nonetheless promote wider equality. She argues that the elites in a democratic society must be constituted so that they are able to serve all sectors of society and so that the privileges and rewards they enjoy due to their position benefit all and especially the least advantaged. This seems like a reasonable criterion for democratic legitimacy. If all are not served in an even handed fashion then the legitimacy of a government seems questionable, although Anderson's argument is about power elites in general and not just politicians. She argues that from this democratic understanding of the responsibilities of elites we get a picture of the sort of qualifications it must have. These have egalitarian implications and implications for how such elites should be educated. It seems plausible that the elite need to be drawn from all sectors of society and have been educated in mixed settings in order to develop the fellow feeling, sympathy and community of interest required of them. The less well off in a society are disadvantaged if elites are unaware and unsympathetic to their situation and this contributes to the reproduction of disadvantage. She uses the familiar argument of how segregation works against the less advantaged, but makes the interesting addition that the advantaged are also deprived of some cultural capital by segregation as they are ignorant of how the less well-off are and how things work in their world. It is not academic knowledge that the advantaged in segregated systems will lack, but competence in working with others, communicating and being able to see the world from their perspective.

Working back then seems to imply an education that involves mixed schools and classes. This argument has a lot of merit and suggests that there could be less inequality in a society where those in positions of power come from more diverse and mixed educational backgrounds. This is not, however, an argument that ability grouping because of its segregating effects leads to any greater educational inequality. It does reiterate though the interdependence of notions of a just education and a just society. It may be thought that this argument is germane to claims of educational inequality by its assertion that a good education must equip people with a sympathetic understanding and ability to engage with all sectors of a society. If ability grouping prevents this by facilitating segregation then it is negatively affecting the education of all groups. But again, this is not really a matter of increased inequality.

Unequal valuing

Some will be uncomfortable with the entire preceding argument on the grounds that it pays too much attention to empirical evidence and depends too much on contingent

outcomes. If you are inclined towards consequentialist arguments that may not be too troubling but it is true that some things appear to be just wrong in themselves, just plain bad ideas. At the level of fundamental moral principles, of our deepest moral beliefs, empirical evidence seems largely irrelevant. Think here of the debate about corporal punishment and caning that led to its eventual abolition in New Zealand in the Education Act of 1989. The debate was not really about whether or not corporal punishment improves learning and behaviour. It was not about whether corporal punishment is educationally effective or whether it was being fairly distributed or even about whether it is particularly effective in changing behaviour. These aspects were there, but argument was more about whether corporal punishment itself is a good idea. Debate focused more on whether it is the sort of thing we think it right for teacher to administer and whether it is right to inflict such punishment on children. In the end it was concluded that corporal punishment is really just a bad idea.

So too you might wonder whether ability grouping is wrong in itself, independently of how it goes in practice. This is essentially what Bailey and Bridges argue. They contend that all arguments in favour of mixed ability grouping are based on social principles or values, particularly on the principle "*of the equal valuing of education for every pupil considered as a purposive agent*"(their italics, 1983, p. 35). This leads them to claim that ability grouping is wrong in itself as it amounts to valuing students in respect of their ability and not as equally valuable purposive agents.

It is worth pointing out first that if this claim is correct it need not be in any conflict with luck egalitarianism. If students are worse off because they are valued less, due to no choice of their own, then luck egalitarianism will decry it. The belief that it is objectionable to treat people as inferior or make them feel inferior, while others assume attitudes of superiority, is an important underlying motivation for egalitarianism. Social practices which are based on a ranking of people are wrong when they stigmatize those of lower status or elevate those of higher status. Ranking is objectionable if it means that people are not being accorded their equal moral status. Bailey and Bridges are saying that ability grouping intrinsically violates this principle.

Shaw (1984) objects that just because children are put in classes based on ability, it does not necessarily follow that we value children in one group more than children in another group. If this happens, she claims, it is because some people and teachers attach greater intrinsic value to high ability than to low ability and whether we have ability grouping or not will not change these attitudes. It seems plausible that differential valuing need not follow automatically from grouping on ability. However, it is somewhat disingenuous to think that in practice it doesn't and that this is of no import to what effects ability grouping may have. There is a strong tendency for the distributions of almost any good in our society to track

how people are valued. We need, therefore, to ensure our institutional structures do not give play to the attitudes that people may or may not have in such a way that those attitudes can wrongly influence people's distributive shares. Ability grouping is a structure that gives ample room for people to teach and treat students in ways that show that some are being valued less than others.

White (1994) makes a similar argument and criticizes Bailey and Bridges on the grounds that it cannot be assumed *a priori* that ability grouping will work against the educational interests of some. One needs to examine the detailed arguments and evidence in order to determine the effect of selective grouping. White suggests that we should prefer a system that makes each child's flourishing of prime concern so no matter what the ability the education would match the child's needs. This seems plausible and the obvious reply is that the evidence is in; ability grouping does not in general best serve the needs of all children. There is some individual variation to be sure (Catsambis, et al., 2001), but in general ability grouping works against those identified as low ability and it is not even clear that it works in favour of all those identified as more able (Boaler, et al., 2000).

These arguments demonstrate the strength of a luck egalitarian conception of educational equality. Like Bailey and Bridges, it takes as foundational some notion of the equal value of each person. But it interprets this abstract principle as having concrete distributive implications. Valuing people equally means not permitting luck to determine the quality of their education and we must therefore have structures that do not distribute education on the basis of traits that are a matter of luck. Shaw and White point out the contingent nature of the effects of ability grouping. But it is wrong to ignore that some not unpredictable effects do flow from the practice, disadvantaging some and advantaging others. Equal valuing requires that our social structures ensure distributive equality. What structures will do this is a contingent fact, but there is enough evidence to suggest it is not entirely contingent when it comes to ability grouping.

There is another reason why we cannot say that ability grouping is intrinsically inegalitarian without examining the evidence. I take luck egalitarian educational equality as a theory about how education, as a benefit, should be distributed. Educational equality needs to be seen then as a good-making feature of an actual distribution of education (Hirose, 2009). This means judgements of inequality are inherently contingent. To be able to say how equal a state of affairs is we need to look at the actual distribution. Principles of equality, such as equal valuing, do not depend on contingent facts, but judgements concerning equality do. Equality involves comparing how one person fares relative to another. We cannot do this prior to looking at all the factors that contribute to an aggregate measure of the overall quality of a person's education.

298

It might be objected that ability grouping is inegalitarian, but so what? What we really want is educational excellence. We can't have excellence without inequality; equality of achievement by definition removes excellence. Without excellence everyone will be worse off and excellence is itself a weighty value. Further, any move to greater equality can only be at the cost of levelling down the achievement of the best. Why should the gifted and talented be worse off? If equality requires levelling down it can't be a very desirable value anyway. I think this is just plain wrong and the arguments of this thesis have been that equality is a weighty value indeed and it is unjust if we advantage some, the lucky, at a cost to others. Also, it has been argued that educational excellence cannot just be in terms of academic achievement and while excellence is a value, it is a lesser one than equality. Brighouse (2010) points out too that we can question whether excellence applies only to the achievement of individuals or whether it also applies to the excellence of an educational system.

So there are two major luck egalitarian grounds for rejecting ability grouping. Firstly, it works to make the unlucky worse-off and the lucky better-off. Secondly, it works to undermine the range of choices for the less able and to lock in past bad choices that it should not, as children are not full agents and should not have to bear disproportionate costs for their poor choices.

Conclusion

The case that ability grouping is an inegalitarian practice is strong. In addition, ability grouping offends values of diversity and community. That many well-intentioned people normally do not notice that something is awry says much about the ease with which inequalities can be accepted; particularly when they are part of the normal landscape. The complacency of schools and the public towards this practice is unwarranted. Schools make decisions which affect the lives of a great many others and this places an obligation on them to do what is best supported by the evidence and the evidence is against ability grouping. In their defence though, if one looks only at the effects on student achievement the evidence is not obviously against ability grouping and schools are run and staffed by practitioners who have limited access to the research evidence. There may be an ethical failing here, but a very understandable and human one for people who are involved in a difficult job that tends to keep them concentrated on the immediate (Harris, 1982).

So is change coming any time soon? This seems very unlikely. The reasons are many and somewhat speculative on my part but I will pick out a few I think are significant. A big factor in the continuation of ability grouping is the beliefs and attitudes of teachers. Teachers are people who did well under the status quo and generally have no reason to think it bad. It worked for them and it seems natural because that is what they grew up with. Teaching is a very demanding job and abandoning ability grouping would make the demand, which already exists, for differentiated lessons impossible to ignore. But differentiated lessons in the sort of conditions prevailing in most of our schools are very hard indeed. The requirement to teach groups of students *en masse* in classes is a structural imposition and although we wave our hands about differential teaching the fact is its difficult – and teachers know this. Ability grouping makes them feel they are addressing this issue within the constraints of having to teach classes and maintain the manageability of their job.

In addition schools are very unlikely to do something if they think it will affect their market share of customers. They are unlikely to do something which parents do not want and there is no evidence that parents want change on this issue. Schools in New Zealand have been encouraged to view themselves as competing enterprises. They tend to view themselves as competing for the best (i.e. middle-class) students and teachers. The educational market does not seem to be one that encourages experimentation and diversity to a great degree. Schools are therefore reluctant to do something different if there is a chance that parents won't like it.

Jonathan Kozol does a great job of describing how ability grouping looks so right from the vantage point of neoliberal thinking.

300

> Early testing to assign each child to a "realistic" course of study, the tracking of children by ability determined by the tests, and the expansion of a parallel system for the children who appear to show the greatest promise (gifted classes and selective schools) are also favored from this vantage point. In terms of sheer efficiency and of cost-benefit considerations, it is a sensible approach to education. If children are seen primarily as raw material for industry, a greater investment in the better raw material makes sense. Market values do not favor much investment in the poorest children. (Kozol, 1991, p. 75).

Finally, there is no *a priori* reason why ability grouping should not work. It probably could if many, many other things were otherwise. But in the end, it doesn't work fairly and is very unlikely to do so, given certain facts about people and how our society currently is arranged. So until such time as there are a large number of other changes, ability grouping will probably continue.

Significantly too, I suggest that luck egalitarianism gives us a conceptual tool for thinking about ability grouping that is coherent and aligns with our intuitions. This is because, as I have argued, a luck egalitarian conception of educational equality is a superior, well-grounded conception. Luck egalitarianism provides grounding principles that stand up in the examination of ability grouping. But note, the luck/choice principle is not a substantive principle, in Tan's sense, and in looking at ability grouping from a luck egalitarian perspective, other principles and considerations had to come into play, in particular about what the *equalisandum* of education needs to be and how to weight the different aspects of that complex *equalisandum*. But I believe that the core beliefs of luck egalitarianism give us a good grip on what justice may require. It emphasises that children are moral equals and should be treated as such. This is not achieved when we allow their education to be overly influenced by circumstances which are a matter of luck to them and beyond their control. And if we expect them to bear the costs of their choices, these must be made under suitable conditions and this is unlikely to often pertain with children and so their choices are unlikely to have much permissible effect on the quality of their education.

Thomas Nagel (1991a, pp. 96-98) has an interesting thought. He asks us to imagine a day when the talented, while considering their great good fortune in the natural lottery, feel some embarrassment and discomfort. A day when they are not inclined to just smile happily at their luck, to shrug their shoulders with equanimity at their undeserved good fortune that advantages them over the less talented. After all, if a white male today were to happily thank his lucky stars for his good fortune without any sense of guilt, as if his luck reflected some immutable fact about the world, we would rightly judge his attitude reprehensible.

301

References

Anderson, E. (1999). What Is the Point of Equality? *Ethics, 109*(2), 287-337.

Anderson, E. (2007). Fair Opportunity in Education: A Democratic Equality Perspective. *Ethics, 117*(4), 595-622.

Arneson, R. J. (1989). Equality and Equal Opportunity for Welfare. *Philosophical Studies, 56*(1), 77-93.

Arneson, R. J. (1995). Against 'Complex' Equality. In D. Miller & M. Walzer (Eds.), *Pluralism, Justice, and Equality*. Oxford; New York: Oxford University Press.

Arneson, R. J. (1999). What, if anything, renders all humans morally equal? In D. Jamieson (Ed.), *Singer and His Critics*. Oxford, UK; Malden, Mass.: Blackwell.

Arneson, R. J. (2000). Luck Egalitarianism and Prioritarianism. *Ethics, 110*(2), 339-349.

Arneson, R. J. (2002). Ronald Dworkin, Sovereign Virtue: The Theory and Practice of Equality. *Ethics, 112*(2), 367-371. doi: 10.1086/324254

Arneson, R. J. (2004). Luck Egalitarianism Interpreted and Defended, from http://philosophyfaculty.ucsd.edu/faculty/rarneson/

Arneson, R. J. (2007). Desert and Equality. In N. Holtug & K. Lippert-Rasmussen (Eds.), *Egalitarianism: New Essays on the Nature and Value of Equality*. Oxford: Clarendon.

Arneson, R. J. (2008). Justice Is Not Equality. *Ratio, 21*(4), 371-391.

Arneson, R. J. (2011). Luck Egalitarianism - A Primer. In C. Knight & Z. Stemplowska (Eds.), *Responsibility and Distributive Justice*. Oxford; New York: Oxford University Press.

Axelrod, R., & Hamilton, W. D. (1981). The Evolution of Cooperation. *Science, 211*(4489), 1390-1396.

Bailey, C., & Bridges, D. (1983). *Mixed Ability Grouping: A Philosophical Perspective*. London; Boston: Allen & Unwin.

Baron, M., Pettit, P., & Slote, M. A. (1997). *Three Methods of Ethics*. Oxford, UK; Malden, Mass.: Blackwell.

Barry, B. (1988). Equal Opportunity and Moral Arbitrariness. In N. E. Bowie (Ed.), *Equal Opportunity* (pp. 23-44). Boulder and London: Westview Press.

Barry, N. (2006). Defending Luck Egalitarianism. *Journal of Applied Philosophy, 23*(1), 89-107.

Bentham, J., & Schofield, P. (1822/1989). *First principles preparatory to constitutional code*. Oxford; New York: Oxford University Press.

Blackwell, L. S., Trzesniewski, K. H., & Dweck, C. S. (2007). Implicit Theories of Intelligence Predict Achievement Across an Adolescent Transition: A Longitudinal Study and an Intervention. [Article]. *Child Development, 78*(1), 246-263.

Boaler, J., Wiliam, D., & Brown, M. (2000). Students' Experiences of Ability Grouping: Disaffection, Polarisation and the Construction of Failure. *British Educational Research Journal, 26*(5), 631-648.

Boehm, C. (2001). *Hierarchy in the Forest: the evolution of egalitarian behaviour*. Cambridge, Mass.: Harvard University Press.

Bowles, S., & Gintis, H. (1976). *Schooling in Capitalist America* London and Henley: Routledge & Kegan Paul

Bowles, S., & Gintis, H. (1998). *Recasting Egalitarianism : New Rules for Communities, States and Markets*. New York: Verso.

Brighouse, H. (1998). School Choice: Theoretical Considerations. In S. Bowles, H. Gintis & E. O. Wright (Eds.), *Recasting Egalitarianism : New Rules for Communities, States and Markets*. New York: Verso.

Brighouse, H. (2000). *School Choice and Social Justice*. Oxford: Oxford University Press.

Brighouse, H. (2005). Educational Equality and Justice. R. Curren (Ed.) *A Companion to the Philosophy of Education* Retrieved from http://www.blackwellreference.com/subscriber/tocnode?id=g9781405140515_chunk_g978140514051536

Brighouse, H. (2007). Educational Justice and Socio-Economic Segregation in Schools. *Journal of Philosophy of Education, 41*(4), 575-590.

Brighouse, H. (2010). Educational Equality and School Reform. In G. Haydon (Ed.), *Educational Equality* (2 ed.). London: Continuum.

Brighouse, H., & Swift, A. (2008). Putting Educational Equality in Its Place. *Education Finance and Policy, 3*(4), 444-466.

Broaded, C. M. (1997). The Limits and Possibilities of Tracking: Some Evidence from Taiwan. *Sociology of Education, 70*(1), 36-53.

Browne, D. E. (1975). The presumption of equality. *Australasian Journal of Philosophy, 53*(1), 46-53.

Buchanan, A. B., Dan W.;Daniels, Norman;Wikler, Daniel. (2000). *From Chance to Choice: Genetics and Justice*. Cambridge, U.K. ; New York: Cambridge University Press.

Burbules, N. C. (1990). Equal Opportunity or Equal Education? *Educational Theory, 40*(2), 221-226.

Calvert, J. (2014). Educational Equality: Luck Egalitarian, Pluralist and Complex. *Journal of Philosophy of Education, 48*(1), 69-85.

Carter, A. (2002). Value-Pluralist Egalitarianism. *The Journal of Philosophy, 99*(11), 577-599.

Carter, I. (2011). Respect and the Basis of Equality. *Ethics, 121*(3), 538-571.

Casal, P. (2007). Why Sufficiency Is Not Enough. *Ethics, 117*(2), 296-326.

Catsambis, S., Mulkey, L., & Crain, R. (2001). For better or for worse? a nationwide study of the social psychological effects of gender and ability grouping in mathematics. *Social Psychology of Education, 5*(1), 83-115.

Cavanagh, M. (2002). *Against Equality of Opportunity*. Oxford ; New York: Clarendon Press.

Christiano, T. (2007). A Foundation for Egalitarianism. In N. Holtug & K. Lippert-Rasmussen (Eds.), *Egalitarianism: New Essays on the Nature and Value of Equality*. Oxford: Clarendon.

Christiano, T., & Braynen, W. (2008). Inequality, Injustice and Levelling Down. *Ratio, 21*(4), 392-420.

Codd, J. A., & Sullivan, K. (Eds.). (2005). *Education Policy Directions in Aotearoa New Zealand*. Southbank, Vic.: Thomson Learning Australia.

Cohen, G. A. (1989). On the Currency of Egalitarian Justice. *Ethics, 99*(4), 906-944.

Cohen, G. A. (1995). *Self-ownership, Freedom, and Equality*. Cambridge ; New York: Cambridge University Press.

Cohen, G. A. (2000). *If You're an Egalitarian, How Come You're So Rich?* Cambridge, Mass.: Harvard University Press.

Cohen, G. A. (2008). *Rescuing Justice and Equality*. Cambridge, Mass.: Harvard University Press.

Cohen, G. A. (2009). *Why Not Socialism?* Princeton: Princeton University Press.

Colburn, B. (2012). Responsibility and School Choice in Education. *Journal of Philosophy of Education, 46*(2), 207-222.

Coleman, J. S. (1975). What Is Meant by 'An Equal Educational Opportunity'? *Oxford Review of Education, 1*(1), 27-29.

Cooper, D. E. (1980). *Illusions of Equality*. London: Routledge and Kegan Paul.

Crisp, R. (2003). Equality, Priority, and Compassion. *Ethics, 113*(4), 745-763.

Crocker, L. (1977). Equality, Solidarity, and Rawls' Maximin. *Philosophy & Public Affairs, 6*(3), 262-266.

Cupit, G. (1996). Desert and Responsibility. *Canadian Journal of Philosophy, 26*(1), 83-99.

Cupit, G. (2000). The Basis of Equality. *Philosophy, 75*(01), 105-125.

Curren, R. (2006). Justice and the Threshold of Educational Equality. In M. Boylan (Ed.), *The Ethics of Teaching* (pp. 331-340). Aldershot, Hants; Burlington, VT: Ashgate.

Cuypers, S. E. (1992). Is Personal Autonomy the First Principle of Education? *Journal of Philosophy of Education, 26*(1), 5-17.

Daniels, N. (1996). *Justice and Justification: Reflective Equilibrium in Theory and Practice*. Cambridge [England]; New York: Cambridge University Press.

Davis, A. (2008). Educational Assessment and Accountability: A Critique of Current Policy. *Impact, 2008*(16), 9-63.

De-Shalit, A., & Wolff, J. (2011). The Apparent Asymmetry of Responsibility. In C. Knight & Z. Stemplowska (Eds.), *Responsibility and Distributive Justice*. Oxford; New York: Oxford University Press.

Dewey, J. (1921). *Democracy and Education: an introduction to the philosophy of education*. New York: The Macmillan Company.

Dunning, D., Heath, C., & Suls, J. M. (2004). Flawed Self-Assessment: Implications for Health, Education, and theWorkplace. *Psychological Science in the Public Interest 5*(3), 69-106

Dworkin, R. (1977). *Taking Rights Seriously*. London: Duckworth.

Dworkin, R. (1981a). What is Equality? Part 1: Equality of Welfare. *Philosophy & Public Affairs, 10*(3), 185-246.

Dworkin, R. (1981b). What is Equality? Part 2: Equality of Resources. *Philosophy & Public Affairs, 10*(4), 283-345.

Dworkin, R. (1983). Comment on Narveson: in Defense of Equality. *Social Philosophy and Policy, 1*(01), 24-40.

Dworkin, R. (1985). *A Matter of Principle*. Cambridge, Mass.: Harvard University Press.

Dworkin, R. (2000). *Sovereign Virtue : The Theory and Practice of Equality*. Cambridge, MA: Harvard University Press.

Dworkin, R. (2011). *Justice for Hedgehogs*. Cambridge, Mass.: Belknap Press of Harvard University Press.

Dworkin, R., & Burley, J. (2004). *Dworkin and his Critics : With Replies by Dworkin*. Malden, Mass.: Blackwell Pub.

Eidelman, S., Crandall, C. S., & Pattershall, J. (2009). The existence bias. *Journal of Personality and Social Psychology, 97*(5), 765-775.

Engels, F., & Marx, K. (1845/1949). *Ludwig Feuerbach and the end of classical German philosophy*. Moscow: Foreign Languages Publishing House.

Feinberg, J. (1974). Noncomparative Justice. *The Philosophical Review, 83*(3), 297-338.

Feldman, F. (1995). Desert: Reconsideration of Some Received Wisdom. *Mind, 104*(413), 63-77.

Fischer, J. M. (2012). *Deep Control: Essays on Free Will and Value* Oxford; New York: Oxford University Press.

Fleurbaey, M. (1995). Equal Opportunity or Equal Social Outcome? *Economics and Philosophy, 11*(01), 25-55.

Frankfurt, H. (1969). Alternate Possibilities and Moral Responsibility. *The Journal of Philosophy, 66*(23), 829-839.

Frankfurt, H. (1987). Equality as a Moral Ideal. *Ethics, 98*(1), 21-43.

Frankfurt, H. (1997). Equality and Respect. *Social Research, 64*(1), 3-15.

Freeman-Moir, D. J., & Scott, A. (Eds.). (2003). *Yesterday's Dreams : International and Critical Perspectives on Education and Social Class*. Christchurch, N.Z.: Canterbury University Press in association with Christchurch College of Education.

Giesinger, J. (2011). Education, Fair Competition, and Concern for the Worst Off. *Educational Theory, 61*(1), 41-54.

Goodin, R. E. (1990). Liberalism and the Best-Judge Principle. *Political Studies, 38*(2), 181-195.

Güth, W., Schmittberger, R., & Schwarze, B. (1982). An experimental analysis of ultimatum bargaining. *Journal of Economic Behavior & Organization, 3*(4), 367-388.

Gutmann, A. (1982). What's the use of going to school? The problem of education in utilitarianism and rights theories. In A. K. Sen & B. Williams (Eds.), *Utilitarianism and beyond* (pp. 261-277). Cambridge, Paris: Cambridge University Press ; Editions de la Maison des Sciences de l'Homme.

Gutmann, A. (1987). *Democratic Education*. Princeton: Princeton University Press.

Haas, E. (2009). Equity, Employment and Education Policy. *Journal of Philosophy of Education, 43*(1), 149-157.

Hanushek, E. A., & Woessmann, L. (2006). Does Educational Tracking Affect Performance and Inequality? Differences-in-Differences Evidence Across Countries. *The Economic Journal, 116*(510), C63-C76.

Harris, K. (1979). *Education and Knowledge: the structured misrepresentation of reality*. London; Boston: Routledge & K. Paul.

Harris, K. (1982). *Teachers and classes: A Marxist analysis*. London, Boston and Henley: Routledge & Kegan Paul.

Harris, K. (1994). *Teachers: Constructing the Future*. London: The Falmer Press.

Harris, K. (1997). Education, philosophy and equality. *Educational Philosophy and Theory, 29*(2), 51-66.

Hattie, J. (2002). Classroom composition and peer effects. *International Journal of Educational Research, 37*(5), 449-481.

Hattie, J. (2003). *Teachers Make a Difference: What is the research evidence?* Paper presented at the Australian Council for Educational Research.

Hattie, J. (2009). *Visible learning : a synthesis of over 800 meta-analyses relating to achievement*. London ; New York: Routledge.

Haydon, G. (Ed.). (2010). *Educational Equality*. London: Continuum.

Higgins, C. (2009). A Plea for Moderation in Educational Policy and Research. *Educational Theory, 59*(5), 499-502.

Hirose, I. (2009). Reconsidering the Value of Equality. *Australasian Journal of Philosophy, 87*(2), 301-312.

Hirose, I. (2011). Egalitarianism and Prioritarianism. In T. Brooks (Ed.), *New Waves in Ethics*. Houndmills, Basingstoke, Hampshire; New York: Palgrave Macmillan.

Hornby, G., Witte, C., & Mitchell, D. (2011). Policies and practices of ability grouping in New Zealand intermediate schools. *Support for Learning, 26*(3), 92-96.

Howe, K. R. (1989). In Defense of Outcomes-based Conceptions of Equal Educational Opportunity. *Educational Theory, 39*(4), 317-336.

Howe, K. R. (1990). Equal Opportunity Is Equal Education (within Limits). *Educational Theory, 40*(2), 227-230.

Howe, K. R. (1993). Equality of educational opportunity and the criterion of equal educational worth. *Studies in Philosophy and Education, 11*(4), 329-337.

Howe, K. R. (1994). Standards, Assessment, and Equality of Educational Opportunity. *Educational Researcher, 23*(8), 27-33.

Huang, M.-H. (2009). Classroom homogeneity and the distribution of student math performance: A country-level fixed-effects analysis. *Social Science Research, 38*(4), 781-791.

Hume, D. (Ed.). (1739/2003). *A Treatise of Human Nature*. Mineola, N.Y.: Dover Publications.

Hurley, S. L. (1993). Justice Without Constitutive Luck. In A. P. Griffiths (Ed.), *Ethics* (pp. 179-212). Cambridge: Cambridge University Press.

Hurley, S. L. (2003). *Justice, Luck, and Knowledge*. Cambridge, Mass.: Harvard University Press.

Ireson, J., & Hallam, S. (1999). Raising Standards: Is Ability Grouping the Answer? *Oxford Review of Education, 25*(3), 343-358.

Jencks, C. (1988). Whom Must We Treat Equally for Educational Opportunity to be Equal? *Ethics, 98*(3), 518-533.

Jones, A. (1991). *"At School I've Got a Chance"*. Palmerston North: Dunmore Press.

Kahneman, D. (2011). *Thinking, Fast and Slow*. New York: Farrar, Straus and Giroux.

Kane, J. (1996). Justice, Impartiality, and Equality: Why the Concept of Justice Does Not Presume Equality. *Political Theory, 24*(3), 375-393.

Kant, I. (1785/1997). *Groundwork of the Metaphysics of Morals* (M. J. Gregor, Trans.). Cambridge, U.K; New York: Cambridge University Press.

Kant, I. (1797/1996). *The Metaphysics of Morals* (M. J. Gregor, Trans.). Cambridge; New York: Cambridge University Press.

Knight, C. (2005). In Defence of Luck Egalitarianism. *Res Publica, 11*(1), 55-73.

Knight, C. (2009). *Luck Egalitarianism: Equality, Responsibility, and Justice*. Edinburgh: Edinburgh University Press.

Knight, C., & Stemplowska, Z. (Eds.). (2011). *Responsibility and Distributive Justice*. Oxford ; New York: Oxford University Press.

Korsgaard, C. M. (1996). *Creating the Kingdom of Ends*. Cambridge; New York, USA: Cambridge University Press.

Kozol, J. (1991). *Savage Inequalities: Children in America's Schools* (1st . ed.). New York: Crown Publishers.

Kraus, M. W., Piff, P. K., Mendoza-Denton, R., Rheinschmidt, M. L., & Keltner, D. (2012). Social class, solipsism, and contextualism: How the rich are different from the poor. *Psychological Review, 119*(3), 546-572.

Kukutai, T. (2004). The Problem of Defining an Ethnic Group for Public Policy: Who is Maori and Why Does It Matter? *Social Policy Journal of New Zealand* (23), 86-108.

Kymlicka, W. (1995). *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Clarendon Press.

Kymlicka, W. (2002). *Contemporary Political Philosophy : An Introduction* (2nd ed.). New York: Oxford University Press.

Lamont, J. (1999). The Concept of Desert in Distributive Justice. In L. P. Pojman & O. McLeod (Eds.), *What Do We Deserve?: A Reader on Justice and Desert*. New York: Oxford University Press.

Leicester, M. A. L. (1996). Equal Opportunities In Education: a coherent, rational and moral concern. *Journal of Philosophy of Education, 30*(2), 277-287.

Levy, N. (2011). *Hard Luck: How Luck Undermines Free Will and Moral Responsibility*. Oxford ; New York Oxford University Press.

Levy, N., & McKenna, M. (2009). Recent Work on Free Will and Moral Responsibility. *Philosophy Compass, 4*(1), 96-133.

Lewens, T. (2010). What are 'Natural Inequalities'? *The Philosophical Quarterly, 60*(239), 264-285.

Lippert-Rasmussen, K. (2001). Egalitarianism, Option Luck, and Responsibility. *Ethics, 111*(3), 548-579.

Lippert-Rasmussen, K. (2004). Are Some Inequalities more Unequal than Others? Nature, Nurture and Equality. *Utilitas, 16*(02), 193-219.

Lippert-Rasmussen, K. (2005). Hurley on egalitarianism and the luck-neutralizing aim. *Politics, Philosophy & Economics, 4*(2), 249-265.

Lippert-Rasmussen, K. (2011). Luck Egalitarianism and Group Responsibility. In C. Knight & Z. Stemplowska (Eds.), *Responsibility and Distributive Justice*. Oxford; New York: Oxford University Press.

Locke, J., & Macpherson, C. B. (1690/1980). *Essay concerning the true original extent and end of civil government. Second treatise of government*. Indianapolis, Ind.: Hackett Pub. Co.

Marshall, J. D. (1996a). The autonomous chooser and 'Reforms' in education. *Studies in Philosophy and Education, 15*(1-2), 89-96.

Marshall, J. D. (1996b). *Michel Foucault: personal autonomy and education*. Dordrecht; Boston: Kluwer Academic Publishers.

McKerlie, D. (1989). Equality and Time. *Ethics, 99*(3), 475-491.

McMahan, J. (1996). Cognitive Disability, Misfortune, and Justice. *Philosophy & Public Affairs, 25*(1), 3-35.

Mele, A. (2006). *Free Will and Luck*. New York: Oxford University Press.

Mill, J. S. (1859/1962). On Liberty. In M. Warnock (Ed.), *Utilitarianism*. London: Collins.

Miller, D. (1997). Equality and Justice. *Ratio, 10*(3), 222-237.

Miller, D. (1999). *Principles of Social Justice*. Cambridge, Mass.: Harvard University Press.

Miller, D. (2012). *Justice for Earthlings: Essays in Political Philosophy*. Cambridge: Cambridge University Press.

Ministry of Education. (2009). The National Education Goals (NEGs), from http://www.minedu.govt.nz/theMinistry/EducationInNewZealand/EducationLegislation/TheNationalEducationGoalsNEGs.aspx

Ministry of Social Development. (2012). Household incomes in New Zealand: Trends in indicators of inequality and hardship 1982 to 2011, from http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/monitoring/household-incomes/index.html

Montt, G. (2011). Cross-national Differences in Educational Achievement Inequality. *Sociology of Education, 84*(1), 49-68.

Mueller, C. M., & Dweck, C. S. (1998). Praise for intelligence can undermine children's motivation and performance. *Journal of Personality and Social Psychology, 75*(1), 33-52.

Murphy, L., & Nagel, T. (2002). *The Myth of Ownership: Taxes and Justice*. Oxford; New York: Oxford University Press.

Nagel, T. (1979). Moral Luck. In *Mortal Questions* (Canto ed., pp. 24-38). Cambridge: Cambridge University Press.

Nagel, T. (1991a). *Equality and Partiality*. New York: Oxford University Press.

Nagel, T. (1991b). *Mortal Questions* (Canto ed.). Cambridge: Cambridge University Press.

Nagel, T. (1997). Justice and Nature. *Oxford Journal of Legal Studies, 17*(n2), 303-321.

Nash, R. (2004). Equality of Educational Opportunity: In defence of a traditional concept. *Educational Philosophy and Theory, 36*(4), 361-377.

Nathan, C. (2011). Need There be a Defence of Equality? Winner of the 2010 Postgraduate Essay Prize. *Res Publica, 17*(3), 211-225.

Nelkin, D. K. (2013). Moral Luck E. N. Zalta (Ed.) *The Stanford Encyclopedia of Philosophy (Summer 2013 Edition)* Retrieved from http://plato.stanford.edu/archives/sum2013/entries/moral-luck/

Nielsen, K. (1985). *Equality and liberty : a defense of radical egalitarianism*. Totowa, N.J.: Rowman and Allanheld.

Nozick, R. (1974). *Anarchy, State, and Utopia*. New York: Basic Books.

Nussbaum, M. C. (1992). Human Functioning and Social Justice: In Defense of Aristotelian Essentialism. *Political Theory, 20*(2), 202-246.

Nussbaum, M. C. (1993). Social Justice and Universalism: In Defense of an Aristotelian Account of Human Functioning. *Modern Philology, 90*(May Supplement), S46-S73.

Nussbaum, M. C. (2001). *The Fragility of Goodness: luck and ethics in Greek tragedy and philosophy* (Revised ed.). Cambridge, U.K. ; New York: Cambridge University Press.

Nuthall, G. (2005). The Cultural Myths and Realities of Classroom Teaching and Learning: A Personal Journey. *Teachers College Record, 107*(5), 895-934.

Nuthall, G. (2007). *The Hidden Lives of Learners*. Wellington, N.Z.: New Zealand Council for Educational Research.

Nye, B., Konstantopoulos, S., & Hedges, L. V. (2004). How Large Are Teacher Effects? *Educational Evaluation and Policy Analysis, 26*(3), 237-257.

Oakes, J. (2005). *Keeping Track: How Schools Structure Inequality* (2nd ed.). New Haven, Conn. ; London: Yale University Press.

Oakes, J., Quartz, K. H., Gong, J., Guiton, G., & Lipton, M. (1993). Creating Middle Schools: Technical, Normative, and Political Considerations. *The Elementary School Journal, 93*(5), 461-480.

Oakes, J., Wells, A., Jones, M., & Datnow, A. (1997). Detracking: The Social Construction of Ability, Cultural Politics, and Resistance to Reform. *Teachers College Record, 98*(3), 482-510.

Obama, B. (2008). *The Audacity of Hope : Thoughts on Reclaiming the American Dream* (1st Vintage Books ed.). New York: Vintage Books.

Olssen, M., O'Neill, A.-M., & Codd, J. A. (2004). *Education Policy: Globalization, citizenship and democracy*. London: Sage Publications.

Openshaw, R., & Clark, J. (Eds.). (2012). *Critic and Conscience: Essays on education in memory of John Codd and Roy Nash*. Wellington, N.Z.: NZCER.

Pagel, M. (2012). *Wired for Culture: The Natural History of Human Cooperation*. London: Allen Lane.

Parfit, D. (1984). *Reasons and Persons*. Oxford [Oxfordshire]: Clarendon Press.

Parfit, D. (1997). Equality and Priority. *Ratio, 10*(3), 202-221.

Parfit, D. (2002). Equality or Priority? In M. Clayton & A. Williams (Eds.), *The Ideal of Equality*. Basingstoke: Palgrave.

Patall, E. A., Cooper, H., & Wynn, S. R. (2010). The Effectiveness and Relative Importance of Choice in the Classroom. *Journal of Educational Psychology, 102*(4), 896-915.

Pendlebury, S. (1995). Luck, Responsibility, and Excellence in Teaching. In J. W. Garrison & A. G. Rud (Eds.), *The Educational Conversation: Closing the Gap*. Albany: State University of New York Press.

Persson, I. (2003). The Badness of Unjust Inequality. *Theoria, 69*(1-2), 109-124.

Persson, I. (2007). A Defence of Extreme Egalitarianism. In N. Holtug & K. Lippert-Rasmussen (Eds.), *Egalitarianism: New Essays on the Nature and Value of Equality*. Oxford: Clarendon.

Peters, M., & Marshall, J. D. (1996). *Individualism and Community: Education and social policy in the postmodern condition*. London: Falmer Press.

Peters, R. S. (1966). *Ethics and Education*. London: Allen & Unwin.

Phillips, A. (1999). *Which Equalities Matter?* Malden, Mass: Polity Press.

Piff, P. K., Stancato, D. M., Côté, S., Mendoza-Denton, R., & Keltner, D. (2012). Higher social class predicts increased unethical behavior. *Proceedings of the National Academy of Sciences, 109*(11), 4086-4091.

Piketty, T. (2014). *Capital in the Twenty-First Century*. Cambridge Massachusetts: The Belknap Press of Harvard University Press.

Pojman, L. P. (1992). Are Human Rights Based on Equal Human Worth? *Philosophy and Phenomenological Research, 52*(3), 605-622.

Pojman, L. P. (1997). On Equal Human Worth: A Critique of Contemporary Egalitarianism. In L. P. Pojman & R. Westmoreland (Eds.), *Equality: Selected Readings*. New York: Oxford University Press.

Pojman, L. P., & McLeod, O. (1998). *What Do We Deserve? : A Reader on Justice and Desert*. New York: Oxford University Press.

Quong, J. (2011). Left-Libertarianism: Rawlsian Not Luck Egalitarian. *The Journal of Political Philosophy, 19*(1), 64–89.

Railton, P. A. (2003). *Facts, values, and norms: essays toward a morality of consequence*. Cambridge, U.K. ; New York: Cambridge University Press.

Rakowski, E. (1991). *Equal Justice*. Oxford: Clarendon.

Rashbrooke, M. (2013). Inequality and New Zealand. In M. Rashbrooke (Ed.), *Inequality: A New Zealand Crisis*. Wellington: Bridget Williams Books

Rawls, J. (1971). *A Theory of Justice*. Oxford: Oxford University Press.

Rawls, J. (1980). Kantian Constructivism in Moral Theory. *The Journal of Philosophy, 77*(9), 515-572.

Rawls, J. (1982). Social unity and primary goods. In A. K. Sen & B. Williams (Eds.), *Utilitarianism and beyond*. Cambridge, Paris: Cambridge University Press ; Editions de la Maison des Sciences de l'Homme.

Rawls, J. (1985). Justice as Fairness: Political not Metaphysical. *Philosophy & Public Affairs, 14*(3), 223-251.

Rawls, J. (2005). *Political liberalism* (Expanded ed.). New York: Columbia University Press.

Rawls, J., & Kelly, E. (2001). *Justice as Fairness: a Restatement*. Cambridge, Mass.: Harvard University Press.

Renwick, W. L., & Beeby, C. E. (1986). *Moving Targets: Six Essays on Educational Policy*. Wellington, N.Z.: New Zealand Council for Educational Research.

Roberts, P. (1999). The Future of the University: Reflections from New Zealand. *International Review of Education / Internationale Zeitschrift für Erziehungswissenschaft / Revue Internationale de l'Education, 45*(1), 65-85.

Roberts, P. (2004). Neo-liberalism, Knowledge and Inclusiveness. *Policy Futures in Education, 2*(2).

Roberts, P. (2007). Neoliberalism, performativity and research. *International Review of Education, 53*, 349-365.

Roberts, P. (2009). A New Patriotism? Neoliberalism, citizenship and tertiary education in New Zealand. *Educational Philosophy and Theory, 41*(4), 410-423.

Roberts, P., & Freeman-Moir, J. (2013). *Better Worlds: Education, Art, and Utopia*. Lanham: Lexington Books.

Roberts, P., & Peters, M. (2008). *Neoliberalism, Higher Education and Research*. Rotterdam: Sense Publishers.

Roemer, J. E. (1994). *Equality of Opportunity*. Cambridge, Massachusetts: Harvard University Press.

Roemer, J. E. (1996). *Theories of Distributive Justice*. Cambridge, Mass: Harvard University Press.

Rothstein, R. (2004). *Class and Schools: Using social, economic, and educational reform to close the black-white achievement gap*. New York, Washington, D.C.: Teachers College Press, Economic Policy Institute.

Santa Cruz, I., Siles, G., & Vrecer, N. (2011). Invest for the Long Term or Attend to Immediate Needs? Schools and the Employment of Less Educated Youths and Adults. *European Journal of Education, 46*(2), 197-208.

Satz, D. (2007). Equality, Adequacy, and Education for Citizenship. *Ethics, 117*(4), 623-648.

Scanlon, T. M. (1982). Contractualism and utilitarianism. In A. K. Sen & B. Williams (Eds.), *Utilitarianism and beyond*. Cambridge, Paris: Cambridge University Press; Editions de la Maison des Sciences de l'Homme.

Scanlon, T. M. (1988). The Significance of Choice. In S. M. McMurrin (Ed.), *The Tanner Lectures on Human Values* (Vol. VIII, pp. 149-216). Salt Lake City: University of Utah Press.

Scanlon, T. M. (1998). *What we owe to each other*. Cambridge, Mass.: Belknap Press of Harvard University Press.

Scanlon, T. M. (2003). *The Difficulty of Tolerance : Essays in Political Philosophy*. Cambridge: Cambridge University Press.

Scheffler, S. (1992). Responsibility, Reactive Attitudes, and Liberalism in Philosophy and Politics. *Philosophy & Public Affairs, 21*(4), 299-323.

Scheffler, S. (2003). What is Egalitarianism? *Philosophy & Public Affairs, 31*(1), 5-39.

Schofield, J. W. (2010). International Evidence on Ability Grouping With Curriculum Differentiation and the Achievement Gap in Secondary Schools. *Teachers College Record 112*(5), 1492-1528.

Schouten, G. (2012a). Educational Justice: Closing Gaps or Paying Debts? *Journal of Applied Philosophy, 29*(3), 231-242.

Schouten, G. (2012b). Fair Educational Opportunity and the Distribution of Natural Ability: Toward a Prioritarian Principle of Educational Justice. *Journal of Philosophy of Education, 46*(3), 472-491.

Segall, S. (2007). In Solidarity with the Imprudent: A Defense of Luck Egalitarianism. [Article]. *Social Theory & Practice, 33*(2), 177-198.

Segall, S. (2010). *Health, Luck, and Justice*. Princeton: Princeton University Press.

Sen, A. (1970). *Collective Choice and Social Welfare*. San Francisco: Holden-Day.

Sen, A. (1979). Equality of What? In S. Darwall (Ed.), *Equal Freedom: Selected Tanner Lectures on Human Values*. Ann Arbor: University of Michigan Press.

Sen, A. (1992). *Inequality Reexamined*. New York: Oxford University Press.

Sen, A. (2010). *The Idea of Justice*. London: Penguin.

Shaw, B. (1984). Mixed Ability Grouping: some philosophical considerations. *Journal of Philosophy of Education, 18*(1), 133-138.

Sher, G. (2010). Real-World Luck Egalitarianism. *Social Philosophy and Policy, 27*(01), 218-232.

Shiffrin, S. V. (2010). Incentives, Motives, and Talents. *Philosophy & Public Affairs, 38*(2), 111-142.

Sidgwick, H. (1907). *The Methods of Ethics* (7th . ed.). London: Macmillan.

Singer, P. (1972). Famine, Affluence, and Morality. *Philosophy & Public Affairs, 1*(3), 229-243.

Singer, P. (1980). *Marx*. Oxford: Oxford University Press.

Singer, P. (1993). *Practical Ethics* (2nd . ed.). Cambridge ; New York: Cambridge University Press.

Singer, P. (2000). *A Darwinian Left : Politics, Evolution and Cooperation*. New Haven: Yale University Press.

Slavin, R. E. (1990). Achievement Effects of Ability Grouping in Secondary Schools: A Best-Evidence Synthesis. *Review of Educational Research, 60*(3), 471-499.

Smart, J. J. C., & Williams, B. (1973). *Utilitarianism: For and Against*. Cambridge [Eng.]: Cambridge University Press.

Snook, I., & O'Neill, J. (2010). Social Class and Educational Achievement: Beyond Ideology. *New Zealand Journal of Educational Studies, 45*(2), 3-18.

Spade, J. Z., Columba, L., & Vanfossen, B. E. (1997). Tracking in Mathematics and Science: Courses and Course-Selection Procedures. *Sociology of Education, 70*(2), 108-127.

Steiner, H. (2002). How Equality Matters. *Social Philosophy and Policy, 19*(01), 342-356.

Stemplowska, Z. (2009). Making Justice Sensitive to Responsibility. *Political Studies, 57*(2), 237-259.

Stemplowska, Z. (2011). Responsibility and Respect: Reconciling Two Egalitarian Visions. In C. Knight & Z. Stemplowska (Eds.), *Responsibility and Distributive Justice*. Oxford ; New York: Oxford University Press.

Strawson, G. (1994). The Impossibility of Moral Responsibility. *Philosophical Studies, 75*(1), 5-24.

Strike, K. A. (1983). Fairness and Ability Grouping. *Educational Theory, 33*(3-4), 125-134.

Strike, K. A. (1991). The Moral Role of Schooling in a Liberal Democratic Society. *Review of Research in Education, 17*, 413-483.

Swift, A. (1999). Public Opinion and Political Philosophy: The Relation between Social-Scientific and Philosophical Analyses of Distributive Justice. *Ethical Theory and Moral Practice, 2*(4), 337-363.

Tan, K.-C. (2008). A Defense of Luck Egalitarianism. *The Journal of Philosophy, CV*(11), 25.

Temkin, L. S. (1993). *Inequality*. New York: Oxford University Press.

Temkin, L. S. (2002). Equality, Priority, and the Levelling Down Objection. In M. Clayton & A. Williams (Eds.), *The Ideal of Equality* (pp. 126-161). Basingstoke: Palgrave Macmillan.

Temkin, L. S. (2003a). Egalitarianism Defended. *Ethics, 113*(4), 764-782.

Temkin, L. S. (2003b). Exploring the Roots of Egalitarian Concerns. *Theoria, 69*(1-2), 125-151.

Temkin, L. S. (2003c). Personal versus Impersonal Principles: Reconsidering the Slogan. *Theoria, 69*(1-2), 21-31.

Thrupp, M. (2007). Education's 'Inconvenient Truth': Part One - Persistent Middle Class Advantage. *New Zealand Journal of Teachers' Work, 4*(2), 77-88.

Vallentyne, P. (2007). Of Mice and Men: Equality and Animals. In N. Holtug & K. Lippert-Rasmussen (Eds.), *Egalitarianism: New Essays on the Nature and Value of Equality* (pp. 211-237). Oxford: Oxford University Press.

Van Parijs, P. (1995). *Real Freedom For All : What (If Anything) Can Justify Capitalism?* Oxford; New York: Clarendon Press; Oxford University Press.

Voigt, K. (2007). The Harshness Objection: Is Luck Egalitarianism Too Harsh on the Victims of Option Luck? *Ethical Theory and Moral Practice, 10*(4), 389-407.

Walzer, M. (1983). *Spheres of Justice : A Defence of Pluralism and Equality*. Oxford: Robertson.

White, J. (1994). The Dishwasher's Child: education and the end of egalitarianism. *Journal of Philosophy of Education, 28*(2), 173-182.

White, S. G. (2007). *Equality*. Cambridge, UK ; Malden, MA: Polity Press.

Wilkinson, R. G., & Pickett, K. (2009). *The Spirit Level: Why Equality is Better for Everyone*. London: Penguin Books.

Williams, B. (1973). The Idea of Equality. In B. Williams (Ed.), *Problems of the Self: Philosophical Papers 1956-1972*. Cambridge: Cambridge University Press.

Williams, B. (1985). *Ethics and the Limits of Philosophy*. London: Fontana Press.

Williams, B., & Moore, A. W. (2006). *Philosophy as a Humanistic Discipline*. Princeton and Oxford: Princeton University Press.

Williams, B., & Nagel, T. (1976). Moral Luck. *Proceedings of the Aristotelian Society, Supplementary Volumes, 50*, 115-151.

Wilson, J. (1991a). Does Equality (of Opportunity) Make Sense in Education? *Journal of Philosophy of Education, 25*(1), 27-32.

Wilson, J. (1991b). Education and Equality: Some Conceptual Questions *Oxford Review of Education, 17*(2), 223-230.

Winch, C. (1996). Equality, Quality and Diversity. *Journal of Philosophy of Education, 30*(1), 113-128.

Young, I. M. (1990). *Justice and the Politics of Difference*. Princeton, N.J.: Princeton University Press.

Young, I. M. (2011). *Responsibility for Justice*. New York: Oxford University Press.