

RETHINKING COMPENSATION FOR BAD LUCK

– Lamont Rodgers –

Abstract: Luck egalitarianism (LE, henceforth) is a fairly prominent theory of justice. While there are many versions of LE, they all agree that, at least to some extent, it is unjust for individuals to lose the opportunity for welfare at least when that loss occurs through no fault of the individual's own. Many writers take LE to have direct political implications; they write as if the truth of LE entails that resources should be taken from some – perhaps those who enjoy lots of unearned welfare – and delivered to those who suffer through no fault of their own. I argue that luck egalitarians should refocus their thinking on what I call a “Systemic Model” of compensation. This model holds that (a) what matters most to offsetting bad brute luck is that individuals have opportunities to make up for losses of welfare and (b) political systems should be designed to prevent some individuals from capturing resources in a manner that frustrates the ability of others to offset their own losses due to unearned bad luck and (c) political systems should aim to maximize the opportunities individuals have to make up for their own bad luck.

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¹ It is, of course, logically possible that the two models speak in favor of the same political-economic system. It is quite possible that they do not, though.

The Systemic Model that I introduce holds that (a) what matters most to offsetting bad brute luck is that individuals have opportunities to make up for losses of welfare and (b) political systems should be designed to prevent some individuals from capturing resources in a manner that frustrates the ability of others to offset their own losses due to unearned bad luck and (c) political systems should aim to maximize the opportunities individuals have to make up for their own bad luck.² The Systemic Model is motivated by three concerns close to the heart of LE. First, it focuses on facilitating the rectification of unearned losses of welfare. Second, it does not obviously risk reducing aggregate well-being. Finally, it does not welcome the charge that the demands of LE will cause enmity. What is more, the Systemic Model at least softens objections that non-egalitarian thinkers raise.

The argument is *not* that proponents of LE must do away with the Torts Model entirely. The argument is that a refocus on the Systemic Model resolves, or at least softens, the strength of objections both friends and foes of LE press. The interest of this paper is in refocusing LE so that its political focus is on finding a system that allows, to the greatest extent possible, individuals to recoup their faultless losses without necessarily taking anything from others.³ Thus, I argue that proponents of LE should prioritize the Systemic Model.

The discussion here aims to target both LE as a comprehensive doctrine and as a hybrid theory. If one treats LE as a comprehensive doctrine, one might believe only that “[T]he aim of justice as equality is to eliminate so far as is possible the impact on people’s lives of bad luck that falls on them through no fault or choice of their own.”⁴ Such an egalitarian would deny that there are other fundamental principles of justice.

A hybrid theory upholds a commitment to eliminating the role undeserved bad luck plays in an individual’s life with some other principles of justice. I thus argue that egalitarians like G.A. Cohen, who both call for robust equality of outcome and hold that there are moral principles that matter just as much as equality, can at least refocus their thinking about achieving equality on the Systemic Model.

I try to remain neutral between social interactionist and cosmopolitan varieties of LE. Cosmopolitan LE is global in that it applies to all individuals, even if they never interact with one another. I can have an obligation to offset the bad luck an individual in some remote village endures, even if I do not interact with that individual. This is distinct from a social-interactionist theory that holds that, whatever obligations of justice exist, they exist only when individuals interact in justice-initiating ways. Trade is the most obvious means of social interaction, but it is not the only one. Individuals may “interact” simply by living in the same society, for example.⁵

In the first section of this paper, I present what I hope is a fair account of the general claims toward which luck egalitarians tend to gravitate. My interest there is not in developing a full picture of the sundry variants of LE though. Instead, I hope to provide a fair account of the claims common to the position. With this account in hand, in section 2, I present concerns friends and foes of LE have raised. The task is not to show

² Couto (2015) presents an argument in the same spirit as the one I offer here.

³ It would also be great if such a system allowed individuals to recoup their own losses related to option luck. But that is another issue.

⁴ Arneson (2000): 340.

⁵ Arneson (2016; 2018; 2020).

that LE has no means of handling these challenges. The goal is to pave the way toward showing that the challenges I raise are motivated to a large degree by a commitment to a Torts Model of compensation. Thus, in the third section of this paper, I introduce a Torts Model and distinguish it from a Systemic Model of compensation. There, I argue that some of luck egalitarianism's problems vis-à-vis the objections from section 2 are motivated by taking LE to prioritize a commitment to the Torts Model. However, I argue that prioritizing the Systemic Model is both compatible with LE and more attractive than a primary commitment to the Torts Model. I conclude the paper in section 4 by addressing the reasonable objection that the Systemic Model of compensation is not sufficiently outcome sensitive to be attractive to egalitarians.

1. Luck Egalitarianism

While there are many versions of LE, those who endorse the position commonly hold that there is some condition, whether it is access to advantage,⁶ opportunity for welfare,⁷ standing within the community,⁸ or the like, and that, with respect to that condition, it is morally bad if individuals do worse than others "through no fault or choice of their own."⁹ LE is egalitarian in its commitment to the view that "inequalities are unjust if they reflect relative involuntary disadvantage among individuals"¹⁰ with regard to some condition or set of conditions that the luck egalitarian in question takes to be primary.

Inequalities with respect to the desired condition that result from pure preference differences, such as selections of leisure activities, hours worked, and so on, are not necessarily the concern of LE.¹¹ The greater well-being of one who simply chooses to work more hours and thus make more money, perhaps because this individual simply enjoys working more than others, is not itself a problem, as many luck egalitarians see it.¹²

Luck functions in LE to alter the strength of the moral reasons for ameliorating the condition of an individual. If an individual is badly off with respect to the goods through little or no fault of her own, then there are good reasons to improve her condition. If the individual is badly off as a result of her own free choices, then there are only weak reasons to improve her condition. This distinction is generally known as the distinction between brute luck and option luck.

Ronald Dworkin sees the distinction as follows. "Option luck is a matter of how deliberate and calculated gambles turn out – whether someone gains or loses through accepting an isolated risk he or she should have anticipated and might have declined."¹³ Brute luck is "a matter of how risks fall out that are not in that sense deliberate gambles."¹⁴ The former is less of a concern for LE; the latter is the sort of luck that is a substantial concern for LE.

⁶ Cohen (1989).

⁷ Arneson (1997).

⁸ Anderson (1999).

⁹ Arneson (2000): 340.

¹⁰ Lang (2015): 700.

¹¹ Roemer (1988).

¹² Dworkin (2000): 73.

¹³ *Ibidem*.

¹⁴ *Ibidem*.

2. Concerns With LE

With each of the concerns I adduce in this section, there are available responses on behalf of LE. I do not consider those responses at any length because my aim here is neither to defend nor refute LE.

One concern with LE is that it too intimately ties peoples' affairs to the lives of others. The issue here is not that egalitarianism might be too demanding. Though this charge is often pressed against consequentialist doctrines, I am not pressing it here. Instead, it is about the fact that egalitarianism seems to require that the bad luck of some individuals become the bad luck of all individuals. Let me explain.¹⁵

Imagine that a poor person has a child. This individual, say, cannot take care of the child. The child's bad brute luck of being born into such a situation is unearned. It needs to be remedied. The parent, *ex hypothesi*, cannot do so. Thus, it seems that LE requires other members of the population to contribute to offsetting the child's bad luck. However, this – if enforced – might be bad brute luck for the other members of the population, who could have otherwise used their resources for more enjoyable ends.

Perhaps tying peoples' affairs too intimately together is bad in itself. Perhaps it is at odds with other liberal values, like self-determination and autonomy. Perhaps it is simply unfair in some manner. Indeed, it is Rawls who tells us that, in "justice as fairness men agree to share in one another's fate...to avail themselves of the accidents of nature and social circumstance only when doing so is for the common benefit."¹⁶

Part of Rawls's concern is that mutually disinterested individuals behind the veil of ignorance would not select a principle requiring robust equality of outcome. They would not choose such a principle precisely because, he claims, it is irrational to do worse off than one must. Thus, it is the Difference Principle that constitutes for him the second principle of justice instead of a principle requiring substantive equality of opportunity for welfare.

There is, of course, an argument to be made that taking care of children is for the common benefit. Future generations are needed to keep the economy humming, to continue social welfare programs, to provide for common defense, and so on. It is not a conceptual truth that all luck egalitarian programs are to the common benefit though. This is easily illustrated by the following thought experiment adapted from Cohen 1995.

Able and Infirm do not enjoy each other's company and they engage in no trade. Infirm is infirm through no fault of his own. Able can harvest enough food to keep himself alive comfortably. When he delivers goods to Infirm as LE demands, Able's life circumstances are far worse than they would be if Able were at liberty not to do so.¹⁷

¹⁵ One finds the present concern in the work of Dworkin (2000); Casal, Williams (2004); and Arneson (2014).

¹⁶ Rawls (1971): 201.

¹⁷ I am not raising the levelling down objection to egalitarianism here. See Mason (2001) for a discussion.

The concern here is that because people's affairs are so tightly bound, the implementation of the demands of luck egalitarian justice may cause enmity. Able clearly ends up doing worse than he otherwise might. His ability to determine what will be done with the fruits of his labor is diminished. This might bother him.

This issue is particularly acute if one takes a cosmopolitan view of the demands of egalitarianism. It is bad luck to be born in a poor nation; it is good luck to be born into a wealthy one.¹⁸ Individuals in wealthy nations would need to incur severe losses, or at least unwanted lifestyle changes, to achieve equality on a global level. The same can, in principle, be true on the national level. Those not committed to equality as LE demands will likely resent losing goods and services for the sake of others who endure the bad luck of being born elsewhere. This is especially true if one has left a particular social arrangement in order to have a better life, but the demands of LE force one to send at least some of one's newly earned wealth to others.

Another issue that can arise here is that the demands of LE can harm even those who seek benefits. Johnathan Wolff notes that individuals seeking compensation for bad luck might need to make confessions about their situations that they would prefer to keep secret.¹⁹ One such revelation might be that the individual has "no talent."²⁰ Perhaps a person born so unlucky as to lack the ability to generate well-being for himself, say through trade, will need to confess this to others. Alternatively, it is possible that people just do not like to know that they have made someone do worse than would have been the case in their absence. Any of these possibilities might pile shame on top of the unearned bad luck of being born with no talent for which there is a market.

A different challenge, or pair of related challenges, comes from Robert Nozick's famous Wilt Chamberlain example. It is well known, but I will reproduce it here. Imagine that an egalitarian outcome is achieved.

Now suppose that Wilt Chamberlain is greatly in demand by basketball teams, being a great gate attraction...He signs the following sort of contract with a team: in each home game, twenty-five cents from the price of each ticket of admission goes to him...The season starts, and people cheerfully attend his team's games; they buy their tickets, each time dropping a separate twenty-five cents of their admission price into a special box with Chamberlain's name on it ... Let us suppose that in one season 1,000,000 persons attend his home games, and Wilt Chamberlain winds up with \$250,000, a much larger sum than the average income and larger than anyone else has.²¹

Eric Mack explains the challenges Nozick wishes to pose for proponents of egalitarianism.²² Mack holds that egalitarianism offers a false promise about justice. When we hold what justice demands, we believe that we will be entitled to employ those hold-

¹⁸ Arneson (2004).

¹⁹ Wolff (1998).

²⁰ Lippert-Rasmussen (2005).

²¹ Nozick (1974): 160–161.

²² Mack (2002). This is to go for any patterned or end-state theory. See Nozick (1974): 153–159.

ings as we see fit. People can come to hold – and own – objects through means that are not merely unblameworthy, but praiseworthy. Someone might work an extraordinary number of hours at a medical clinic while charging a pittance for each hour of work. That individual could come to be far wealthier than someone who does not do so. However, if the bad brute luck of others requires amelioration, it is not true that we – or our imaginary doctor – may use our holdings for our own ends. We may constantly need to give our putatively just holdings to others in order to offset their bad luck. In this sense, it is not clear how we ever enjoy what justice promises. Thus, it is not clear in which sense the original egalitarian distribution is just.

A similar problem is related to planning. We plan to do things with the holdings to which we are entitled. We pursue plans that give our lives not merely amusement but meaning. We buy the houses we grew up in because we wish to preserve a means of living. We buy religious objects because we wish to be certain kinds of people. We give money to causes because we wish to advance those causes. The more we are called upon to eliminate the bad luck of others, the more challenging this sort of planning becomes. This is particularly the case if LE requires not merely a predictable plan of taxation, but wealth taxes, the seizing of assets during catastrophes, and so on.

The problem these two challenges seek to draw out is that LE promises entitlements but cannot deliver them. Arneson writes that the satisfaction of LE principles would yield a wonderful world.²³ This hope is thrown into question when one considers the possibility that things like natural disasters and relatively benign human activities could require constant and significant shuffling of holdings.

Again, I am not arguing that there are no means of responding to the concerns I have raised in this section. What I wish to show in the following section is that there are two models available for thinking about compensating individuals for bad luck. Luck egalitarians themselves often invite us to think of wealth and well-being as a zero-sum game in which one individual's bad luck necessarily requires transferring goods from one individual to another. This way of approaching problems opens the door to the charges from this section. I thus show that there is available an alternative model that does not so easily invite these sorts of criticisms.

3. Two Models of Compensation

Imagine that Gerald steals Bob's television. In such a scenario, there is a clear individual who is owed something and an individual who must give up something in order to remedy the situation. There is a party who is owed something and a specific individual or group of individuals who owe that thing to the party. This is a pretty standard example of a Torts Model. On such a model, when possible, the party who is owed something must be "made whole" or have his utility returned to where he would have expected it to be, had his rights not been violated.²⁴

²³ Arneson (2012).

²⁴ Black (1968): 1660.

I mentioned in section 1 that luck egalitarians tend to deny that specific individuals must make up for the unearned losses of opportunities for well-being that others suffer. However, the *writings* of luck egalitarians tend to suggest viewing the demand for equality in accordance with the Torts Model. G.A. Cohen imagines Able and Infirm, as mentioned above, as an example of a case in which Able must work in order to aid Infirm, who cannot care for himself.²⁵ Able might be compensated, if he finds his labor “irksome.”²⁶ However, Able seems to be required to labor and deliver some of his goods to Infirm.

In less fanciful examples, Bruce Ackerman and Anne Alstott (1999) present a somewhat egalitarian-minded argument to justify taxing the top 41% of American earners to establish a fund in order to allow for more equal opportunity for well-being. Here, the top 41% are identified as owing the remaining 59% in order to achieve the goals of one version of egalitarianism. They are owed this money or the like, not because the top 41% have committed fraud, engaged in rent-seeking, or what have you. Instead, if we consider the 59% being owed something, it is in order to achieve egalitarian goals. As I mentioned in section 2, this sort of general plan enjoys broad acceptance amongst luck egalitarians. Indeed, I daresay that many luck egalitarians would say that this does not go far enough. After all, some people may need far more resources than others in order to have a real chance at equality of opportunity for well-being. Disabled individuals might be an example of such a case.

Similarly, at least some egalitarians endorse social systems that involve compensating individuals for their natural temperaments and abilities.²⁷ Since individuals generally do not decide to have agreeable or cheerful temperaments, those who suffer because of their psychological constructions should be compensated. Rakowski explicitly argues for taking from those who have agreeable temperaments and giving to those who do not.

Finally, Arneson borrows an example from Nozick (1974) and Gauthier (1986) to illustrate his own cosmopolitan theory of justice from an interactionist theory of justice.

They imagine people as living independently and self-sufficiently on separate islands, one individual on each island. Each person is the first appropriator of whatever land and natural resources she finds on the island on which she happens to find herself living. The separated islanders engage in no trade and nobody’s activities have any impact on anyone living on any other island. The islanders we suppose differ in strength, intelligence, and other personal traits that affect their ability to prosper in their circumstances. The islands are variously hospitable to human habitation. Some have rocky soil and scant rainfall; others have fertile soil and plentiful rainfall.²⁸

Arneson writes that “what generates distributive justice obligations is the sheer fact that some people are leading avoidably bad lives, or anyway lives whose quality is not high as measured by an appropriate standard, and other people are better off and

²⁵ Cohen (1995): 95.

²⁶ Ibidem: 94.

²⁷ Rakowski (1992): 83.

²⁸ Arneson (2011): 38.

able to help.”²⁹ He thus disagrees with Nozick and Gauthier that the individuals on different islands are morally free to pursue their own values without aiding those on the arid, rocky islands. Those on the fertile, wet island owe those on the other islands whose lives are, through no fault of their own, not going well.

That the Tort Model suggests taking from some and giving to others does not show that it requires seizing private property. That is not the claim; indeed, such a claim would be question-begging. At least some egalitarians deny that there is such a thing as pre-tax property.³⁰ There might be pre-tax holdings, but “holdings” is a neutral term. My point is that even this requires taking something from some individuals. If it is possible not to take from some while still compensating others, I will argue, that is superior to taking from some to compensate others. I wish to direct the focus of LE away from what I call the Torts Model – one which requires taking.

To see an alternative to the Torts Model, consider the following modification of a case from Werner 2015.

Adam, Barnabas and Cainan all have an odd kidney disease such that they will die if they do not consume an odd vegetation called *curea* which grows on the isolated island they inhabit. *Curea* cures kidney disease. One needs to consume four bushels each year to do the trick. There are 18 bushels of *curea* naturally growing on the island. It is a two days’ journey from the inhabitable part of the island to collect the *curea*. Adam and Barnabas each make the trek and harvest 6 bushels, leaving 6 for Cainan. Cainan faultlessly twists his ankle during his trek to the *curea*. It will now take him 3 days to harvest *curea*.

Here, Cainan suffers bad brute luck. *Ex hypothesi*, he was not responsible for twisting his ankle. On the Torts Model, it seems that Cainan’s bad luck needs to be offset by others. Adam and Barnabas should each give two bushels to Cainan. However, I think we should wonder whether luck egalitarians should really insist that this is what must happen. Is it unjust for Adam and Barnabas to insist that Cainan just go and collect the *curea* himself? It is true that he will be one day behind them in the pursuit of well-being. However, he will not die. What is more, the method of harvesting the *curea* leaves enough that Cainan may make up for his bad luck with some cost to himself but no cost to others.

What is happening here is that the system in place allows those who innocently lose well-being the opportunity to make up for it themselves. There is a cost involved to the individual who loses some welfare, of course. But there is also a cost involved for those who created the opportunities in the first place – especially if we take opportunity cost seriously. I thus defend what I call a Systemic Model of compensation. As I mentioned in the introduction, such a model is committed to at least the three following propositions: (a) what matters most to offsetting bad brute luck is that individuals have opportunities to make up for losses of welfare; it is not of fundamental importance that these opportunities come from taking from others; (b) political systems should be designed to prevent some individuals from capturing resources in a manner that frustrates the ability of others to

²⁹ Ibidem: 39.

³⁰ Nagel, Murphy (2002).

offset their own losses due to unearned bad luck and (c) political systems should aim to maximize the opportunities individuals have to make up for their own bad luck.

On a Systemic Model, it is at least conceivable that individuals will not need to share in the bad luck of others. The most successful implementation of a Systemic Model of compensation will allow individuals to compensate for their own losses due to bad luck without requiring the seizure of anything from those who do not suffer bad luck. This would also preserve the holdings of those who do not suffer bad luck. Less ideal, but perhaps more realistic, implementations might either (a) allow those who suffer no (or little) bad brute luck to compensate others voluntarily or (b) require very little implementation of the Torts Model.³¹ The Torts Model might be required either for those who are unable to recoup their unearned losses or are unable to do so without enduring costs that clearly and significantly reduce their opportunity for welfare.³² There might thus be a range of Systemic Models that satisfies the opportunity for equal distribution of whatever good or state of affairs particular egalitarians prize while avoiding some of the standard objections to LE.

A Systemic Model may function in many ways. In the *curea* scenario envisioned above, people make sure to leave opportunities available for others. However, there are opportunity-generating versions too. Imagine that the storm destroys all the *curea* naturally available on the island. However, add to it that Adam and Barnabas have been trading secrets for growing *curea*. After a lot of hard work, it turns out that they have each managed to grow an extra two bushels.

On the Torts Model, Adam and Barnabas should give Cainan the bushels. On the Systemic Model, Adam and Barnabas could separately ask Cainan to work with each one for a day in exchange for the *curea*. Adam and Barnabas are doing better than Cainan. However, Cainan's situation is no worse than it would have been if he had not had the bad luck. His bad luck is compensated for, at least in this situation, by the system of production on the island.

It seems that luck egalitarians should favor a system that produces as many opportunities as possible for offsetting bad luck. I say this for two sets of reasons. Here is the first set. If the focus is on mere transfers of resources, a system might lack sufficient resources to rectify a significant portion of unearned losses of well-being. It seems that it should be embarrassing for proponents of LE if it were bad brute luck to live in a system that focuses on the Torts Model and, *thereby*, becomes unable to compensate people for their losses due to other bad luck. This could happen in two ways. First, it might be that the demands of equality severely deplete the store of goods available to give to those who suffer bad luck. Second, too stringent a focus on the Torts Model could slow the growth of technology such that some brute luck cannot be rectified. It might be that medical innovation, for example, might not occur – or might not occur as quickly as it could – if resources are diverted into undoing bad luck.

³¹ Shapiro (2002) argues that egalitarians should agree that “voluntary methods of aiding the involuntarily disadvantaged are at least as good as, and possibly superior to, state redistribution.”

³² I thank an anonymous referee for pushing me to think about this issue. I return to the matter in section 4. There, I confess that I am uncertain how steep the costs must be to those who make up for their own bad brute luck.

The second set is that not all people who obtain more goods than others will do so in morally nefarious manners. Wilt Chamberlain does nothing untoward in Nozick's famous example. In more familiar cases, my grandfather ran a service station for 35 years. He did well for himself without swindling or otherwise wronging anyone.

A reasonable objection to the Systemic Model works as follows. While Cainan might be able to offset his own bad luck in simple cases like the *curea* one, there are more complicated cases in the actual world. If Cainan is born into poverty and the subject of an economic system that allows only exploitative labor, it will require a great deal more effort to make up for his bad luck than the day's walk to collect a magical plant. This is not captured in the *curea* case above.

This objection is well-taken. It is because of this concern that I added component (b) to the Systemic Model. The Systemic Model should thus oppose opportunity-reducing economic policies and practices. For example, licensing to enter fields, patenting, blighting laws, grants of monopoly privileges to corporations, capitalization requirements, and taxing transactions between firms but not within them, property taxes, all reduce the opportunities for individuals to make up for their unearned bad luck.³³ They all add to the burden of pursuing well-being and, when necessary, offsetting losses. But, as I mentioned above, if one endures so much bad luck that, despite the opportunities to recoup lost chances for welfare, one is significantly worse off, then the Torts Model can supplement the Systemic Model.

Despite this possibility, luck egalitarians should focus on generating lots of opportunities to offset bad luck. In fact, Arneson stipulates that, in addition to ameliorating the condition of those who do badly through no fault of their own, a "further condition is that help can be carried out in such a way that it is reasonably cost-effective."³⁴ While it is easy to endorse the Torts Model as a solution to concerns more realistic than the *curea* case, it is arguably far cheaper – especially to the poor and middle-class – to eliminate policies that benefit the wealthy and/or established firms and harm the poor. This is part of the motivation for the Systemic Model.

Now, there are many ways that the Systemic Model might work. I have mentioned specific policies that I find harmful, but those remarks are merely suggestive. The impetus for this paper is to urge luck egalitarians to seek out policy ideas inspired by the Systemic Model that best achieve their goals. It is not as if this has not been suggested. The egalitarian-minded Joseph Carens (1986) envisions a competitive market in which individuals attempt to maximize profits, be efficient, innovate, and so on. However, they also agree to a tax system that ultimately offsets nearly all of the unequal results that come from such a system. Such a system has the goal of deriving all the benefits of markets while yielding egalitarian results. Insofar as it is relevant to this paper, such a system focuses on generating plenty of resources to redress unearned losses of welfare. The focus of that system is not, at least as the market functions, to redress losses of welfare.³⁵

³³ See Long (2014) for a discussion of some of these issues. Mankiw (2009) cites survey data indicating that there is substantial agreement amongst economists that some of the policies mentioned here are detrimental to the poor and general welfare.

³⁴ Arneson (2011): 38.

³⁵ It is admittedly unclear whether such a system could be successful.

My own illustration of the Systemic Model has focused on markets. However, I am not (here, at least) suggesting that luck egalitarians should be proponents of markets. There might be sundry means of building a Systemic Model of compensation. Some economists have suggested that, at least under certain conditions, a fiat money system can allow a government to pay for goods and services without having to issue bonds or the like.³⁶ Indeed, the state of Georgia is experimenting with policies like this. It is currently sending out cash payments to a select number of impoverished women. While this is actually an example of the Torts Model – since the money is taken from taxes – that does not *need* to be the case. The idea is that a government can increase monetary supply, as all current governments do; but, contrary to current practice, cash payments could go directly to specific individuals – presumably the poor, as they seem most likely to have suffered from brute bad luck. This is the converse of what currently happens. Now, money goes to banks which give loans, with interest, to people likely to be able to repay them. This often excludes individuals who have suffered brute bad luck. Perhaps a fiat money system can issue cash payments to those who suffer certain kinds of bad luck while increasing neither taxation nor problematic inflation.³⁷ If this is possible, a system could compensate individuals for bad luck without seizing goods from others as the Torts Model requires.

The less one must rely on the Torts Model, the more one can soften the criticisms adduced in section 2 of this paper. This is precisely because all of those concerns, save one, arise from the need to take holdings from individuals. The less one must do so, the less pressing are those charges.

The one exception is that individuals might need to make the ostensibly embarrassing confession that they have no goods or services to offer others in exchange for goods or services. The individuals who might have no talent and thus need to make embarrassing confessions could suffer losses of well-being on at least two levels. First, they might suffer because of having to make the confession. Perhaps filing some sort of claim to receive resources to offset the bad luck of lacking talent is humiliating in itself. The confession costs one well-being. A second reason this person might lose well-being might lie simply in the fact that he has no talent that is useful to others. G.A. Cohen sometimes suggests that humans have an interest in serving others.³⁸ Perhaps this talentless individual is unable to satisfy this human interest. Perhaps, in Cohen's famous camping trip analogy, a person with no talent cannot even participate in the trip without others carrying all his provisions, setting up his tent, cooking his food, and so on. His companions might not mind, but the person who cannot help might not enjoy the same amount of well-being as the others.

While not all egalitarians accept the picture of camping trip morality, I use it here only to help illustrate the plight of the talentless individual. On the Torts Model, we can take from those who do not have the bad luck of lacking talent. However, this will not

³⁶ Fullweiler (2016).

³⁷ Bell (2000). This and the previous source defend what is now called "Modern Monetary Theory." The general idea is that economic growth will improve technology, which tends to drive down costs, while simultaneously increasing wages quickly enough to offset devaluation of currency.

³⁸ Cohen (1995): 262; Cohen (2009).

ameliorate the individual's condition vis-à-vis lacking talent that is valuable to others. What might so ameliorate the individual's condition in this regard is being in a system that introduces new ways for people to bring their heretofore undiscovered talents to bear. One small example of this is YouTube. It has allowed individuals who might once have needed to rely on social welfare now to participate in a vibrant social *and* economic community. The demand to focus on a Systemic Model of compensation is a demand to encourage the sort of dynamism that allows for this sort of thing to happen.

On a Systemic Model of compensation, the focus is on generating lots of opportunities for individuals to make up for their bad luck. This could occur through innovation, or it could occur through direct cash payments to all who earn less than a certain amount. These are the two most obvious means of addressing the present concern. My limited imagination should not be taken as authoritative; there may be far more means of sparing individuals from having to make the sort of admission under consideration.

My goal here is to shift the focus of luck egalitarians away from the Torts Model. It is, of course, an empirical question of whether and which system would best achieve luck egalitarian goals. I have made no effort to settle the empirical question. It is worth considering some closely related objections to my suggested refocus. In the following section, I attempt to show that I have not strayed too far from the egalitarian spirit of LE.

4. Objections

All of the objections here are incarnations of the worry that I have abandoned the egalitarian aspect of luck egalitarianism. The focus has been on allowing individuals to make up for their own losses of well-being without requiring others to do so. What is egalitarian about that? Similarly, and here is the second point to address, have I pushed egalitarianism back to some of its roots in Marx and suggested that we can end scarcity if we just find the right political system?

These are reasonable concerns. First, it is not a conceptual truth that all egalitarian goals require, as a matter of principle, resorting to the Torts Model. Egalitarian minded Marxists believed that our productive capacities would increase so much that we could end scarcity.³⁹ While the empirical realities of our world have undone the dream of ending scarcity, there are logically possible worlds free from the realities we face. Surely, if a genie could simply wave her magic wand and immediately make up for the bad luck some suffer, there would be no good moral reason to require others to transfer their holdings to those who so suffer. Of course, there are no genies in this world. I do not believe that we can end scarcity.

It does, however, seem possible that we can find economic systems that generate the most opportunities for individuals to offset their own bad brute luck without allowing others to capture those opportunities. In fact, the Systemic Model can suggest an evaluative measure that should be agreeable to luck egalitarians. Suppose we have two systems that generate lots of opportunities. One generates lots of opportunities, but those are largely seized by those who have good luck. Another generates opportunities most

³⁹ Cohen (1995): 9–11.

easily seized by those who do suffer bad luck. It seems that proponents of LE should find the latter system more desirable than the former.⁴⁰ Indeed, I observed above that licensing requirements, capitalization requirements and so on tend to reduce the ability of those who suffer bad luck to make up for their losses. Someone more knowledgeable than this particular philosopher could tinker with the rules governing economic arrangements to help those who suffer bad luck get more opportunities than in other arrangements. Thus, I think that both the luck and egalitarian aspects of LE can be compatible with my suggestions here.

I have been largely silent to this point about outcomes. A strong commitment to equality of *outcome* has not been at the fore of my defense of the Systemic Model. It is worth addressing this issue. Some proponents of positions recognizable as luck egalitarian in nature do seem to require robust equality of outcome. Arneson, who has been the focus of my presentation of LE, does not require robust equality of outcome. At least in Arneson (1989), he defends the egalitarian ideal as “equality of opportunity for welfare.”⁴¹ While he has enriched his position over the years, this ideal seems to remain. The Systemic Model does not seem at odds with this. Proponents of LE should endorse systems that maximize the opportunities for individuals to make up for losses due to brute bad luck. I have been clear that the Torts Model does not need to be abandoned. Empirical considerations may very well justify it. The issue here is one of focus; it is not a defense of an exclusive commitment to a particular model of compensation.

Indeed, my reflection on the issue has made me take seriously the following possibility. Suppose that Cainan is prone to bad luck. He constantly loses out on opportunities for welfare and, while he is making up for those losses under the aegis of the Systemic Model, his time spent adds up to an objectionable unequal opportunity for welfare. Should that happen, the Torts Model might be required. Again, the goal here is not to abolish the Torts Model; it is to dislodge it as the primary means of thinking about egalitarian justice.

It is more problematic for proponents of robust equality of outcome to embrace the Systemic Model. As I understand G.A. Cohen’s position, for example, he finds nearly all inequalities of holdings objectionable. Unequal asset distribution can either “reflect an unjust distribution” or “generate unjust extraction.”⁴² Thus, even if a “flow” of resources comes purely from different preferences, the resulting unequal distribution could be objectionable precisely because it facilitates unjust extractions and/or transfers.

On the one hand, it seems contingently inevitable that a moral theory demanding significant equality of opportunity – not to mention outcome – will require some redistribution of resources. This welcomes thinking of compensation for bad luck in terms of the Torts Model. I wish to flag this confession. However, I wish also to suggest that it does not really undo the thrust of this paper.

It is interesting to observe that Cohen favorably invokes Carens’ idea that an economy can be run to model the growth and technological advances of capitalism,

⁴⁰ Unless, of course, the lucky who seize the opportunities use their wealth and well-being to aid the unlucky in the way Shapiro (2002) suggests.

⁴¹ Arneson (1989): 77.

⁴² Cohen (1995): 197.

but in which no one takes themselves to be generating holdings for themselves. They do seem to get to keep their pre-tax holdings though. Perhaps taxes are assessed yearly and holdings that survive taxation are then the legitimate property of those who hold them. If something like this is the case, it looks like Cohen is onto the idea that the Torts Model might undermine economic development. Thus, he seeks to square egalitarianism with a system that generates lots of opportunities and growth. Cohen could be read as attempting to square the Torts and Systemic Models. I do not claim that the Carens-Cohen model is likely to be successful. All I say is that, if Cohen is doing what I think he is, Cohen's *attempt* does not seem obviously at odds with the thrust of this paper. The move away from thinking of justice and opportunities for compensation as a zero-sum game is all that I wish to encourage.

To reiterate, though, the Systemic Model is not *by itself* incompatible with redistribution and/or taxation. Welfare liberals, and even some classical liberals,⁴³ hold that a good healthcare system would provide universal coverage for catastrophic and long-term care. One rationale for such a system could be to offset the bad brute luck with respect to one's health.⁴⁴ The point of this paper is to encourage luck egalitarians to support policies that generate maximal opportunities for individuals to offset their own bad luck. It is not to encourage them to give up egalitarian concerns. The idea is that some of the goals of LE could best be achieved by moving away from seeing justice in accordance with the Torts Model.

It seems that backing off on the constant demands of seizing from one to give to those who suffer brute bad luck will soften some of the force of the Chamberlain argument against LE. Perhaps a predictable tax program that allows some means for isolating holdings from the demands of distributive justice can be squared with the Systemic Model. Perhaps some Western European nations – like those that have abolished the wealth tax – allow individuals to plan *well enough* and use their holdings to pursue their own values while still satisfying being sufficiently egalitarian in the manner I am suggesting.⁴⁵ Thus, when I said earlier that luck egalitarians demand more efforts to achieve equality than we currently see, this paper might suggest that they are mistaken to demand that sort of equality only or primarily via the Torts Model.

This essay has attempted to show that luck egalitarians should redirect their concerns away from seeing justice in accordance with the Torts Model. Instead, they should be primarily interested in the Systemic Model of compensation. This model aims to allow individuals both to dissociate their private affairs and to preserve their just holdings – at least to a greater degree than the Torts Model promises. The broader upshot is that the political construction that best satisfies the demands of a Systemic Model is an empirical question. LE thus does not directly imply the existence of any particular political system.

⁴³ It is my understanding that the renowned classical liberal economist Tyler Cowen favors something like this sort of model.

⁴⁴ Perhaps those who wish to avoid the Harshness Objection would favor this model even for those who require care because of bad option luck. See Voigt (2007).

⁴⁵ This is by no means meant to be a refutation of the fundamental challenge Nozick's Chamberlain example presents. Instead, it is a suggestion that the force of the challenge can be mitigated to some extent.

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