

## The Incoherence of Luck Egalitarianism (final draft)<sup>1</sup>

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Jerry Cohen is often identified as one of the founding fathers of the theory of distributive justice that has come to be known as luck egalitarianism.<sup>2</sup> The most frequently cited source is a paper from 1989, in which, Cohen said, the aim of egalitarianism was ‘to eliminate *involuntary disadvantage*, by which I (stipulatively) mean disadvantage for which the sufferer cannot be held responsible, since it does not appropriately reflect choices he has made or is making or would make’.<sup>3</sup> Variations on this formula were repeated in several subsequent essays, as well as in his final major work *Rescuing Justice and Equality*, in which he self-applies the luck egalitarian label, and describes his ‘animating conviction’ about distributive justice as being that ‘an unequal distribution whose inequality cannot be vindicated by some choice or fault or desert on the part of (some of) the relevant affected agents is unfair, and therefore, *pro tanto*, unjust.....’<sup>4</sup> Attentive readers will notice some differences between these two formulations that deserve our attention, but the broad picture seems to be one in which Cohen first identified and then developed and defended with legendary philosophical skill a distinctive view about distributive justice, which requires that each person should enjoy the same level of ‘advantage’ unless she has more or less of that by reason of an actual or potential choice for which she is responsible. Indeed, this defence is often taken to be his main positive contribution to the theory of justice.<sup>5</sup>

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<sup>2</sup> He is so identified in the article that first introduced the phrase ‘luck egalitarianism’, E. Anderson, ‘What is the Point of Equality?’, *Ethics*, 109 (1999), 287-337. Similar attributions can be found in, for example, S. Hurley, *Justice, Luck, and Knowledge* (Cambridge, MA: Harvard University Press, 2003), ch. 5; S. Segall, ‘In Solidarity with the Imprudent: A Defense of Luck Egalitarianism’, *Social Theory and Practice*, 33 (2007), 177-98; Z. Stemplowska, ‘Making Justice Sensitive to Responsibility’, *Political Studies*, 57 (2009), 237-59; K.-C. Tan, *Justice, Institutions, and Luck* (Oxford: Oxford University Press, 2012), ch. 1. The other allegedly canonical figures most often cited are Richard Arneson, Ronald Dworkin, Eric Rakowski, John Roemer, and Larry Temkin.

<sup>3</sup> G. A. Cohen, ‘On the Currency of Egalitarian Justice’ in G. A. Cohen, *On the Currency of Egalitarian Justice and Other Essays in Political Philosophy*, ed. M. Otsuka (Princeton NJ: Princeton University Press, 2011), p. 13.

<sup>4</sup> G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008), p. 7; for the self-identification, see pp. 310, f.n. 51.

<sup>5</sup> He is of course also celebrated for his critical dissections of the theories of Dworkin, Nozick and Rawls.

Regardless of the truth of the last judgement, I am going to suggest in this chapter that Cohen's commitment to luck egalitarianism was actually a mistake, and did not reflect his own deepest convictions about justice and equality. I will also suggest that since luck egalitarianism is an incoherent position (in a sense to be explained), Cohen's entanglement with it was to that extent unfortunate. By way of explanation, I want to propose that Cohen became embroiled, initially by virtue of an exchange with Ronald Dworkin, in a debate about the metric of equality – the issue of the appropriate respect (resources or welfare or capabilities, etc.) in which people should be rendered equal as a matter of justice – and this spilled over into a further debate about the ways in which personal responsibility might justify inequality along one or other of these dimensions. But this debate was conducted on a liberal terrain that was uncongenial to Cohen, whose own political convictions were of radically socialist kind.<sup>6</sup> We can appreciate this point by reflecting on a somewhat curious remark of Cohen's made when discussing what he calls 'Dworkin's fundamental insight', which he aimed to develop in his own version of luck egalitarianism: 'Dworkin has, in effect, performed for egalitarianism the considerable service of incorporating within it the most powerful idea in the arsenal of the antiegalitarian Right: the idea of choice and responsibility'.<sup>7</sup> Since egalitarianism is rightly regarded as emblematic of the political philosophy of the Left, why would one think that it a *service* to incorporate within it the strongest idea of its opponents, rather than a retreat or a capitulation? This sentence stands in stark contrast to an essay of Cohen's published five years later in which he castigates revisionists who want to replace traditional socialist values ('community and equality') with principles of social justice whose egalitarianism is heavily tempered with concerns about desert, incentives, freedom of choice, and so forth.<sup>8</sup> In that essay Cohen operates with a sharp distinction between the values of the Right and the values of the Left, and argues, citing the work of Hayek and Nozick on the other side of the fence, that the greatest service that philosophers can perform for their political counterparts is to develop and stand by fundamental theory that makes no concessions to what is politically acceptable in the short run. According to this view, the undoubted popularity in current political thinking of the ideas of choice and responsibility should not carry any weight when a philosopher is engaged in the task of

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<sup>6</sup> It is certainly true that Cohen in earlier writing had engaged at length with libertarian thinking, especially with the idea of self-ownership: see G. A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995), esp. ch. 6. The reasons for this engagement, however, were somewhat different, having to do with apparent parallels between Marxist and libertarian ideas about self-ownership and exploitation. For more on Cohen's own view of his relationship to liberalism, see 'Self-Ownership, History and Socialism: an Interview with G. A. Cohen', *Imprints*, 1 (1996), 7-25.

<sup>7</sup> Cohen, 'On the Currency', p. 32.

<sup>8</sup> G. A. Cohen, 'Back to Socialist Basics', *New Left Review*, 207 (1994), 3-16, reprinted in Cohen, *On the Currency of Egalitarian Justice*.

exploring his or her deepest convictions about the idea of justice. Of course, Cohen might have thought that choice and responsibility were ethically important ideas irrespective of whether they were championed by the Right or the Left. But then the next step would presumably be to disentangle the universally valid components of these ideas from the particular use that was made of them by spokesmen for the antiegalitarian Right. But this is not what Cohen claims on Dworkin's behalf in his 1989 essay. He claims that Dworkin has succeeded in capturing the major weapon deployed by the Right and turned it to the service of the egalitarian Left; in other words, he has incorporated the ideas of choice and responsibility *in a form that would be recognizable to spokesmen for the Right who had previously used them to discredit egalitarianism*.<sup>9</sup> By implication, this is also to be the service that Cohen's alternative (and superior) version of luck egalitarianism would perform.

So we are left with a puzzle. In 1994, Cohen still saw his philosophical project as one of articulating the distinctively socialist values of community and equality ('the only values which *the Left affirmed as a matter of principle and which the Centre and Right reject as a matter of principle*'<sup>10</sup>) whereas back in 1989 he appeared committed to developing the luck-egalitarian principle of justice, which, by virtue of the latitude it provided for choice-based inequalities, could claim to have captured the main ideological weapon of the Right.<sup>11</sup> To put it at its simplest, this looks like a vacillation between socialism and left-liberalism.<sup>12</sup> But did luck-egalitarianism really represent Cohen's final, considered position on questions of justice?<sup>13</sup> There is some reason to think that it did not. In his short book *Why not Socialism?*, published in the year of his death, it reappears as 'socialist equality of opportunity', which disallows inequalities that arise from differences in natural talent, but 'tolerates inequality of benefit, where the inequality reflects the genuine choice of parties who are initially equally placed and who may therefore reasonably be held responsible for the consequences of

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<sup>9</sup> The intention could not realistically be to expect rightwingers to embrace luck egalitarianism itself, but rather to show that the latter view could encompass a sufficiently rich understanding of choice and responsibility to discredit their ideological claim that the Left was indifferent or hostile to these ideas.

<sup>10</sup> Cohen, 'Back to Socialist Basics' in Cohen, *On the Currency of Egalitarian Justice*, p. 214.

<sup>11</sup> Cohen of course put forward luck egalitarianism as a principle of equality: what it sought to equalize were the circumstances in which individuals would make their choices. So on the surface it might appear that there was no conflict with his socialism. But as I shall go on to argue, by introducing choice and its consequences into the specification of egalitarianism, Cohen actually subverted it.

<sup>12</sup> For a thoughtful account of why a shift from socialism to left liberalism might be seen as desirable, see W. Kymlicka, 'Left Liberalism Revisited' in C. Sypnowich (ed.), *The Egalitarian Conscience: Essays in Honour of G. A. Cohen* (Oxford: Oxford University Press, 2006).

<sup>13</sup> For further exploration of the extent of Cohen's commitment to luck egalitarianism, see P. Tomlin, 'Internal Doubts about Cohen's Rescue of Justice', *Journal of Political Philosophy*, 18 (2010), 228-47.

those choices'.<sup>14</sup> But although generally supportive of this principle, Cohen worries that it might permit large differences of income and wealth to arise through the operation of 'option luck'.<sup>15</sup> He fears that such inequalities might make it impossible for people to live in 'full community' with one another. And he continues:

I believe that certain inequalities that cannot be forbidden in the name of socialist equality of opportunity should nevertheless be forbidden, in the name of community. But is it an injustice to forbid the transactions that generate those inequalities? Do the relevant prohibitions merely define the terms within which justice will operate, or do they sometimes (justifiably?) contradict justice? I do not know the answer to that question.<sup>16</sup>

This passage betrays some doubt on Cohen's part that the requirements of justice can be fully captured by a principle that allows inequalities to arise on the basis of individual choices, here especially the choice to gamble.<sup>17</sup> This doubt is further amplified in a late article in which Cohen explores how we should think more generally about inequalities that arise from an egalitarian starting point by processes that appear permissible, and suggests that we might need to introduce a distinction between justice and legitimacy to handle them: the outcomes should be described as legitimate but not just (or else, he suggests, we might want to distinguish between justice as fairness, applying to the initial distribution, and justice as legitimacy, applying to the steps that produce the final distribution).<sup>18</sup> But such a distinction, he recognizes, would cause problems for luck egalitarianism, understood as a theory of distributive justice. For the luck egalitarian wants to say that inequalities that arise between individuals as a result of the choices they make are not merely legitimate but actually *just*. 'By virtue of the content of the luck-egalitarian doctrine, the status of justice proper is conferred, in an unqualified way, on the favoured upshots.' Cohen

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<sup>14</sup> G. A. Cohen, *Why Not Socialism?* (Princeton NJ: Princeton University Press, 2009), p. 26.

<sup>15</sup> Option luck is luck that befalls somebody as a result of a calculated risk they have chosen to take (like being drenched because you decided to go out on a showery day without an umbrella), as opposed to the 'brute luck' they experience through the impact of unanticipated forces over which they have no control (like being hit by debris from an aeroplane passing overhead). As will be apparent, the two kinds of luck are not categorically distinct, but describe points close to either end of a spectrum.

<sup>16</sup> Cohen, *Why Not Socialism?*, p. 37.

<sup>17</sup> In his original 1989 article Cohen, while clearly wanting to give scope to personal choice and its effects on levels of advantage within his conception of justice, did not explicitly address the question of which choices should be permitted by justice and which should not be. I pursue this question later in the chapter.

<sup>18</sup> G. A. Cohen, 'Fairness and Legitimacy in Justice, and: Does Option Luck ever Preserve Justice?' in Cohen, *On the Currency of Egalitarian Justice*.

wonders whether 'unlike plain egalitarianism, luck egalitarianism *is* paradoxical, because the use of shares by people is *bound* to lead to a distribution flecked by luck'.<sup>19</sup>

This essay of Cohen's ends on a note of uncertainty. I believe, however, that Cohen's rather hesitant remarks are essentially leading in the right direction, and that luck egalitarianism is indeed paradoxical – or as I shall suggest more strongly, incoherent – for the reason that he gives. After exploring this issue in the following sections I shall return finally to Cohen's political philosophy and offer a different interpretation of the idea of justice that underpins it.

### **Why Luck Egalitarianism is Incoherent**

Luck egalitarianism has been very widely discussed in the recent literature of political philosophy, and many of the issues that have quite properly been raised will not be my concern here. For example, I will not be concerned with the 'currency' issue as such. For present purposes I will simply follow Cohen in assuming that there is such a thing as 'advantage' whose distribution between individuals is a concern of justice, and therefore try to remain neutral on the question of how 'advantage' is best understood.<sup>20</sup> I will also sidestep the problems involved in deciding when individuals can properly be held responsible for the choices that they make, again following Cohen in assuming that we can at least make sense of people having different *degrees* of responsibility.<sup>21</sup> And finally, I shall not consider whether luck egalitarianism, or principles of distributive justice more generally, are apt ways of capturing the kind of equality that matters to us fundamentally, although on this issue I myself side with critics such as Elizabeth Anderson, Jo Wolff and Samuel Scheffler who think that they are not.<sup>22</sup> The question of how the ideas of justice and equality are related will be put in abeyance until the closing section of the chapter.

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<sup>19</sup> Cohen, 'Fairness and Legitimacy in Justice', p. 142. By 'shares' here Cohen means the quotas of resources people were initially allocated.

<sup>20</sup> According to Cohen, 'advantage' as the currency of justice should be understood as 'a heterogeneous collection of desirable states of the person reducible neither to his resources bundle nor to his welfare level'. (G.A. Cohen, 'Equality of What? On Welfare, Goods, and Capabilities' in Cohen, *On the Currency of Egalitarian Justice*, p. 59). Cohen believes, in other words, that if we reflect on what personal assets count when asking whether somebody has his just entitlement, we will pay attention both to resource deficits and to welfare deficits with neither being fully reducible to the other.

<sup>21</sup> See Cohen, 'On the Currency', p. 32. For criticism of luck egalitarianism on the grounds that it depends upon 'a metaphysically inflated conception of the significance of choice' see S. Scheffler, 'Choice, Circumstance, and the Value of Equality' in Scheffler, *Equality and Tradition* (Oxford: Oxford University Press, 2010).

<sup>22</sup> Anderson, 'What is the Point of Equality?'; J. Wolff, 'Fairness, Respect and the Egalitarian Ethos', *Philosophy and Public Affairs*, 27 (1998), 97-122; S. Scheffler, 'What is Egalitarianism?' in S. Scheffler, *Equality and*

So, then, we are to imagine a benchmark in which individuals hold resources of various kinds which give them the same level of advantage overall – they are equally well off in the initial position – and then we are to consider choices they might make which would alter that level of advantage upwards or downwards, thereby creating inequalities between them.<sup>23</sup> And we are invited to consider whether the distribution of advantage that obtains at some later time is a just distribution, by virtue of the fact that the initial position was one of equality and that subsequent moves away from that original position result only from choices for which they are responsible. This, it is said, nullifies inequalities that are due to brute luck – causes or events that alter a person’s level of advantage irrespective of any choice that they make – leaving only those that are directly chosen, or indirectly chosen by the person opting to take a risk, paradigmatically in the form of a deliberate gamble. In Cohen’s version of luck egalitarianism, justice not only permits inequalities that arise in this way, but requires that they should not be corrected.<sup>24</sup> So there can, according to Cohen, be ‘unjust equality’, meaning equality that has been imposed ‘in the presence of appropriately differential responsibility’.<sup>25</sup>

It is worth reflecting at this point on different ways in which someone’s choice might alter the level of advantage they enjoy, given an initial set of holdings. One possibility is that they become better or worse off by acquiring new tastes, such that the goods they already have provide them with higher or lower levels of welfare (which I am assuming with Cohen is at least one component of ‘advantage’). For example, a person who only has access to a particular kind of music learns to appreciate that music and then enjoys listening to it. Such deliberate changes of preference have been much discussed in the literature on luck egalitarianism, perhaps over-discussed, since a focus

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*Tradition* (Oxford: Oxford University Press, 2010). For my own view, see D. Miller, *Principles of Social Justice* (Cambridge, MA: Harvard University Press, 1999), ch. 11.

<sup>23</sup> Andrew Williams has (rightly) pressed on me the point that any complete specification of a luck egalitarian position must include an account of what individuals are permitted to do with the resources they are allocated; this will then partly determine the range of just inequalities that may arise. My procedure here is to leave this an open question, to be explored in the light of the twin egalitarian commitments to nullifying the effects of differential brute luck while at the same time allowing ample scope for the exercise of individual responsibility and choice. As I noted above, Cohen himself did not address this question in his original formulation of the luck egalitarian theory of justice. For Williams’ critique of Cohen here, see A. Williams, ‘How Gifts and Gambles Preserve Justice’, *Economics and Philosophy*, 29 (2013), 65-85.

<sup>24</sup> Since Cohen was a value-pluralist, he could have allowed that we might have reasons other than justice for wanting to mitigate inequalities that arise through processes of voluntary choice. But for the sake of consistency he would have to oppose anyone being *required* to undertake such mitigation.

<sup>25</sup> G. A. Cohen, ‘Luck and Equality’ in Cohen, *On the Currency of Egalitarian Justice*, p. 121.

on this kind of case draws attention away from several other (and perhaps more consequential) instances in which a person makes choices that leave him better or worse off.

A second type of case is one in which a person directly alters the value of one or more of the resources she justly has simply by the way in which she treats it. For example she destroys it, or allows it to decay, or on the other hand she finds an unexpected use for it, or enables it to develop in a way that allows it to reach its full potential (for her). In such a case the change that is brought about has no effect on the resources that others hold, so inequalities arise simply by virtue of the better or worse use of the things that each of us possesses. Thus imagine that you and I each begin with a bowl of unripe peaches, but whereas you wait carefully until the fruit has reached its ripest condition, and then begin to eat, I am either too hasty or too dilatory and therefore get less enjoyment from my fruit. Here the inequality arises simply from the impact of the choices that each of us make on our own resources: what you decide to do with your peaches has no effect on my peaches or on what I choose to do with them.

Now if the effect of individual choice were to be restricted to the two types of case discussed above, then luck egalitarianism would not be incoherent. Assuming that we have successfully identified an initial position in which levels of advantage have been rendered equal, thus eliminating the inequalitarian effects of brute luck from the world as we know it, the inequalities that emerge through the mechanisms just described do not involve any brute luck. It is of course true that the *inequality* that may arise has not itself been chosen. I have chosen to eat my fruit too early, but I have not chosen that you should eat yours later, so I have not chosen that you should gain more enjoyment than me.<sup>26</sup> One could say it is brute luck from my point of view that I am worse off than you. On the other hand, it is hard to think that this could be represented as an injustice, since I could have chosen to be more attentive to the ripeness of my peaches. So although one could still find fault with the luck egalitarian principle of justice – for example on the well-trodden ground that it denies that people who make very bad choices have any claim of justice to be helped out of their predicament – one couldn't claim it was incoherent when applied to this type of case.

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<sup>26</sup> This is one example of what Susan Hurley has called 'the boring problem' in *Justice, Luck, and Knowledge*, ch. 6. Hurley considers the case of two individuals, Ernest and Bertie each of whom is responsible for the level of goods that he enjoys, and points out that 'while Ernest's own goods position is not a matter of luck for him, the relation between his position and Bertie's is partly a matter of luck for Ernest. Reciprocal remarks apply to Bertie.' (p. 161). I assume that Hurley calls this the boring problem because once it is pointed out it becomes rather obvious, but I think the interesting question is about when the brute luck involved might become a concern of justice for luck egalitarians (as I have argued it does not in the peach-eating case above).

It follows that there is a hypothetical world in which luck egalitarianism would not be liable to any charge of incoherence, and that is one in which the effects of a person's choices only extended to their own resources and other components of advantage, never to anybody else's. Each person, so to speak, lived in a self-contained bubble that prevented the decisions they made from having any impact outside of the bubble itself. Many discussions of luck egalitarianism seem implicitly to assume such a world. Either they address the problem of whether or in what circumstances people might be able to demand compensation for changes of taste that leave them worse off, or they discuss imprudent choices, such as engaging in risky sports without having taken out insurance first, that leave the chooser in a very poor condition. In neither case does the impact of choice extend beyond the chooser himself (unless of course it can be shown that justice does after all demand that he receive compensation, when somebody else will be required to pay it).

But this is really a misleading picture, because in our own world the choices that somebody makes will very often have a direct or roundabout impact on the levels of advantage enjoyed by others. How so? One class of cases involves choices that involve transferring resources to other people – for example giving them gifts or buying their services. These will typically disturb the initial equality of advantage that we are presupposing. Now it might appear that if we think of such processes as occurring between two individuals, there is still no problem because the inequality that emerges between the donor and the recipient has been chosen by them both: when A gives B a gift, thereby becoming less well-off than B,<sup>27</sup> A chooses to move to a lower level of advantage overall, and B in accepting the gift chooses to be moved to a higher level. No element of differential brute luck is involved. But this overlooks the position of C, D, and everyone else who has been made worse off than B through no choice or fault of their own, and who moreover will typically lack the opportunity to move back to level pegging with B. From their point of view, the inequality that has arisen is a piece of brute bad luck.<sup>28</sup> (Bequests from parent to child are a familiar example of such choice-induced differential luck.)

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<sup>27</sup> I ignore here any satisfaction that A may derive from the act of giving itself.

<sup>28</sup> Here I follow H. Lazenby, 'One Kiss Too Many? Giving, Luck Egalitarianism and Other-affecting Choice', *Journal of Political Philosophy*, 18 (2010), 271-86. See also G. Elford, 'Equality of Opportunity and Other-Affecting Choice: Why Luck Egalitarianism Does Not Require Brute Luck Equality', *Ethical Theory and Moral Practice*, 16 (2013), 139-49. A similar problem for Dworkin's version of egalitarianism was pointed out in M. Otsuka, 'Liberty, Equality, Envy and Abstraction' in J. Burley (ed.), *Dworkin and his Critics* (Oxford: Blackwell, 2004). In his reply, Dworkin tacitly abandons the claim that egalitarianism requires eliminating the influence of differential brute luck in favour of an alternative reading of the envy test: see 'Ronald Dworkin replies' in Burley, *Dworkin and his Critics*, pp. 352-3.



The other, perhaps even more common, kind of case is one in which, without direct resource transfers, I use my resources in a way that enhances or diminishes the value of yours without your consent.<sup>29</sup> This might occur because there is actual or potential competition between us. For example, I enter an auction and bid against you, forcing the price of the good that you want to buy to go higher than it otherwise would. Or, the opposite case, I choose to put my car up for sale, and the buyer who would otherwise have bought yours chooses mine, with the consequence that you are only able to sell yours for a lesser amount. Or, I decide, successfully, to apply for a job that would otherwise have been offered to you. These are cases of the sort that Cohen has in mind when he worries that choice might always be ‘flecked with luck’ since ‘one man’s choice is another man’s luck’.<sup>30</sup> But there are other cases too. If we are to treat welfare as a component of advantage, then your welfare may be diminished just because the value of what you do or what you possess is lowered by contemplating what I do or possess. As Marx once famously wrote, ‘a house may be large or small; as long as the surrounding houses are equally small it satisfies all social demands for a dwelling. But let a palace arise beside the little house, and it shrinks from a little house to a hut....the occupant of the relatively small house will feel more and more uncomfortable, dissatisfied and cramped within its four walls.’<sup>31</sup> So when you build your mansion alongside my cottage, this is brute bad luck for me. Or, if I am Antonio Salieri, I can rejoice in the belief that I am a great composer until the day that Mozart chooses to move to Vienna and I eventually realise that I am just ‘the patron saint of mediocrity’.<sup>32</sup>

In these many different ways, therefore, a person can choose to use elements of advantage that are rightfully hers, because assigned under the principle of equal initial advantage, such that in the course of exercising her choice, she creates brute luck inequalities that disadvantage (some) other people. To protect the recipients against the effects of bad brute luck, it seems we must prevent the exercise of such choice. Since what is distinctive about luck egalitarianism, unlike other forms of egalitarianism, is that it tries to combine within a single principle of justice opposition to inequalities

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<sup>29</sup> I shall not even begin to consider cases in which different people’s independent choices interact, either to their advantage or to their disadvantage, for example instances of collective action where a certain result can only be obtained if two or more persons act co-operatively. For discussion of the complications this raises for luck-egalitarianism, see K. Lippert-Rasmussen, ‘Luck Egalitarianism and Group Responsibility’ in C. Knight and Z. Stemplowska (eds.), *Responsibility and Distributive Justice* (Oxford: Oxford University Press, 2011).

<sup>30</sup> Cohen, ‘Fairness and Legitimacy in Justice’, p. 143.

<sup>31</sup> K. Marx, *Wage Labour and Capital* in K. Marx and F. Engels, *Selected Works* (London: Lawrence and Wishart, 1968), p. 83.

<sup>32</sup> I am relying here on Peter Shaffer’s *Amadeus*, which may not be historically accurate. I thank Andrew Williams for calling to mind the final epithet.

that are due to brute luck and support for inequalities that are due to responsible choice, it appears to be internally incoherent – at least when applied to an interactive world like our own.<sup>33</sup> The two halves of the principle appear to be at war with one another: the more that choice is exercised, the greater the liability of others to brute luck disadvantage. But is there any way that the charge of incoherence can be rebutted?

### **Rescuing luck egalitarianism?**

In this section I want to consider ways in which a defender of luck egalitarianism might try to respond to the problem I have just identified while still holding on to the original aim of the theory, which, following Cohen, I take to be one of reconciling the commitment to equality characteristic of political philosophies of the Left with the commitment to responsibility and choice characteristic of political philosophies of the Right. I insert this reminder here, because a defence will not be successful if it produces either a version of equality too thin to satisfy any Leftist or a version of choice and responsibility too feeble to be recognized by any Rightist. A defence might begin with the general observation that luck egalitarianism is in one way radically underspecified. By itself, it lacks an account of what Serena Olsaretti has called the ‘stakes’ of responsibility: which consequences of their actions people should be held responsible for when responsibility conditions are being applied.<sup>34</sup> For, as Olsaretti points out, the consequences that will actually befall somebody as a result of some (perhaps imprudent) choice that they make will very often depend on prevailing social rules and policies. Some consequences may be ‘natural’; but even natural consequences may lead to further outcomes that are socially determined. My choice to leave my peaches until they are overripe may in the first place only have the natural effect of making me ill when I eat them, but what happens next may depend on whether I am eligible for public health care that provides a cure. A public health system relieves individuals of full responsibility for choices that they make that affect their health by relieving them of all or part of the costs of treatment. But without further specification luck egalitarianism as outlined by Cohen does not tell us whether such a system is justified or not.

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<sup>33</sup> As indicated above, the problem would not arise in a ‘bubble world’ in which a person’s choices affect the position of no-one other than herself. Equally, it does not arise for a version of luck egalitarianism in which justice only allows people to make such self-regarding choices. I develop this point in the section that follows.

<sup>34</sup> S. Olsaretti, ‘Responsibility and the Consequences of Choice’, *Proceedings of the Aristotelian Society*, 109 (2009), 165-88. Others who have argued in a similar way include M. Fleurbaey, ‘Equal Opportunity or Equal Social Outcome?’, *Economics and Philosophy*, 11 (1995), 25-55, sects 6-7 and B. Barry, ‘Chance, Choice, and Justice’ in B. Barry, *Liberty and Justice* (Oxford: Oxford University Press, 1991).

Olsaretti focuses on cases involving self-affecting choices, but her general point may be applied to other-affecting choices as well. Social norms and institutions may determine the extent of the impact that my choices have on the lives of others. How, then, might we try to prevent one person's choices from subjecting other people to brute luck disadvantage? One possibility would simply be to prohibit all choices that had this effect. Given an assignment of resources, people would be permitted to use them in ways that benefit them personally, but barred from any use that would alter the position of other people. Note that this has to apply to choices that *increase* others' level of advantage as well as to choices that decrease it, unless the same increase applies to everyone. This is to avoid the problem, noted above, that selective gift-giving must count as brute bad luck for those who are not favoured with gifts – they find themselves at the wrong end of an inequality they have not chosen. Note also that although some of the examples of other-affecting choice might seem to presuppose specific property rights and a certain kind of economy – one that includes practices such as auction sales and competitive hiring of labour – other examples do not. For instance, as Lazenby notes, one might bestow immaterial benefits, such as love and affection, on a particular person that involved no resource transfers, but would nonetheless count as conferring unequal advantage.<sup>35</sup> And Salieri's dismay upon the appearance of Mozart is not centrally a matter of the diminution of his earning power. A blanket prohibition on other-affecting choices would therefore be enormously restrictive. It would leave barely any scope for real choice at all, since almost anything one might do with one's person or one's resources has the potential to affect others, often in ways that would be hard to anticipate. The significance of choice, as normally understood, is that it enables a person to shape the course of her life by making significant decisions about how she wants to deploy her capacities and the resources she has available.<sup>36</sup> But if she is prohibited from making any choices that might impact positively or negatively on others, there will be very little that she can actually decide to do.

A second possibility would be to say that a person may indeed make other-affecting choices, but it then becomes his responsibility to correct for their inequalitarian effects. We might think of this as applying a tort law model to individual choice. Under tort law, it is accepted that one person may damage another's property inadvertently or negligently, but he has then to compensate the other by

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<sup>35</sup> Lazenby 'One Kiss Too Many?', pp. 280-1.

<sup>36</sup> There is an illuminating discussion of the value of choice in T. M. Scanlon, *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1998), pp. 251-6. Scanlon distinguishes three kinds of value promoted by allowing what happens to people to reflect the choices that they make (under appropriate conditions).

making a transfer that ideally will restore the person to the same level of advantage as she enjoyed before the accident. But although a scheme of this kind would not strictly speaking prevent choices from being made, it will act as an enormous deterrent by making any other-regarding choice potentially extremely costly. If one makes a gift, for example, then one has to be ready to compensate all those people who did *not* receive a gift, and whose position was therefore lowered by comparison to the beneficiary on the scale of advantage.<sup>37</sup> Of course it is impossible to imagine such a scheme coming into effect, given the epistemic difficulties involved in tracking all of the remoter effects of individual choices. But my point is that even if that difficulty were overcome, once again the scope for personal choice is severely restricted, because the person contemplating a choice has to try to anticipate the costs that she might incur if her choice proves to have a significant impact on others. Everyone who enters a race or a job contest has to contemplate the possibility that if she wins she will have to compensate the disadvantaged losers, for example.

A defender of luck egalitarianism might protest at this point that it is a misunderstanding to focus on the effects of particular choices that an individual person might make. Recall that the aim of luck egalitarianism is to protect people from exposure to brute luck disadvantage. What matters here, it might be said, are overall levels of advantage measured over reasonable intervals of time.

Momentary fluctuations hardly matter so long as they are offset later by movements in the opposite direction. A's gift to B should be of no concern to egalitarians provided C, D and all the rest receive gifts from others in due course, such that over time everyone gets presents of roughly the same value. Luck egalitarian practice should not be aimed at directly curbing choice or its effects, but simply at ensuring that the cumulative effect of many choices over time is not such as to disturb initial equality. If there is a need to compensate those who lose overall, resources should be transferred not from those whose choices have caused the inequality, but from those who benefit from it.

Luck egalitarians can of course entertain the hope that they will live in a world where to a very large extent the effects of other-affecting choices even themselves out in the way suggested in the last paragraph, so that corrective policies need only to be light-touch. But this seems to dodge the issue of principle, which concerns the compatibility of choice and equality. So consider the following case. A wealthy philanthropist decides to establish a large cash prize for any scientist who is able to identify the faulty gene that allows a particular form of cancer to develop.<sup>38</sup> One day a scientist

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<sup>37</sup> C.f. here Lazenby 'One Kiss Too Many?', p. 277 who thinks in terms of a redistributive tax scheme applied to donors.

succeeds in this quest and the cash is handed over. A very large inequality has been created which there is no reason to think will be counteracted by later events. Since we have ruled out prohibiting the exercise of choice by the philanthropist, or requiring him to compensate for the inequality he has created, the only solution open to the luck egalitarian would be to remove and redistribute almost all of the scientist's gain. But of course this would precisely frustrate the intention of the philanthropist, whose aim was to incentivise and reward scientists who made this the object of their research. In one sense the philanthropist can still make a choice (he can *attempt* to create a prize worth, say, £500,000), but the institutions now being envisaged (a recipient tax of almost 100%, for example) prevent that choice from having the results that its maker intends. At this point we need to recall that luck egalitarianism's ambition, as understood by Cohen, was to incorporate ideas of choice and responsibility in versions that their ideological sponsors on the Right would recognize. Now I take it that what is meant by having a choice, as understood not only by right-wing ideologues but by people generally, is that what I choose affects the world in the direction that I intended: what happens after I make the choice is more or less what I meant should happen when I made it. A world in which people made choices, but what then followed was something quite different from what they had in mind, would not be a world in which the ideas of choice and responsibility were embodied.<sup>39</sup>

The point then, is that unless other-affecting choices happen to cancel one another out in such a way that only very minor disturbances to equal advantage are created, luck egalitarians will need to put in place quite far-reaching mechanisms to compensate the unlucky which will also, however, very often have the effect of frustrating the choices that are producing the inequality. As I suggested earlier, it seems that the two halves of the luck-egalitarian principle are at war with one another. In seeking to protect people from the brute bad luck that other's responsible choices may impose on them, it seems that we have to curtail the scope of choice so radically that it no longer exemplifies 'the most powerful idea in the arsenal of the antiegalitarian Right'.

There is, however, a different way of responding to the incoherence objection that a luck egalitarian might try to pursue. Rather than circumscribing choice in such a way that it no longer has inequality effects, she might narrow her opposition to brute luck inequality such that only *some*

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<sup>38</sup> One might ask whether there will be wealthy philanthropists in a society that is run along luck egalitarian lines, so imagine instead that a philanthropist-entrepreneur collects the prize money by asking for many small donations from individuals who are keen to see cancers eliminated.

<sup>39</sup> Imagine a bar in which when a customer orders a drink, the bar-tender uses a complex and opaque algorithm to decide which beverage is actually served to her. Would we say that this is a bar in which customers are able to choose their drinks?

forms of bad brute luck will need to be compensated for on luck-egalitarian grounds. In particular, she might discount brute luck that results simply from individuals exercising choices within certain institutional constraints. She might draw inspiration here from Kok-Chor Tan's defence of 'institutional luck egalitarianism'. According to Tan:

Luck egalitarians ought not to be in the business of mitigating all natural contingencies (due to luck) that people face. As an aspect of social justice, luck egalitarianism is only concerned with how institutions deal with such natural contingencies. Its goal 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.<sup>40</sup>

As this passage may suggest, Tan is thinking primarily about the effects of people's natural characteristics on their levels of welfare. The fact that good-looking people can easily attract friends and lovers while ugly people cannot is not, according to Tan, the kind of inequality with which luck egalitarians should be concerned. But if a society's institutions allow people to earn more by virtue of their looks, then that would be an injustice by luck egalitarian standards, since 'institutions should not be designed in ways that turn natural facts about persons into social advantages or disadvantages for them'.<sup>41</sup> According to institutional luck egalitarianism, therefore, the scope of justice is limited: not all unchosen inequalities are condemned at the bar of justice, but only those that stem from a society's institutional arrangements.<sup>42</sup>

Tan's version of luck egalitarianism would probably not appeal to Cohen,<sup>43</sup> but let us see nonetheless whether it can avoid the charge of incoherence in the form that I have been pressing. It might

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<sup>40</sup> Tan, *Justice, Institutions, and Luck*, p. 103.

<sup>41</sup> Tan, *Justice, Institutions, and Luck*, p. 104.

<sup>42</sup> There is an ambiguity in Tan's position of which he does not seem to be aware about what it means for an institution to 'turn natural facts about persons into social advantages'. On a stronger interpretation, this applies only if the institution itself is designed in such a way that it creates the social advantage through its own rules or procedures. Consider, for example, a law prescribing that only blue-eyed people should be allowed to attend university. On a weaker interpretation, it applies if the institution provides the means by which individual agents create the advantage in question. Consider, for example, a law of bequest that allows (but does not require) wealthy parents to pass on all of their assets to their offspring. Some of Tan's formulations invite the stronger reading, but in other places he insists that what his version of luck egalitarianism requires is the establishment of an institutional framework such that natural facts about people *do not become* real social advantages for them, which invokes the weaker (and more plausible) interpretation (see, for example, what he has to say about institutional remedies for disability on p. 104).

<sup>43</sup> Tan does in fact devote a significant part of *Justice, Institutions, and Luck* to criticising Cohen's wide view of the scope of justice.

appear that what I have been calling the ‘other-affecting’ choices of individuals are non-institutional, and therefore fall outside the scope of an institutional version of luck egalitarianism. But although this may be true of some such choices, in many other cases institutions are present in the background, and condition the effects that choices have. In standard cases of gift-giving, for example, the effects of receiving the gift will depend on the conventionally-defined property rights of the recipient. Institutions may not require or even encourage gift-giving, but they do in part determine the incremental advantage that the beneficiaries receive. This is especially clear if one considers an institution such as inheritance. It is a natural fact that I am the child of a particular person, but it is the institutional arrangements (the law of bequest, taxation, etc.) that govern inheritance that may turn this into a considerable social advantage. More generally, if choice is going to have the significance that it needs to have for luck egalitarianism to fulfil its ideological mission, it must involve the capacity to control and dispose of material things, and this implies that the effects of choice will be institutionally mediated.

Of course, by exempting some of the ways in which persons can affect each other from luck egalitarian scrutiny, Tan does remove some cases in which the demands of choice and equality would otherwise conflict. Extending this approach, we could avoid the conflict altogether simply by circumscribing an area within which individual choice will be allowed to operate, with its attendant effects, and then not counting these effects as ‘brute luck’ for their targets. This might be done by invoking some third principle that would then be used to resolve the conflict between choice and equality. For example, Zofia Stemplowska has advocated an interest-balancing approach to deal with the related question of how far we should allow individuals to bear the costs of their own imprudent choices, and how far we should protect them by socialising the costs, so that everyone is covered by a common fund.<sup>44</sup> She understands this as involving a balancing of people’s interest in freedom with their interest in security. We might adopt a similar approach to an issue such as inheritance: we would set the interest testators have in being able to bequeath their assets without any restriction against the interest beneficiaries have in avoiding the inequality that would result from an unlimited right to bequeath, and find some middle ground solution. As a way of deciding upon public policy, this makes perfectly good sense. But we need to be clear that this is no longer a matter of developing an internally coherent principle of ‘egalitarian justice’ that gives appropriate scope to choice and responsibility. Instead it involves a straightforward trade-off between a concern

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<sup>44</sup> Z. Stemplowska, ‘Making Justice Sensitive to Responsibility’, and more briefly in Z. Stemplowska, ‘Responsibility and Respect: Reconciling Two Egalitarian Visions’ in Knight and Stemplowska (eds.), *Responsibility and Distributive Justice*.

for equality and a concern for the personal freedom to use and dispose of one's assets as one chooses.

### **Rescuing Cohen from Luck Egalitarianism**

To avoid any possible misunderstanding, it is worth emphasizing at this point that the incoherence I have identified in luck egalitarianism has nothing to do with problems of practical implementation. The issue does not arise, for instance, from our inability in practice to detect the cumulative impact of one person's choices on the lives of others. On the contrary, I have been assuming, implausibly, that we can know when and to what extent one person's choice will count as good or bad brute luck for another, and then pointing out that we cannot prevent or correct for such brute luck inequalities without crippling the capacity for choice. Now I suggested earlier that Cohen showed that he was aware of this problem in a late paper. He also speculated that the 'equality of what?' question that he had devoted so much intellectual energy to answering might prove to have been misguided, because of the very different kinds of goods that might be sheltering under the umbrella of advantage.<sup>45</sup> Surprisingly, perhaps, he was receptive to Michael Walzer's claim that there might be different 'spheres' of justice across which goods were incommensurable.<sup>46</sup> All of this suggests some unclarity in Cohen's thinking about the concept of justice itself, and its relationship to the concept of equality. This issue is addressed very briefly in the Introduction to *Rescuing Justice and Equality* where, despite displaying reluctance to be pressed on the subject, he settles simply for the ancient formula 'justice is giving each person her due', which is of course neutral as between the various ways in which a person's 'due' might be filled out.<sup>47</sup>

If we consider Cohen's intellectual career as a whole, however, and especially his close (critical but sympathetic) engagement with the thought of Karl Marx, we might have expected him to turn to the well-known Marxian conception of justice expressed in the slogan 'from each according to his abilities, to each according to his needs'. And indeed this is applauded as the 'primeval socialist slogan' as late as 1994 and contrasted with proposed definitions of justice that would permit

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<sup>45</sup> G. A. Cohen, 'Afterword to Chapters One and Two' in Cohen, *On the Currency of Egalitarian Justice*, pp. 62-3.

<sup>46</sup> Cohen took care to avoid endorsing two of Walzer's claims, one having to do with the social relativity of principles of distributive justice, the other concerning congruence between a society's practices and 'the principles expressed or implicit in the society's cultural self-understandings' (Cohen, 'Afterword', p. 63). He did not, however, say whether he accepted or rejected Walzer's claim that the principles of justice that should govern the distribution of goods were different from one sphere to the next.

<sup>47</sup> Cohen, *Rescuing Justice and Equality*, p. 7.



extensive inequality.<sup>48</sup> It is also the principle that lies behind the example of the camping trip used by Cohen to illustrate his essay *Why Not Socialism?*.<sup>49</sup> When the camping trip runs in the way that Cohen approves, everyone contributes to the welfare of the other campers without expecting any reward for the use of their talents, and the resources that the campers bring with them, or discover, are made freely available for all to make use of. Now of course the slogan needs a good deal of interpretation if it is going to be of any practical use as a guide to social life, and Cohen implicitly provides interpretation in a number of places. For instance, it is clear that he has an expansive notion of 'needs'; he does not draw a line between needs and wants, but instead a line between desires that a person just has, and desires that have been deliberately cultivated. So on this reading, a person can justly claim whatever resources are necessary to meet her desires provided that she has not cultivated 'expensive tastes'.<sup>50</sup>

Looking now at the first half of the socialist slogan, which covers people's contribution to social welfare, Cohen assumes that people should use their talents in whatever way is most productive, and for as long a duration as has been agreed in the community to which they belong. This is subject to two important riders. First, work that is more burdensome than average can be compensated by providing the worker with more leisure or extra resources. Second, each individual has a 'legitimate personal prerogative' either to work less or to use their talents in less productive ways: thus a limit is set on the social demands that may be placed on a person that reflects the interest she may have in pursuing a particular plan of life.<sup>51</sup> Or as Cohen himself puts it:

The old communist slogan 'From each according to his ability, to each according to his need' was at best poorly formulated, because it suggested that the more able should give more of themselves irrespective of the needs that might thereby be fulfilled or frustrated. To avoid unfair burden on the talented, or on anyone else for that matter, the first part of the slogan

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<sup>48</sup> Cohen, 'Back to Socialist Basics' in Cohen, *On the Currency of Egalitarian Justice*, pp. 219-20.

<sup>49</sup> For some reasons why luck egalitarianism would be an inappropriate principle for the campers to use, see R. Miller, 'Relationships of Equality: A Camping Trip Revisited', *Journal of Ethics*, 14 (2010), 231-53.

<sup>50</sup> This assumes that there are sufficient resources to meet everyone's desires. If this is not the case, then a natural extension of Cohen's principle would be to say that the same proportion of each person's desires should be satisfied, or to put it another way, that each should enjoy the same fraction of the welfare level they might have enjoyed if there were no resource constraints.

<sup>51</sup> It is not entirely clear whether Cohen regards the personal prerogative as something that justice itself requires, or as a limit to the demands of justice that is justified on other grounds. Here I am treating it as part of the full specification of the distributive principle that I claim represents Cohen's own best understanding of justice.

should, instead, be constrained by its second part: no one should be expected to serve in a fashion that will unduly depress her position, in comparison with others, with respect to what she needs to have to live a fulfilling life.<sup>52</sup>

Note that so long as people make reasonably sparing use of their personal prerogatives, the result of applying this principle of distributive justice will be approximate equality, in the sense that ‘the amount of amenity and burden in one person’s life should be roughly comparable to that in any other’s’.<sup>53</sup> Thus if, like Cohen, we also value equality because it encourages personal relations of community, the communist slogan scores over luck egalitarianism by bringing the ideas of justice and community into harmony with one another (I noted earlier Cohen’s discomfort on noticing that the luck egalitarian principle, here rechristened ‘socialist equality of opportunity’, might *conflict* with the idea of community, or as he put it, ‘it would of course be a considerable pity if we had to conclude that community and justice were potentially incompatible moral ideals’.<sup>54</sup>)

Note further that one reason a philosopher might have for endorsing luck egalitarianism is that by allowing choice to modify initial equality, it may appear to capture the most attractive element of the popular idea of *desert*: someone who chooses to use the resources that are assigned to them in a productive way, one might think, deserves to receive and enjoy the benefits that accrue. Luck egalitarianism appears to deliver this result while avoiding what many take to be the main problem with conventional notions of desert, namely that they justify rewarding people on the basis of outcomes that depend upon their undeserved and unequally valuable talents. But this could not be Cohen’s reason, for he has consistently set his face against allowing desert considerations, of any kind, to influence distributive shares.<sup>55</sup> Cohen granted that there were grounds for desert, such as making an unusually high degree of effort in some useful task, that might demand recognition in the

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<sup>52</sup> Cohen, *Rescuing Justice and Equality*, pp. 208-9.

<sup>53</sup> Cohen, ‘Back to Socialist Basics’ in Cohen, *On the Currency of Egalitarian Justice*, p. 220.

<sup>54</sup> Cohen, *Why Not Socialism?*, p. 37. Pablo Gilabert has argued that we should treat what he calls ‘the principle of community’ as an independent principle of justice that limits the operation of socialist equality of opportunity: see P. Gilabert, ‘Cohen on Socialism, Equality and Community’, *Socialist Studies*, 8 (2012), 101-21. However it is not clear to me what reason one could have for wanting to hold on to the latter principle once the ability/need principle has been spelt out in the way suggested above; the concerns expressed by Gilabert about ‘having expansive opportunities to lead a flourishing life’ which he thinks luck-egalitarianism protects seem to be fully catered for by the former.

<sup>55</sup> The reference to desert as a possible vindicator of inequality in the passage from p. 7 of *Rescuing Justice and Equality* that I cited at the beginning of this chapter is therefore an anomaly. On pp. 15-16 Cohen writes that ‘no one has a rightful claim, based on desert, or on any other antecedent condition, to have more resources than anyone else’ and this is the premise that runs throughout his lengthy and critical engagement with Rawls in that book. Ideas of desert are always associated with anti-egalitarian positions to the right of Rawls.

form of ‘a salute and a handshake and a sense of gratitude’, but it would actually undermine the deserving person’s intention to offer her a material reward.<sup>56</sup>

Everything therefore points towards a suitably modified version of the Marxian ability/need principle as the best way to capture Cohen’s own deepest convictions about distributive justice. His long flirtation with luck egalitarianism turns out to have been a mistake. Alongside that principle, he should have recognized that there might be *legitimate* departures from justice stemming from personal choice in the use of resources – this was the position he was gravitating towards in ‘Fairness and Legitimacy in Justice’. As an avowed value-pluralist, allowing justice to be moderated in this way would not have been a problem, though he could continue to hope that a shared ethos of justice would deter people from making choices that would significantly disturb equality of condition.

This is not the place to offer a substantive assessment of the principle of distributive justice I am attributing to Cohen. One might think that it would only be applicable within a small community marked by a high degree of interpersonal solidarity and trust.<sup>57</sup> One might also think that considerations of desert must feature prominently in any conception of social justice that is appropriate to a technologically advanced, market-based society. Elsewhere I have argued that an approach to justice that seeks to insulate the concept from all contingent facts about the human condition risks undermining its capacity to offer practical guidance of any kind.<sup>58</sup> My main point in this essay is a different one: luck egalitarianism does not provide a coherent escape route for someone whose fundamental convictions are egalitarian but who feels under some pressure to respond to grasshopper/ant stories in which the industrious are called upon to subsidize the idle.<sup>59</sup> Its claim to represent, not an unstable compromise between equality and other values, but the best interpretation of equality itself, cannot be sustained.

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<sup>56</sup> Cohen, ‘Back to Socialist Basics’ in Cohen, *On the Currency of Egalitarian Justice*, p. 222. For more on Cohen’s views on desert see my essay ‘Our Unfinished Debate about Market Socialism’, *Politics, Philosophy and Economics*, forthcoming, which cites passages from Cohen’s unpublished paper ‘David Miller on Market Socialism and Distributive Justice’

<sup>57</sup> For a discussion of why Cohen’s camping is a poor model for thinking about what justice requires in society as a whole, see M. Ronzoni, ‘Life is not a Camping Trip – on the desirability of Cohenite socialism’, *Politics, Philosophy and Economics*, 11 (2012), 171-85.

<sup>58</sup> D. Miller, ‘A Tale of Two Cities; Or, Political Philosophy as Lamentation’ in D. Miller, *Justice for Earthlings: essays in political philosophy* (Cambridge: Cambridge University Press, 2013).

<sup>59</sup> See Cohen, ‘Luck and Equality’, p. 120.