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Luck, opportunity and disability

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This paper argues that luck egalitarianism, especially in the guise of equality of opportunity for welfare, is in tension with the ideal of fair equality of opportunity in three ways. First, equal opportunity for welfare is compatible with a caste system in employment that is inconsistent with open competition for positions. Second, luck egalitarianism does not support hiring on the basis of qualifications. Third, amending luck egalitarianism to repair this problem requires abandoning fair access to qualifications. Insofar as luck egalitarianism cannot support fair equality of opportunity, it cannot do justice to the claims of the disabled. Indeed, in the absence of fair equality of opportunity, disabled people are likely to be marginalized.

Keywords: disability; luck egalitarianism; equality of opportunity

Equality of opportunity is widely held to be a requirement of distributive justice. If anything is uncontroversial in political philosophy, it is the idea that equal opportunity is good.¹ Equality of opportunity is commonly understood to demand three things. First, it requires open competition for social positions – for jobs and for admittance to higher education. Second, it requires that contestants be assessed in terms of their qualifications where qualifications are understood as the capabilities needed to fulfill the duties of the position. Selectors are obliged to choose those applicants who are the most qualified. Third, it requires that individuals have adequate access to the qualifications associated with various social positions. Following John Rawls, I will call this common notion of equality of opportunity ‘fair equality of opportunity’ (Rawls 1971). This ideal can be interpreted in a number of ways, so there are many variants of fair equality of opportunity.

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Recently an alternative ideal of equality of opportunity has been proposed by luck egalitarians. This ideal is offered as the proper ‘currency’ or metric of distributive justice to stand in the stead of such things as resources or welfare. It contains two features that distinguish it from the traditional account of equal opportunity. First, luck egalitarian equality of opportunity concerns opportunities for welfare, not opportunities for jobs or for acceptance into higher education programs. It is in that respect broader than the traditional view. Second, it is justified by appeal to the ‘luck/choice principle,’ which stands at the center of luck egalitarianism. This principle states that distributive inequalities are just when they are traceable to choice and unjust when they are traceable to brute luck (Tan 2008).² Proponents of equal opportunity for welfare claim that equalizing opportunities for welfare ensures that people’s welfare levels conform to the luck/choice principle – that is, that their welfare fluctuates with their choices and not their luck.

It appears, then, that the point of fair equality of opportunity is different from the point of equal opportunity for welfare. However, as we will see, there is some overlap between the views. Yet, there has been little dialogue between proponents of each of these accounts, and so it is not clear what the relationship is between them.³ In the first section of this paper, I argue that equal opportunity for welfare is in tension with fair equality of opportunity in three ways. First, equal opportunity for welfare is compatible with a caste system in employment that is inconsistent with the open competition provision of fair equality of opportunity. Second, luck egalitarianism generally, including the equal opportunity for welfare version, lacks strong grounds for requiring that candidates be assessed in terms of their qualifications. Instead it implies that people should be hired on the basis of their choices. I assume that the counter-intuitive nature of this implication poses a problem for the luck egalitarian. Third, an obvious argument available to the luck egalitarian in support of judging candidates by their qualifications requires rejecting the notion of fair access to qualifications.

In the second part of this article, I consider the implications of my argument for the issue of justice for the disabled. This section argues that fair equality of opportunity is critical to justice for the disabled. To the extent that luck egalitarians have trouble supporting fair equality of opportunity, they have difficulty ensuring justice for the disabled. My main line of argument is that both the open competition and the fair access provisions of fair equality of opportunity are essential to preventing the marginalization of the disabled. While the disabled might enjoy, for example, equality of opportunity for welfare under a luck egalitarian scheme, in the absence of fair equality of opportunity they would be largely prevented from competing with able-bodied persons for desirable social positions. And so they would likely be excluded from social cooperation and hence suffer diminished political and economic status.

Equal opportunity for welfare

People have equal opportunity for welfare, according to Richard Arneson, when each person has 'an array of options that is equivalent to every other person's in terms of the prospects for [self-interested] preference satisfaction it offers' (Arneson 1989).⁴ Consider a decision tree that describes each person's possible complete life history. The equal opportunity for welfare principle is satisfied when everyone confronts equivalent decision trees in the sense that the expected values are the same for each person's best welfare option, second best welfare option, and so on. On this view, each person is given an allotment of wealth that, given his circumstances, will afford him opportunity for welfare equal to that of everyone else.

If equal opportunity for welfare obtains, there are two ways people can have less welfare than others. First, they can have less on account of their choices. Where one person might choose to be a banker and enjoy the maximum level of welfare possible given his resources and circumstances, another might choose to be an activist and enjoy less welfare than possible given his resources and circumstances. Second, people can experience bad brute luck. One might, for instance, become ill later in life through no fault of one's own. According to proponents of equal opportunity for welfare, such unlucky individuals are owed compensation in the form of extra opportunities for welfare.

Two clarificatory points about equality of opportunity for welfare: first, although opportunity for welfare is the metric of justice on this view, what is distributed to provide equality of opportunity for welfare is typically wealth. And what is redistributed to compensate people who later suffer luck-induced deficits in opportunities for welfare is wealth. Sometimes this distribution is to be achieved via direct payments by the state to individuals; sometimes it is to be achieved via indirect payments, such as state funding for public schools. Second, the quantity of wealth individuals are owed depends upon how their initial circumstances – their social position at birth and their native abilities – affect their opportunities for welfare. A person born with few natural talents to neglectful parents will be allotted more initial resources than one born with many natural talents to conscientious parents.

One upshot of this second feature of the doctrine of equality of opportunity for welfare is that a person who encounters misfortune with respect to his initial family environment and native talents will have only those opportunities for welfare that extra resources can afford him. For instance, a person born with few natural talents will have fewer opportunities for welfare that involve the exercise of talent. So, he will be able to achieve the same level of welfare as a very talented person only by means other than the use of his talents. Perhaps the extra resources he is allotted to compensate for the shortfall in opportunities for welfare caused by his

reduced talents can be used, for example, to buy a boat. And perhaps boating will afford him a significant degree of welfare, so that he has the same opportunity for welfare that, say, an artist has on account of the welfare he gets from producing art. Likewise, a person who has the same opportunity for welfare as others who then encounters misfortune and is on that ground given extra resources will be similarly limited in the ways by which he may achieve welfare.

The process for establishing equal opportunity for welfare, then, and for compensating people whose opportunity for welfare is diminished by luck, is necessarily imperfect because only some *sources* of welfare are amenable to institutional manipulation. For instance, consumption-oriented sources of welfare are relatively easy to provide; a person with few opportunities for welfare can use the extra resources he is allotted to buy things that will increase his opportunities for welfare. By contrast, creativity-oriented sources of welfare are relatively difficult to provide; a person with few opportunities for welfare who has diminished natural capacities is limited in the extent to which he can convert his resource allotment into increased capacities. So, the extent to which he can enjoy creativity-oriented sources of welfare is small. In short, some people will be constrained in the means by which they can achieve welfare, even if they have a wide array of options of a certain type for achieving welfare. Furthermore, there is a point at which no amount of initial resources can provide one born into very unfortunate initial circumstances with the same opportunity for welfare as one born into very favorable initial circumstances. Likewise, there is a point at which no amount of compensatory resources can restore one who has suffered a terrible misfortune to the level of opportunity for welfare one would have had had one not suffered the misfortune.

Opportunity for welfare and opportunity for careers

The principle of equal opportunity for welfare I outlined above can be satisfied in the absence of the open competition provision of fair equality of opportunity.⁵ Consider two individuals, Alice and Beatrice. Both have the same opportunity, let us say, to pursue their best welfare option, second best welfare option, third best, and so on. Alice's best welfare option involves sporting activity and Beatrice's intellectual activity. Yet, it happens that Alice belongs to a social caste whose members are forbidden from positions that involve intellectual activity. So Alice is legally prohibited from going to college and from holding jobs that require a high degree of education. Beatrice belongs to a higher social caste, the members of which have access to intellectual work and higher education and are not barred from the sporting activities available to members of Alice's caste. Indeed, there are no pursuits from which they are banned.

Let us make three further assumptions about this case. First, assume that Alice's sporting preferences are not adaptive; she would have had such preferences even if she had been born into the higher caste. Second, assume members of Alice's caste are not, on the whole, poorer than members of Beatrice's caste, because sporting activities are at least as lucrative as activities that require extensive education. Third, assume that members of Alice's caste have the same opportunities for consumption as the members of Beatrice's caste. They are not confined to second-rate facilities or prohibited from engaging in certain leisure activities. So, members of the lower caste have open to them many sources of welfare, their prohibition from intellectual work notwithstanding. This example suggests that a caste system in employment is in principle compatible with equal opportunity for welfare.

The advocate of equal opportunity for welfare might respond to the caste example as follows. Freedom of choice, he might claim, is a constituent of welfare (Arneson 2000). So, a person's welfare is enhanced to the extent that she confronts a wide array of options and it is diminished to the extent that her options are restricted. The point is not that when one confronts a wide array of options for welfare she is more likely to achieve welfare. Rather, the point is that the choosing itself is a source of welfare. Therefore, a person who lacks freedom of choice has diminished opportunity for welfare, for she lacks access to the welfare that arises from being in a position to choose.

It follows that if some people's freedom is restricted, they will not enjoy opportunities for welfare equal to those whose freedom is not restricted. Now, to the extent that the open competition provision of fair equality of opportunity is a component of individual freedom, it follows that that provision is necessary for equal opportunity for welfare. In other words, the argument goes, everyone must be free to choose their career paths in order to ensure equal opportunity for welfare, for if some people's career options were limited, they would not have opportunities for welfare equal to those whose career paths were not limited.

This rejoinder on the part of the proponent of equal opportunity for welfare will not do, however, because a person whose choice of occupations is restricted might have non-career related options open to him that are not open to someone whose career options are not limited. And so he might have the same opportunity for welfare as the person whose career options are unconstrained. Consider, again, Alice and Beatrice. I stipulated above that Alice and Beatrice have equal opportunity for welfare. Alice, then, has the same chance of being, say, an Olympic pole-vaulter as Beatrice has of being, say, a primatologist. Yet, according to the criticism being proposed, the very fact that Alice is prohibited from choosing primatology – indeed from choosing any intellectual pursuit – diminishes her opportunity for welfare relative to Beatrice. It might seem to follow that in

the absence of open competition, Alice cannot have the same opportunity for welfare as Beatrice.

But suppose Alice is flexible, confident and optimistic whereas Beatrice is rigid, insecure and pessimistic. It follows that Alice has greater opportunity for welfare, in that respect, than Beatrice. This greater opportunity enjoyed by Alice due to her personality might exactly make up for the diminishment in opportunity for welfare Alice experiences from not being able to choose from as many career options as Beatrice. So, it turns out that equal opportunity for welfare does not preclude the sort of caste system I described, which system is in violation of the open competition aspect of fair equality of opportunity.⁶

Luck and fair equality of opportunity

I now argue that luck egalitarianism, including equal opportunity for welfare, should not require that candidates be evaluated in terms of their qualifications. Recall the main tenet of luck egalitarianism – that inequalities due to luck are unjust while inequalities due to choice are just. Two matters of luck that greatly concern luck egalitarians are people's initial social circumstances and their natural talents. Luck egalitarians endorse mitigating, through social policy, the influence of initial social circumstances and natural talents on people's shares of goods.⁷ They favor policies that equalize people's initial social circumstances; and when such equalizing cannot be achieved, they favor compensating people for their unlucky initial social circumstances. So if, for instance, despite efforts to equalize initial social circumstances, an adult ends up not having access to college and is therefore confined to a low-paying job, he is owed state-provided compensation in order to increase his share of goods.

Those born with a scarcity of natural talents are likewise owed compensation on the luck egalitarian view. Ronald Dworkin argues that resources, rather than welfare, should be distributed according to the luck/choice principle. Inequalities in resources, that is, are just when they are the outcome of choice and unjust when they are the outcome of brute luck. He counts both natural talents and wealth as resources. A person with few natural talents, then, has fewer resources than a person with many talents and this inequality, as it is caused by luck, is unjust. The person with fewer talents is then entitled to extra wealth to make his total share of resources equal to that of the person with many talents. As we saw above, the equal opportunity for welfare version of luck egalitarianism also demands giving extra resources to those with fewer talents, as this is necessary to establish equality of opportunity for welfare.

Fair equality of opportunity, then, seems compatible with the central aim of luck egalitarianism, for it is designed to minimize the influence of

people's social circumstances upon their prospects. In Rawls's words, fair equality of opportunity demands that those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system, that is, irrespective of the income class in which they were born (Rawls 1971, p. 73).

Fair equality of opportunity, however, departs from luck egalitarianism insofar as it does not lessen the influence of natural circumstances on people's shares. Indeed, assessing people in terms of their qualifications, once social backgrounds have been sufficiently equalized, *promotes* the influence of natural talents by permitting those talents a large role in the allotment of occupations. So, luck egalitarians and proponents of fair equality of opportunity agree up to a point; both wish to reduce the influence of initial social position on distributive outcomes (Mason 2001).⁸ Indeed luck egalitarians tend to assume that a society that is just by luck egalitarian lights will include fair equality of opportunity (Mason 2006, Tan 2008).

Now, there is a notable asymmetry in the luck egalitarian approach to eliminating deficits caused by bad luck. The luck egalitarian's treatment of differences in natural circumstances stands in contrast to his treatment of differences in social circumstances. Luck egalitarians, like proponents of fair equality of opportunity, endorse all sorts of *ex ante* interventions to restrict the influence of unlucky social circumstances. They support policies aimed at helping children with unfavorable social backgrounds acquire the skills and talents that their unlucky social circumstances might prevent them from acquiring without state intervention. So they support such things as public education, subsidized healthcare (for children), publicly funded after-school programs, and so on (Mason 2004, 2006). However, the only means luck egalitarians propose for restricting the influence of unlucky natural circumstances is compensation *ex post* – compensation delivered at the point at which one deploys one's talent. So resourcists, such as Dworkin, propose giving extra wealth to less talented adults in order to make their total share of resources equal to the shares of the more talented. And proponents of equal opportunity for welfare, such as Arneson, endorse giving extra wealth to less talented adults in order to make their total share of opportunities for welfare equal to the shares of more talented adults. So, it turns out that luck egalitarians allow the naturally talented to benefit from their natural talents insofar as they allow the naturally talented to obtain desirable social positions on the basis of their natural talents.

What explains this asymmetry in luck egalitarianism? Consider the forms that *ex ante* intervention might take in the case of natural talents. There are at least three ways in which we might mitigate *ex ante* the influence of natural talents on distributive outcomes. First, we could intervene on the physical, perhaps genetic, level in order to reduce the range of differences in natural talents among people. Second, we could pool

people's natural talents and give everyone equal access to the talent pool. Third, we could cease distributing social positions on the basis of qualifications and distribute them instead on the basis of effort and choice.⁹ The first of these methods raises a host of issues that are beyond the scope of this paper. And surely luck egalitarians have not said enough about why direct intervention in the 'natural lottery' should not be implemented (Buchanan *et al.* 2000, p. 61–100). Let us assume that they can offer weighty (albeit, non-luck egalitarian) moral considerations against physically altering people to eliminate differences in natural talent among them.

The second of these proposals has been taken up (and rejected) by luck egalitarians on the ground that it results in 'the slavery of the talented' and hence conflicts with the luck/choice principle itself (Dworkin 1981b, p. 312, Arneson 1989, p. 78). Here is the problem. The pooling of people's talents is accomplished by assigning each individual an equal share of ownership of everyone's talents. This amounts to ownership of a block of time during which owners with limited talents can dictate how the talented, whose talents they partially own, should deploy their talents. The problem with this system is that the highly talented are at a disadvantage because they have less freedom to pursue their life plans than the less talented, who are rarely, if ever, at the disposal of others. The more talented are limited, relative to the less talented, in their freedom to make choices that would influence their own distributive shares. And so they are penalized for something that is merely a matter of luck, namely the fact that they have extensive talents that are in high demand.

The third proposal has not been given much attention by luck egalitarians.¹⁰ This is the idea that we refrain from selecting people for jobs and positions in higher education strictly on the basis of their qualifications because doing so allows them to get those positions, in part, on the basis of their natural talents, which are a matter of brute luck. It seems, though, that luck egalitarians have good grounds for endorsing a policy whereby candidates are assessed strictly in terms of their choices and efforts. That policy would better meet the demands of luck egalitarian justice than the principle of fair equality of opportunity, because it would prevent the talented from enjoying, simply on account of good luck, the *intrinsic* rewards of desirable social positions. It would prevent them from gaining – again, merely due to luck – the satisfaction, security, independence, flexibility and opportunity for creativity associated with desirable social positions. To be sure, compensation *ex post* can ensure that the more talented, despite their having highly satisfying and high-paying jobs, do not end up with a larger share of whatever one thinks the metric of justice should be. Nonetheless, if the aim is to ensure that people are not penalized for their bad luck nor benefited by their good luck, a principle distributing social positions on the basis of choice comes closer to the luck egalitarian ideal than the principle of fair equality of opportunity. And so the luck egalitarian owes us a

justification for endorsing a policy of distributing positions on the basis of qualifications.

Consider the case where opportunity for welfare is the metric of justice. A policy of distributing positions strictly on the basis of choice would avoid the problems identified above of using wealth as a proxy for opportunity for welfare. Such a policy would offer those with limited natural talents a *source* of welfare (the intrinsic rewards associated with certain jobs), and perhaps even a *level* of welfare, not available to them on the scheme imposed by fair equality of opportunity. From the point of view of equal opportunity for welfare, that is, it seems superior to distribute positions on the basis of people's choices rather than their qualifications so as to prevent the less talented from being systematically confined to low welfare-producing jobs. These jobs are likely to leave them no options for welfare beyond the consumption-oriented activities afforded them by compensatory wealth, and will perhaps leave them with fewer opportunities for welfare altogether than the talented have.

Selecting for positions on the basis of choice

The selection procedure that the luck egalitarian should consider looks like this. Suppose that there are independent reasons to allow selectors to require a bare minimum level of capability on the part of employees or potential students. (An employer is permitted, for example, to prevent someone with narcolepsy from having a job as a bus driver.) Among the candidates that show the minimum degree of capability required for safety and, perhaps, required for a minimum level of efficiency, employers, on this proposal, must select those who have exhibited the most effort rather than those who possess the most natural aptitude.

Imagine that Carl and Dexter are competing for admission to a graduate program. Carl has in abundance the native abilities required for graduate education and is therefore well qualified. He has from a young age exhibited great facility with language and excellent reasoning skills. He is also unflappable and has great powers of concentration. He has very good grades, high test scores and an excellent writing sample. Furthermore, Carl has produced these things with very little effort. He did not work hard in school, he did not study for the Graduate Record Examinations (GRE), and he produced his writing sample in a short time while on vacation. Dexter, on the other hand, has considerably fewer of the native abilities required for graduate education. But Dexter is qualified, though barely so, for he has managed to get decent grades, acceptable test scores and to produce an adequate writing sample. He did this by studying hard throughout his life, hiring tutors when necessary and using his free time to hone his writing capabilities.

Carl has what it takes for graduate school, then, largely on account of good luck. Dexter has what it takes largely on account of his choices. Yet, the luck egalitarian would claim that Carl, and not Dexter, should be admitted (in conformity with the principle of fair equality of opportunity) and that Dexter should be compensated with wealth for the distributive deficits he is likely to suffer from being denied admission to graduate school. That is, Dexter should be given extra opportunities for welfare (via an infusion of resources) to make up for the luck-induced deficit in welfare caused by his relative scarcity of talents. Yet, even if this extra wealth guarantees that Carl and Dexter have equal opportunities for welfare, and so they can, if they so choose, have the same degree of welfare, it is still the case that Carl gets to enjoy the welfare associated with pursuing a doctorate, where Dexter does not and Carl gets this benefit on the basis of his good luck, not his choices. Further, it might be that no amount of extra wealth will give Dexter the amount of opportunity for welfare he would have if he had the chance to attend graduate school. In this case, in being denied admittance to graduate school, Dexter may be denied equal opportunity for welfare despite his being compensated with resources for the bad luck of having limited talents.

If Carl were denied admission and Dexter admitted (due to his choices and efforts), Carl too would be denied a source of welfare, but Carl is not entitled to this source of welfare since it is available to him on account of his good brute luck, not his choices. Moreover, Carl will not face the problem of his compensation allowing only consumption oriented opportunities for welfare, or perhaps not raising his welfare sufficiently, for Carl *is not owed compensation* for being denied admission to graduate school, on the luck egalitarian view, because it was his choices and not bad luck that dictated his rejection from graduate school.

This example suggests that proponents of equal opportunity for welfare should reject the practice of choosing more qualified over less qualified candidates. Instead, they should endorse the practice of choosing candidates whose choices make those candidates suitable for the job. This criterion of selection conforms to the luck/choice principle because it diminishes the influence of natural talents on distributive outcomes – in this case on one's opportunities for welfare. And, importantly, it diminishes this influence *better* than a system that merely compensates the less talented with wealth in order to (attempt to) make their opportunities equal to those enjoyed by the talented.

A dilemma for the luck egalitarian

A policy of selecting people for social positions on the basis of their choices alone strikes many as counter-intuitive. This is a problem for the luck egalitarian. There are two ways he might defend hiring on the basis of

qualifications. First, he might identify a difference between natural and social circumstances that justifies using only *ex post* interventions in the case of natural circumstances. Second, he might avoid having to identify such a difference by arguing that we should use only *ex post* interventions in the case of both natural and social circumstances.

Using the first tack, the luck egalitarian might claim that only *ex post* methods *as such* are appropriate where natural talents are concerned or that only *ex post* methods are appropriate, given the range of *ex ante* methods available. But in any case he would have to identify the morally relevant difference between social and natural circumstances that entails that only *ex post* methods of mitigating bad luck are permitted in the case of natural talents. While it might be easy to rule out *ex ante* methods such as manipulating the gene pool, it is not immediately obvious how the luck egalitarian can argue that *ex ante* methods involving (mere) social manipulation are permitted only when restricting the influence of social circumstance and not the influence natural circumstance on people's prospects.

The second approach open to the luck egalitarian is to argue that only *ex post* methods should be used in either domain. This view preserves the idea that candidates should be assessed in terms of their qualifications because it permits both natural and social brute luck to affect people's prospects up until the point at which they deploy their natural and acquired abilities as adults.

But this view eviscerates the ideal of fair equality of opportunity. If *ex ante* interventions are prohibited in the case of social circumstances, then we must abandon the policy of requiring fair access to qualifications. If we abandon that policy, the principle of equal of opportunity would require merely open competition and selection on the basis of qualifications. (This is the version of equality of opportunity that Rawls calls 'careers open to talents.')

Yet this thin variety of equal opportunity strikes many as inadequate as it confers huge advantages to the children of the privileged. To allow such privilege to determine people's life prospects seem inimical to the point of equality of opportunity, which is (to invoke a familiar metaphor) to 'level the playing field.'¹¹

So, the luck egalitarian has a difficult choice to make. If he wants to preserve selecting on the basis of qualifications, he must explain why only *ex post* compensation is acceptable in the case of natural circumstances. Indeed, it seems that he must explain why *ex ante* intervention is *prohibited* in the case of natural talents but *required* in the case of social advantage. He must tell us, in short, why those who are luckily naturally talented, but not those who are luckily socially privileged, should receive the society's most coveted positions.

If the luck egalitarian cannot make this case, then he is pressured to argue that all types of misfortune must be restricted by *ex post* methods alone. He must argue, then, not only that *ex ante* methods of intervention

in the instance of social disadvantage are *not required*, but also that they are *not permitted*. He must explain, that is, why such policies as public education, state-sponsored children's healthcare, and so on, are impermissible means for compensating those from unfortunate social backgrounds for their bad luck.¹²

Disability, bad luck and reciprocity

Examples of people with disabilities abound in the literature on luck egalitarianism (Dworkin 1981a, 1981b, Cohen 1989). Many luck egalitarians, it seems, regard disabilities as paradigm examples of bad brute luck.¹³ Indeed, to be disabled, according to luck egalitarians, is simply to lack certain natural talents. So, to the extent that luck egalitarians are committed to compensating people for the bad luck of lacking natural talent, they are committed to compensating people with disabilities (Dworkin 1981b).

For reasons I will explain subsequently, this feature of luck egalitarianism makes it look as though luck egalitarianism is better able to handle disability justice issues than its main rival, democratic egalitarianism. The rest of this article is devoted to showing that luck egalitarianism's uneasy relationship with fair equality of opportunity renders it problematic from the point of view of justice for the disabled. Fair equality of opportunity, I contend, is essential to justice for the disabled. But before making this case, I will introduce a worry – unfortunately only to set it aside – about the way that luck egalitarians think about disability.

It may be that luck egalitarians are simply wrong that disability is a form of bad luck.¹⁴ Many disabled people claim that they are, *qua* disabled, no worse off than able-bodied people. Their quality of life, they claim, is *not* lower than the quality of life of the able-bodied, except to the extent that they are subject to oppression as disabled.¹⁵ In this respect, being disabled is like being female or gay. No one assumes that being female or gay *itself* makes one's life go badly; women or gay people have less desirable lives than men or straight people (if they do) only to the extent that they suffer from, for example, harassment, discrimination, stigmatization, and so on. Absent a discriminatory social context, being disabled, on this view, is not a disadvantage. If being disabled is in itself not a disadvantage in any respect, then being disabled cannot in itself be matter of bad luck; for one cannot both be unlucky and not disadvantaged in any respect. And if being disabled is not a matter of bad luck, then it is not the case that luck egalitarianism handles the issue of justice for the disabled better than other egalitarian theories of justice. My critique of luck egalitarianism sets aside this issue and grants the luck egalitarian's assumption that disability is at least sometimes unlucky.

Luck egalitarianism, as I noted above, has a straightforward way of dealing with the case of disability. But notice that only those distributive

deficits stemming from disabilities not traceable to people's choices are compensable on the luck egalitarian approach. Someone who becomes disabled through an accident that he could have been reasonably expected to avoid is not owed compensation.¹⁶ He is required to pay the full cost of his choice to engage in the avoidable activity that resulted in accidental disablement. So, it turns out that, even on the face of it, luck egalitarianism does a bad job of explaining what is owed, in terms of distributive justice, to disabled people; unless, of course, one is willing to say that someone who is disabled in, say, a skiing accident is owed no assistance (beyond charity) to help her cope with the deficits caused by her disability.¹⁷

Nonetheless, many have claimed that democratic egalitarianism is even worse equipped than luck egalitarianism to give an account of justice for the disabled. Democratic egalitarianism, the argument goes, essentially excludes the disabled from the domain of justice altogether (Kittay 1999, Nussbaum 2006). That is, it does not simply fail to do justice to the disabled, as perhaps luck egalitarianism does; it fails to treat the disabled as subjects of justice at all. Briefly, the objection is this. Democratic egalitarians frame the question of distributive justice as follows: how should cooperatively produced social goods be distributed among those who have produced them? And they answer the question like this: such goods should be distributed according to principles upon which the cooperators can all reasonably agree.

So, individuals are viewed, by the democratic egalitarian, as standing in relations of reciprocity in two senses. First, they are seen as joint producers of the goods whose distribution is to be governed by principles of justice. And so their claim to a share of goods is grounded, at least in part, on their having helped produce those goods. So, citizens are owed a share of goods, at least in part, according to the democratic egalitarian, on grounds of reciprocity (Rawls 1993, pp. 16–17). Citizens also stand in relations of reciprocity in the sense that they must be able to justify principles of justice to one another. They are not permitted to impose upon one another principles that some participants could not reasonably accept. In this sense, citizens are in reciprocal relations when it comes to justifying their social arrangements (Rawls 1993, pp. 49–50).

Disabled people are excluded from this picture, according to critics, because, to the extent that they cannot fully participate in a scheme of social cooperation, they lack grounds for a claim on social goods and they lack standing in the process of justification – because they are not full cooperators, the question of whether the disabled can reasonably agree to principles of justice does not arise. Further, to the extent that someone's disability prevents him from appreciating reasons, he cannot be a party to a (hypothetical) agreement on principles of justice. That is, he cannot be someone of whom it is true that he could reasonably agree to some

principle. In short, the disabled – or at least the severely disabled – do not stand in relations of reciprocity with other citizens as those relations are understood by democratic egalitarians. And so, the disabled are not, the critique says, recognized by democratic egalitarians as subjects of justice.

This is a trenchant criticism of democratic egalitarianism. Proponents of the view have argued that it can avoid this objection (Quong 2007, Stark 2007, 2009a, 2009b, Hartley 2009, 2011). Let us assume, for the time being, that they are correct. Let us assume, then, first, that the disabled are included in the domain of democratic egalitarian justice and so are regarded as subjects of justice. Let us assume, second, that disabled people have a claim of justice (and not merely of beneficence) on a share of socially produced goods. And let us assume, third, that the principles of justice that govern the distribution of those goods are those that the disabled (or their trustees in the case of severe cognitive disability) have reason to accept. Then we can ask whether luck egalitarianism or democratic egalitarianism better handles, *substantively*, the issue of distributive justice for the disabled.

Disability and equal opportunity

Democratic egalitarianism, like most egalitarian theories of justice, endorses fair equality of opportunity. The details of the democratic egalitarian argument for fair equality of opportunity, I must leave aside. In skeletal form, the view is this. A just society is one that secures equal citizenship (Miller 1999). Treating citizens as equals requires (among other things) giving them equal opportunity to gain the social positions a society has on offer. The absence of open competition and the practice of hiring people on grounds other than their qualifications constitute unjust discrimination. And, the absence of fair access to qualifications creates hierarchies of wealth and status that are incompatible with genuinely equal citizenship.

One way of judging whether democratic or luck egalitarianism is better on issues of justice for the disabled, then, is to see if the presence of fair equality of opportunity is more conducive to justice for the disabled than the presence of equal opportunity for welfare. If it is, then democratic egalitarianism is superior, in one respect, to the equal opportunity for welfare view in theorizing the justice claims of the disabled. Below I argue that democratic egalitarianism is indeed superior in this respect.

We can consider each provision of fair equality of opportunity in turn. It seems that open competition, which, I argued above, is *not* demanded by equal opportunity for welfare, is essential to justice for the disabled. The reason is that, if a caste system in employment is permitted, the disabled are likely candidates for constituting a lower caste, at least in industrialized capitalist societies. That is to say, if there is no demand that all citizens be permitted to compete for jobs, then it seems likely that those who are

seen, for ideological reasons, as unworthy of competition would systematically be excluded. And the disabled are likely to be seen as unworthy of competition because people mistakenly judge disabled people's impairments as making them incapable of doing many jobs. While disabled people would, *ex hypothesi*, have (close to) the same opportunities for welfare as able-bodied people under such a caste system, they would be denied an important *source* of welfare available to the able-bodied, namely desirable careers. This would likely cause the disabled to be politically marginalized, for while they would not be, again, *ex hypothesi*, without means, many would be excluded from cooperative activity. They would therefore suffer the stigma and disempowerment often associated with that status in capitalist societies. Furthermore, there is a risk that the disabled might not even have the same opportunities for welfare as the able-bodied in the absence of open competition. This is because the compensatory wealth that would be allotted to the disabled to raise their opportunities for welfare to the level enjoyed by able-bodied people with high welfare producing jobs might not be adequate to the task.

It might seem that a policy of hiring people on the basis of their choices rather than their natural talents – and so *not* hiring strictly on the basis of qualifications – would be advantageous to the disabled. Prohibiting people's natural talents from influencing their job prospects, in other words, might benefit the disabled, for their disabilities would be regarded as largely irrelevant to their claims to various jobs. To the extent the equal opportunity for welfare approach is committed to hiring people on the basis of their choices, that approach might seem superior to democratic egalitarianism (with its commitment to fair equality of opportunity) in giving disabled people access to desirable social positions.

This apparent superiority is undermined by two factors. First, a policy of hiring candidates on the basis their choices will not always benefit the disabled. Consider again, Carl and Dexter. Let us suppose that Carl, who is intellectually gifted, is also a paraplegic. He would nonetheless be denied admission to graduate school on the hiring scheme that luck egalitarians (I argued above) should adopt. He would no more benefit from a policy of hiring on the basis of effort and choice than would a non-disabled person. Second, it is unlikely that luck egalitarians will concede to abandoning the practice of judging candidates by their qualifications. Now, suppose that luck egalitarians cannot make a principled distinction between social and natural differences such that *ex ante* interventions are required in the case of social differences and prohibited in the case of natural differences. Then they are compelled to endorse only *ex post* interventions. That is, if they cannot explain why *ex ante* methods are required in the social domain and prohibited in the natural domain, then they must, to avoid inconsistency, endorse only *ex post* methods of limiting the influence of luck in both domains.

This outcome would be disastrous for people with disabilities. In the absence of *ex ante* interventions for ameliorating unfortunate social circumstances, disabled people would suffer severely. All the programs used for this type of intervention – public transportation, public education, etc. – are necessary to allow disabled people who are born into less than ideal social circumstances fair access to qualifications. Unless a disabled child is born into privileged circumstances, where he has, for example, a car and a driver and money to spare for various therapies, he will not be able to acquire the skills necessary to compete as an adult with able-bodied people for various social positions (Mason 2004). Hence it is likely that, in the absence of fair access to qualifications, many capable disabled people will be prevented from getting attractive jobs and from attending college, graduate and professional school. Again, under a scheme of equal opportunity for welfare, the disabled are guaranteed the same *amount* of opportunity for welfare as the able-bodied, for they will be compensated with extra resources for any deficits in opportunities for welfare their disabilities induce. However, many will have to achieve welfare by means other than gainful employment in a job of their liking. Hence they will suffer the stigma and marginalized status associated with being economically unproductive.

Summary

Given the considerations canvassed above, it seems that democratic egalitarianism, to the extent that it is committed to fair equality of opportunity, better accounts for what is owed to the disabled than does the equal opportunity for welfare version of luck egalitarianism. Democratic egalitarianism can preclude, *in principle*, caste systems in employment where the equal opportunity for welfare view cannot. The prohibition on such a caste system is essential to prevent disabled people from being formed into a lower caste whose members are judged to be unemployable. Moreover, even if it turns out that, as a matter of fact, equal opportunity for welfare cannot be achieved without open competition, the proponent of equal opportunity for welfare is under pressure to abandon one or the other of the two further provisions of fair equality of opportunity. Because he advocates reducing the impact of natural misfortune, he must reject the practice of hiring people on the basis of qualifications, for this practice permits natural talents (and so brute luck) to influence both the sources and the amount of welfare available to people. Further, if he wants (as is likely) to preserve the practice of hiring on the basis of qualifications, the proponent of equal opportunity for welfare will likely have to eschew the demand for fair access to qualifications. This result would be extremely detrimental to disabled people, as it would make it difficult for them to compete with able-bodied people for jobs and for admission to higher education. And so, the disabled

would be prevented from occupying social positions for which they could be perfectly well qualified.

By contrast, democratic egalitarians can fully endorse fair equality of opportunity without worrying about the ways in which its provisions allow natural talent to influence people's life prospects. This is because they are not concerned to compensate people for distributive deficits caused by misfortune. Their reasons for endorsing fair equality of opportunity lie elsewhere. Hence, insofar as fair equality of opportunity is crucial to justice for the disabled, democratic egalitarians are well positioned to advance justice for the disabled.

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Notes

1. This ideal is not *completely* uncontroversial (Cavanagh 2002).
2. Inequalities traceable to option luck are not unjust, according to luck egalitarianism. The distinction between brute luck and option luck is due to Dworkin (1981b).
3. This absence of dialogue is noted by Risse (2002) and Mason (2001) (see also Mason 2006). Kymlicka (2002) and Roemer (1998) seem to assume that all along the justification for equal opportunity has been that it holds people responsible for their choices, but not their luck. In fact this justification is fairly new; more typically equality of opportunity is justified as a procedural condition on the fairness of inequality of condition or as a requirement of desert or respect for persons (for example, Rawls 1971, Goldman 1987, Sher 1998, Radcliffe-Richards 1998, Mason 2004).
4. See also, Arneson (1990), Cohen (1989) and Vallentyne (2002). For a critique of Arneson, see Christiano (1991) and Daniels (1990).
5. Arneson (1999) implicitly acknowledges this fact in his critique of Rawlsian fair equality of opportunity (see also Alexander 1986, Taylor 2004).
6. It goes without saying that although a caste system in employment is in principle compatible with equal opportunity for welfare, most actual caste systems are not. Further, the proponent of equal opportunity for welfare might reject such a caste system on other grounds. Indeed, many of its supporters claim that luck egalitarians can legitimately appeal to non-luck egalitarian considerations of justice (Eyal 2007, Segall 2007, Tan 2008).
7. I use 'goods' here as a generic stand-in for whatever any particular luck egalitarian regards as the proper currency of justice.
8. Dworkin (1985, p. 207) calls fair equality of opportunity 'fraudulent' insofar as it fails to address the unequal distribution of natural talents.
9. Luck egalitarians regard the efforts a person makes as typically a matter of choice. See, for instance, Dworkin's (1981b, pp. 305–307) example of Claude's willingness to work hard at farming despite his limited capabilities in that domain.
10. An exception is Roemer (1998, pp. 84–90).

11. Both Roemer (1998) and Mason (2006) start their books by invoking the metaphor of a level playing field.
12. There are surely justifications for the state providing its citizens with education and healthcare that have nothing to do with compensating people for their unlucky initial social circumstances. It is not clear to what extent these justifications are available to the luck egalitarian.
13. For critical discussion of this approach, see Wolff (2009).
14. It would seem to follow that they are *eo ipso* wrong that lack of natural talent is a form of bad luck. I will not address this issue. The topic of disability and luck is explored by Smith (2013).
15. For discussion of this issue, see Wendell (1996, pp. 35–56), Johnson (2003), McMahon (2005) and Barnes (2009a, 2009b).
16. Such individuals suffer from bad option luck, not bad brute luck, and so are not owed compensation for their distributive disadvantages. Here I employ Segall's 'reasonable avoidability' account of option luck (Segall 2010, pp. 19–23). For discussion of the notion of option luck and of the luck egalitarian's opposition to aiding those who suffer bad option luck, see Fleurbaey (1995), Lippert-Rasmussen (2001), Vallentyne (2002), Barry (2006), Eyal (2007) and Voigt (2007).
17. A standard luck egalitarian response to such 'harsh treatment' worries is to invoke a distinction between what individuals are owed as matter of justice and what they are morally owed. For a discussion, see the references cited in note 16.

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