Notre Dame Law Review

Volume 74 | Issue 2 Article 5

1-1-1999

Economics, Equality, and Responsibility: A Review Essay

Michael Louis Corrado

Follow this and additional works at: http://scholarship.law.nd.edu/ndlr

Part of the Law Commons

Recommended Citation

Michael L. Corrado, *Economics, Equality, and Responsibility: A Review Essay*, 74 Notre Dame L. Rev. 539 (1999).
Available at: http://scholarship.law.nd.edu/ndlr/vol74/iss2/5

This Essay is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.

BOOK REVIEW

ECONOMICS, EQUALITY, AND RESPONSIBILITY: A REVIEW ESSAY

*Michael Louis Corrado**

I. UTILITARIANISM AND THEORIES OF THE GOOD

As a *normative* science, law and economics (in its most popular form) turns out to be a strikingly indefensible form of utilitarianism, in which the good to be maximized is the satisfaction of preferences whose intensity is measured by a willingness and ability to pay for that satisfaction. In addition to all the familiar problems of utilitarianism, this approach has special problems of its own. Limiting the intensity of preferences by the *ability* to pay, of course, means that one who cannot pay anything has no preferences worth satisfying. Worse, a dollar's worth of willingness to pay counts for the same amount of utility, no matter who is doing the paying.[1] So adding a dollar's worth of satisfaction to the welfare of a very wealthy person exactly balances the loss of a dollar's worth of satisfaction to a very poor person; taking one million dollars' worth of satisfaction from one person is preferable to taking one dollar's worth each from one million and one persons.

And yet, in spite of these very obvious problems, the influence of law and economics has not abated. It may simply be that it is an approach that has a powerful constituency; Samuelson says somewhere that economics is a kept science, and it is true that the standard version of law and economics favors the status quo. But it is also significant that law and economics gives concrete answers, something that may appeal to judges. The force of a precise answer may overcome

* Professor of Law, University of North Carolina School of Law.

1 This at least is the prevailing view, found in Posner and others. *See* WILLIAM LANDES & RICHARD POSNER, ECONOMIC STRUCTURE OF TORT LAW 54–57 (1987). Guido Calabresi acknowledges the declining marginal utility of money. *See* GUIDO CALABRESI, THE COSTS OF ACCIDENTS 39–42 (1970).

the significance of a correct answer. For purposes of this discussion, the important point is that the experience with law and economics has made us realize in a new and much deeper way the relevance of both philosophy and economics, and indeed of the philosophy of economics, to questions of law; it has also made us ask whether other approaches to justice might not be formulated in equally precise ways.

On the outskirts of this recent economic and philosophical activity we find a lively new literature on egalitarianism.[2] It is this literature, and the attempt to formalize it, that is the focus of John Roemer's recent book, *Theories of Distributive Justice*.[3] The first three chapters of the book are of less interest for those without economic training, though even here there is something of value for the economically unsophisticated. Those who have some familiarity with Arrow's Paradox may be surprised to learn (as I was) that the outcome of Arrow's proof will vary with the level of comparability presupposed for the maximandum. Roemer constructs an array of precisely defined levels of comparability and uses them to show that whereas the "paradoxical" result that no social choice can be derived from individual choices holds where utility functions are utterly incomparable—as would be true, for example, if we were limited to the preference rankings with which Arrow worked—different social choice rules become available as we increase the level of comparability in various directions. If individual utility functions are comparable in one way, utilitarianism (maximization) is the only social rule that will work; if they are comparable in another way, only maximin will work. If they are absolutely comparable, many different rules, including both utilitarianism and maximin, will work.

Still, the interest that the first three chapters hold for the philosopher and the lawyer untrained in economics will be more a matter of curiosity. It is when we get to chapter four, on utilitarianism, that we really enter into the contemporary debate. Utilitarianism is set out as the background for the discussion, and the important developments are set out in succeeding chapters: chapter five is on Rawls and Sen; chapter six on Nozick; chapter seven on Dworkin; chapter eight on Arneson and Cohen, and on Roemer's own contribution to the discussion. Some of what we find in these chapters is formal and set-theoretical; but there is enough good informal discussion to enable the reader to follow most of the argument even without following the for-

2 For a helpful summary of this literature, see G.A. Cohen, *Equality of What? On Welfare, Goods, and Capabilities*, *in* THE QUALITY OF LIFE 9 (Martha Nussbaum & Amartya Sen eds., 1993).

3 JOHN E. ROEMER, THEORIES OF DISTRIBUTIVE JUSTICE (1996).

mal discussion. In this review I will confine myself to two of the central issues: the current varieties of egalitarianism and the critical role of responsibility in contemporary egalitarian theory.

Perhaps the easiest way to begin the discussion of the book is to return to the varieties of utilitarianism. Utilitarianism is a moral philosophy that determines the rightness and wrongness of our actions by the good and bad consequences that those actions lead to; it is one type of consequentialism. Consequentialist theories can be divided up in a variety of ways. One way is according to what the theory takes a good (or bad) consequence to be. Another is according to the way that the theory tallies up the good. Yet another is according to the relevant recipient of the good. Hedonistic egoism is a consequentialist theory—it would have each of us act so as to maximize her own happiness. Happiness is the good; maximizing the good (rather than, for example, simply avoiding the worst consequences) is the way to do the tally; for each of us it is only her own good that is relevant to the moral worth of her actions. This is not a very attractive theory, as theories of morality go. Any sort of egoism is implausible on its face, and to make it seem plausible advocates have argued that somehow the good of all is necessary for the good of each—that is, they have argued for an "enlightened" egoism.

Now utilitarianism is a consequentialist theory that also advocates maximizing the good; the difference is that for the utilitarian the good of each person must be considered in the tally, and each person's good must count equally. With respect to these two points—maximization of the good, each person to count equally—all utilitarianisms more or less agree.[4] The interesting variations come in the theory of the good. Early utilitarians urged either happiness or pleasure as the good to be maximized; some felt that all pleasures were the same and were to be counted equally (pushpin is as good as poetry),[5] while others argued that some pleasures were better and were to

4 I say more or less because of the possibility of variation between things like act and rule utilitarianisms. It may be that a rule utilitarian would not pursue the greatest good, but rather would follow rules that are intended or are likely to lead to the greatest good. In that case it is not maximization that is the aim, exactly, but rather the chance of maximization.

5 Pushpin is a simple children's game. The phrase is Bentham's, but Jerry Postema has persuaded me that in Bentham's mouth it was not a claim about the fundamental nature of the good. He agrees, however, that later utilitarians may have refused to distinguish types of pleasure.

count for more (the pleasure taken in poetry is better and counts more than an equal amount of pleasure taken in pushpin).[6]

Many of the objections raised to these theories were of the sort that could be brushed off by a committed utilitarian, either by biting the bullet and accepting the objectionable conclusion ("Yes, I think that under the right circumstances it would be right to punish the innocent"), or by denying the empirical basis of the objection ("Circumstances would never arise in which more happiness would be created by punishing innocent people"). But one objection could not be brushed off in that way: utilitarianism requires us to trade off one person's happiness or pleasure for another's, and there did not appear to be any way to measure what one person lost against what another gained. The pleasure and happiness of one person, it would seem, could not be compared to the pleasure or happiness of another. For a theory that was meant to direct policy, this was a tremendous weakness.

This problem is a problem about the comparison of some internal feature of one person (how much pleasure he is experiencing, for example) with an internal feature of another person. Now to shorten the story, there are at least two directions in which the utilitarian can go from here. One would be to insist that indeed we can measure and compare such things, while trying to find a way to do it. Another would be to suggest substitutes, features that can be more easily compared and measured. So, for example, you might imagine a theory that required maximizing the total of *resources* available in a society.

Thus if we follow this second course we must distinguish two sorts of theories of the good. There are theories about purely internal properties such as happiness or pleasure.[7] There are theories about purely external goods—income and wealth; resources in general. (We might distinguish satisfaction of preferences as constituting yet a third category, in which the good is taken to be something that partakes of both, and is partly internal and partly external. For the purposes of this discussion we can lump satisfaction of preferences

6 G.E. Moore thought it wrong to try to *analyze* the good in terms of happiness or pleasure or any other "natural" property. It was always possible, he said, to ask meaningfully whether any such natural property was good; and hence no such property could be part of the meaning of goodness. Many different sorts of things might be good; in every case the relation of goodness to that thing was synthetic, not analytic.

7 These are sometimes called subjective theories of the good. But although the pleasure a person may take in a given thing will vary from person to person and is thus a subjective matter, whether or not a person experiences pleasure is itself an objective question. Happiness and pleasure are just as objective as money and food.

together with happiness and pleasure as an internal property, a form of welfare.)[8] The internal or welfare theories of the good must deal with the problem of interpersonal comparison. But the external or resource theories are not, for their part, free of difficulties: they are afflicted with the absence of any regular connection between any external object and anything that is of invariable signficance to human beings. Of what use are goods unless they connect somehow to human welfare; and if they do so connect, isn't it the welfare that is important and not the goods themselves?

II. Egalitarianism and Theories of the Good

The relevance of all this to egalitarianism is this: of the two significant debates among egalitarians, philosophers and economists alike, the first has been over what the good is that is to be equalized. (The second, as we will see below, has to do with the role of personal responsibility.) Just as in utilitarianism, the good that an egalitarian wants to equalize might be happiness or some other aspect of a person's welfare. Or it might be resources. In general terms, the debate has been between "welfarists" (those whose theories are concerned with the equal distribution of the utility, happiness, and satisfaction derived from resources) and the "resourcists" (those whose theories are concerned with the equal distribution of the resources themselves).

John Rawls is the father of this debate. In his *Theory of Justice* he broke with utilitarianism not only in arguing against maximization and in favor of a more egalitarian sort of distributive principle, but also in arguing against utilitarianism's classical welfarism.[9] Rawls was not arguing for a more egalitarian distribution of happiness or satisfaction, but for a more egalitarian distribution of *goods*.[10] Amartya Sen found this approach objectionable; he referred to it as a kind of fetishism.[11] Goods all by themselves have no particular significance; it is what human beings can do with them that is important. Yet Sen rejects welfarism just as Rawls does; what he thinks we should equal-

8 *See* Jon Elster & John E. Roemer, *Introduction* to Interpersonal Comparisons of Well-Being 1, 5–10 (Jon Elster & John E. Roemer eds., 1991).

9 John Rawls, A Theory of Justice 30 *passim* (1971).

10 The principle of distribution in *A Theory of Justice* (as is well-known) is not a simple egalitarian principle. Instead it seeks to maximize the amount of primary goods that the worst-off person gets. It is thus a compromise between equality and Pareto improvements; one person can get more than others, but only if it brings up the portion of the worst off.

11 *See* Amartya Sen, *Equality of What?*, *in* The Tanner Lectures on Human Values 195, 218 (Sterling M. McMurrin ed., 1980).

ize—*capabilities*, the various ways of being and behaving that are open to people—has been characterized by Cohen as advancing "midfare," which he characterized as being midway between goods and utility.[12]

Why reject welfarism? If you are concerned with an egalitarian distribution, why not make it the equal distribution of the *benefit* derived from goods, rather than the goods themselves? Even if you think you have licked the difficulty of interpersonal comparison (as much a problem for the egalitarian as for the utilitarian), there remain three prominent objections to any form of welfare-egalitarianism.[13] The first is the problem of *offensive tastes*. Should we really worry about promoting the equal welfare of someone whose utility depends upon the suffering of others? Should they be given equal weight with more acceptable preferences? This is a problem of welfarism generally, whether egalitarian or utilitarian. Clearly no morally acceptable purpose is served by satisfying offensive preferences.

The second problem is the problem of *expensive tastes*. This is a problem for the welfare egalitarian but not for the welfare utilitarian. Suppose that someone has cultivated his tastes so that he is satisfied or made happy only by the most expensive goods. Perhaps he derives satisfaction from eating only when he is served fine wines and relatively expensive foods. To bring his welfare, happiness, and satisfaction up to that of others will mean expending more in resources upon him. Perhaps the pleasure that most of us can get from a simple beer or a simple red wine he can get only from a wine that costs $500 a bottle. If it is satisfaction that we are going to equalize, then he must get the expensive wine if I get beer. Why should more resources go to him just because he has cultivated these tastes? Welfare egalitarianism says that he should get more; common sense seems to tell us that that is not what egalitarianism is all about. Notice that welfare utilitarianism does not have the problem of expensive tastes: since *more* satisfaction or happiness overall will be created by spending the $500 on buying you and me and the other fellow beer than by buying a bottle of wine for the one with expensive tastes, that is what the utilitarian would advocate. (It would be different if the one with expensive tastes could get the same pleasure you and I get out of a bottle of beer, but could derive a much more intense pleasure from the more expensive drink. The assumption in the expensive tastes argument is that the drinker with the more expensive tastes gets the same pleasure from the very expensive drink that you and I get from the less expensive.)

12 *See* Cohen, *supra* note 2, at 18–20.

13 *See* ROEMER, *supra* note 3, at 188–93.

Finally, there is the problem of *cheap tastes*. Suppose someone has involuntarily learned to be satisfied with less. There are many examples of this sort of thing. Sen talks about the "tamed" housewife who has learned to be satisfied with her lot, and who has come to believe that the only place for her is in the home.[14] Or, think of the slave who has come to think of his lot as appropriate. These are cases of involuntarily lowered expectations. People who have had lowered expectations and preferences imposed on them by their society are made happy with less. But why should that be a reason for *giving* them less in an egalitarian society? Welfare egalitarianism would give the most resources to the one with expensive tastes, less to the one with ordinary tastes, and least of all to the one with cheap tastes. And the reason, according to the welfare egalitarian, is that it is welfare—happiness, satisfaction—that is to be equalized, and these three require different amounts of resources to achieve the same degree of welfare.

But if welfarism is subject to these objections, resourcism has its own problems. One, pointed out by Sen and others and mentioned above, is that goods by themselves mean nothing unless related somehow to the well-being of persons.[15] Suppose we distribute all goods equally: one person might derive a great deal of satisfaction from the amount she was given; another might derive none at all. Thus a merely equal distribution of goods has little moral appeal. Handicaps make this point most clearly. Suppose that the distribution of goods includes bicycles for everyone. Of what use is the bicycle for someone who is blind? For someone who has no legs? Must not our equal distribution of goods take handicaps into account? So if welfarism is objectionable, isn't resourcism equally objectionable?

Rawls preferred to avoid the difficulties of welfarism, and advocated (with respect to justice in distribution) what we might call a conditional resource egalitarianism: distribution was to be equal *unless* an inequality would help the least well-off. In other words, equality is the starting point, but there is no reason in justice or fairness to settle for equality if some inequality would make everyone better off. The main concern was for the least well-off, however, and not for mere maximization of some total; the principle of distribution is called "maximin." (I will ignore here, as Roemer mostly does, the difference between this principle and a principle of pure egalitarianism.) As to what it is that is to be distributed in this way, Rawls confined his egali-

14 *See id.* at 190 (citing AMARTYA SEN, THE STANDARD OF LIVING 11 (1987)).

15 *See, e.g.*, Cohen, *supra* note 2, at 16.

tarianism to the distibution of primary goods, in particular income and wealth and the prerogatives attached to offices.[16]

Rawls chose goods over some form of welfare for reasons already mentioned, including the problem of expensive tastes. But G.A. Cohen has pointed out that the issue of expensive tastes raises a problem for Rawls.[17] Rawls argues that welfare-egalitarianism would shift greater resources to the person with expensive tastes, which is unfair because the cultivation of such tastes is not something that is inflicted upon us by nature against our will, but instead something that we freely choose. Resource-egalitarianism, by equalizing the goods we have at our disposal, holds us responsible for the tastes we choose to cultivate; it is not society's responsibility to provide for such tastes. At the same time, however, Rawls does not want to hold people responsible for the amount of effort they expend, effort being tied up with things that are beyond a person's control. The problem, as Cohen sees it, is that Rawls cannot have it both ways. If we cannot extricate willingness to expend effort from circumstances that are beyond our control, neither can we extricate the cultivation of expensive tastes from circumstances beyond the actor's control—the way she was raised, the tastes of her friends, and so on.[18] Thus, if someone must be compensated for her lack of effort, why not compensate her for her expensive tastes? This question has evolved into the general issue of the role of responsibility in distributive justice, which, as we will see below, has become one of the most important issues in the egalitarian debate.

But to return to Roemer's discussion of welfarism versus resourcism: Roemer traces the development of this debate from Rawls's egalitarianism of primary goods through recent theories of equality of opportunity. At some point, however, the discussion comes to focus more on responsibility than on the welfare-resource debate. In the remainder of this section, therefore, I will survey Roemer's discussion of Rawls and Sen on welfare, midfare, and resources, and explain and criticize his contribution to that discussion. In the next section I will survey his discussion of the post-Dworkin debate on responsibility, and will address his contribution to that debate.

Sen, as we have seen above, rejected any egalitarianism that attempted to equalize goods as such. Richard Arneson criticized Rawls on much different grounds. Arneson argued that Rawls is, in spite of

16 *See* RAWLS, *supra* note 9, at 90–95. Basic liberties are to be distributed as equally as possible, and are not subject to the difference principle.

17 *See* Cohen, *supra* note 2, at 13–16.

18 *See id.* at 13–14.

himself, *committed* to a form of welfarism. For some measure of primary goods must be found if Rawls is to be permitted to compare bundles of such goods to determine who is the least well-off. The measure cannot be imposed from some objective point of view (perfectionism) because it is fundamental to Rawls' approach to tolerate different conceptions of the good, which would naturally lead to different valuations of the different goods. But if the valuation varies with individual conceptions of the good, it then becomes a form of welfarism. (That is, as in welfare egalitarianism, the bundle that each person gets will depend on what the person gets out of the bundle, given her own conception of the good or successful life, rather than on the goods themselves that are in the bundle.) And if the theory is welfarist, then it is open to all the objections to which welfarism is subject.[19]

Roemer, defending Rawls from the charge of welfarism, admits that the index of primary goods must vary with individual conceptions of the good, but denies that it can be derived solely from a person's conception of the good. It cannot, therefore, be reduced to welfarism:

> Arneson is right to push Rawls on this point, but not right to conclude that the Rawlsian view must dissolve into welfarism . . . . There may be room for a theory which chooses indices of primary goods which are ordinally equivalent to welfare . . . which is not the same as welfare if individuals are other than risk neutral. Such a theory would not be welfarist, as these indices need not be recoverable from information on welfare levels.[20]

Nevertheless, a given bundle of goods will advance one life-plan more than another, which conflicts with Rawls's requirement that there be a single ordering of goods. The question remains, therefore, which conception of the good, which life-plan, should be privileged in choosing the index of primary goods.

Sen's midfarism rejects goods as the equalizandum—but it also rejects welfare. Sen proposes instead a theory in which what is to be equalized is the choice among different lifestyles. Different things that might be true of an individual—different things the person might be, different things the person might do or have done to him—Sen calls *functionings.* A set of functionings that might be true of a person at one and the same time he calls a "vector" of functionings, and the choice that a person has among various vectors of functionings open

19 *See* ROEMER, *supra* note 3, at 167.

20 *Id.* at 171. Note that a theory is welfarist, in Roemer's terminology, only if utility is the sole criterion on which distribution is based. *See id.* at 127.

to him he calls the person's *capability*. It is this capability that is to be equalized, at least up to some minimum standard.[21]

Notice that there are two ways of interpreting Sen's position that should not be confused. A greater capability may be desirable only because it makes it likely that the actor will have access to a higher level of functioning; in other words, what is to be equalized is the actual level of functioning chosen by the individual, and the number of alternatives aside from the one chosen is not important. On the other interpretation, the availability of alternatives is as valuable in itself as the higher level of functioning. It makes a difference whether one is hungry because one has chosen to fast, or is hungry because one is poor and has no choice in the matter. Choice or freedom is valuable in itself. The second of these, according to Roemer, is Sen's position.[22]

Sen's proposal is attractive. It takes account of the fact that we do not all get the same benefit out of goods. If things really are to be equalized for the person who is without legs, we must do more (in a world in which everyone rides bicycles) than give him a bicycle; he will require more in the way of goods than the person who does not have that handicap. But while the thing to be equalized is not goods or resources, neither is it welfare. Remember the "tamed" housewife (Sen's label)? She is happy with less, but it would not be fair to give her less. And so in Sen's theory what is relevant is neither the resource itself nor the happiness derived from it, but rather those functionings that it makes possible. A bicycle might make locomotion possible for someone with two functional legs, but it does not make it possible for someone without legs, and that is what must be taken into account in the effort to equalize.

Roemer's criticism is that Sen is too vague: he offers us no basis for comparing capabilities.

> Sen provides no equivalence relation on the class of capability sets which would enable us to say when one person's capability is better or richer than another's. . . . [H]e argues that partial orderings . . . are really all that we can make, and that it is a foolish Cartesianism that seeks completion of the theory in the sense of providing complete orders of these objects. . . . He may be right, but, in my estimation, the assertion is unproved. One feels that Sen often tries to make a virtue of necessity when he writes that certain

21 *See id.* at 188–90; *see also* Amartya Sen, *Capability and Well-Being*, *in* THE QUALITY OF LIFE 30, *supra* note 2, at 30.

22 *See* ROEMER, *supra* note 3, at 190.

> hard questions have no right answers. The alternative, in science, is to admit that there are answers, but we do not have them yet.[23]

He also argues that, as was the case with Rawls, Sen's capabilities are tied to welfare, so that the measure of capabilities must vary across persons.

According to Roemer, Sen and Rawls agree on a number of things, including this: what is to be equalized (or maximined) is not the final outcome, but rather the opportunity to choose among various outcomes. What we do with our opportunity is not the subject matter of fairness, but rather a matter of personal responsibility. Utilitarianism, on the other hand, is outcome-oriented: it is the sum of individual welfare at any given moment that must be maximized. Rawls and Sen differ from writers considered later in the book—Dworkin, Cohen, and Arneson—"principally in their less focused, and I would say less consistent treatment of agent responsibility."[24]

Having criticized Rawls and Sen, Roemer offers his own proposal. Starting with the notion of a life-plan, he distinguishes primary from secondary resources as follows: primary resources are goods necessary for the fulfilment of all life-plans; secondary resources are goods that contribute to the fulfilment of some but not all life-plans. Housing space, health services, and educational services are examples of primary resources; yachts, diamond rings, and scotch whiskey are examples of secondary resources. "[P]rimary recources are primary in the sense that a person is willing to trade off arbitrarily large amounts of any secondary resource to get very small amounts of a primary resource as the amount of the primary resource goes to zero."[25] And "the partition of the set of resources into primary and secondary is the same for all persons."[26]

His egalitarianism, then, extends only as far as satisfying everyone's need for primary goods; beyond that point inequality is acceptable.

> It is natural to say that a person's needs for primary resources have been met when he starts devoting income to the purchase of secondary resources. . . . "[A]cceptable" allocations are ones that would be advocated by the "instrumental egalitarian" . . . for whom equality is only a compelling goal when not everyone can feasibly have "enough."[27]

---

23 *Id.* at 192–93.

24 *Id.* at 202.

25 *Id.* at 195.

26 *Id.* at 194.

27 *Id.* at 196, 201.

A just allocation, therefore, is either one in which everyone receives the same allocation of primary resources, or in which everyone purchases (is able to purchase?) some secondary resource. Where resources are too scarce to permit everyone to partake of some secondary resource or other, then everything must be shared equally; where everyone has been brought up to the point at which they are willing to purchase some secondary good, then the restriction is dropped and inequalities are acceptable.

What is notable about the theory is that at no point does it depend upon "any judgment involving levels of utility." Thus, it is free of any taint of welfarism, and it does not require separate measures related to each person's conception of the good. People are purchasing secondary goods or they are not. If they are not, then the requirement of equal distribution kicks in; if they are—if they *all* are—then what we may call the "satisfaction point" has been reached and distributive justice is satisfied. Because of this, according to Roemer, the theory is not subject to the objections concerning cheap or expensive tastes. There are, nevertheless, some apparent problems.

First, it will bother some that this proposal allows great disparities in income, once the satisfaction point has been achieved. Roemer merely acknowledges this point: where allocations permit everyone to consume some secondary good, it is acceptable, "even though among those allocations, there may be quite nontrivial variations in utility." It is easy to come up with ways in which such an allocation might offend simple requirements of fairness—suppose that some group in society were simply provided with all necessary primary resources, and enough income to purchase some secondary resource, but were otherwise deprived of opportunities. Surely that would be unfair. The point at which everyone in the world community will be provided with all necessary primary resources is so remote, however, that at the moment such an objection seems rather inconsequential.

The second point is that the distinction between primary and secondary resources is meant to be the same for all persons.[28] This seems inconsistent with his informal characterization of primary resources: "A person is willing to trade off arbitrarily large amounts of any secondary resource to get very small amounts of a primary resource as the amount of that primary resource goes to zero."[29] Consider cases in which people are willing to trade everything for an amount of some drug or for the chance to gamble, or cases in which young people will trade everything for some prestigious symbol—a pair of sneakers, for

28 *See id.* at 194.

29 *Id.* at 195. I owe this point to Gail Corrado.

example. There does not appear to be any sort of consensus about what is primary, and thus it is difficult to see how the satisfaction point is to be defined in the absence of some objective notion of well-being.

Finally, before turning to the issue of responsibility, we ought to look at Roemer's criticism of a distribution scheme advanced by Ronald Dworkin. Dworkin would let distribution be determined by a hypothetical auction, in which each person would be given an initial, equal allotment with which to bid behind a thin veil of ignorance; what she would be bidding for would be (1) a bundle of goods and (2) insurance against those handicaps which, through no fault of her own, would hold her back in her pursuit of a life-plan. Notice that the concern of justice in distribution is, for Dworkin, goods and not welfare. The person behind the veil does not know what her handicaps will be, though she does know a good deal else, including what her preferences are. The distribution that would result in the actual world from the purchase of both goods and insurance will be the fair distribution.

That, at least, is how Roemer describes Dworkin's proposal. In an interesting footnote that highlights the significance of the cross-disciplinary endeavor that Roemer has embarked on here, he says this about his own description of Dworkin's auction:

> This summary of Dworkin's insurance market is surely less complex, and far more succinct, than the proposal as he makes it. I do not, however, believe I have misrepresented his attempt. The somewhat Byzantine complexity of Dworkin's presentation of an insurance market behind the veil is the product of a clever but economically untrained philosopher struggling to rediscover a subtle economic idea, namely, of an equilibrium in an economy with a set of markets for contingent claims. I should also add that Dworkin does not use the "veil of ignorance" terminology, and even has objections to it. But I think the term conveniently communicates his proposal.[30]

Dworkin's distribution scheme is subject to the standard objection to any egalitarianism concerned solely with the distribution of goods. Even if insurance will see to it that the handicapped person has goods in the same amount as the person who is not handicapped will have, it does not see to it that he will have the opportunity to reach the same place in his life-plan as those who are not handicapped; it is that that should be equalized, not the quantity of goods held. But Roemer makes clear that Dworkin's proposal is subject to an even more serious objection. He summarizes the point this way:

30 *Id.* at 248 n.2.

> Behind the veil, a person knows there is a risk he will be born handicapped. He decides *not* to insure against that risk, because the utility he will get from having money, if handicapped, is so low. It is rational for him, rather, to have a lot of money if he is born able—thus, he contracts behind the veil to have *less* money in the handicapped state than in the able state. Interestingly this does not require that the soul have risk-averse preferences, in the usual economic terminology. So Dworkin's mechanism can, in fact, end up rendering the handicapped person worse off than he would have been without the ability to contract behind the veil, in which case he would have the same income in both able and handicapped states.[31]

III. Egalitarianism and Personal Responsibility

In spite of his objections to Dworkin's distribution scheme, in Roemer's view it was Dworkin who first saw the real significance of the question of responsibility in all this. "Dworkin's work brought into much sharper focus an important issue that was germinal in the work of Rawls and Sen, personal responsibility."[32] If there is a central theme in Roemer's book, it is this question of responsibility.[33] Roemer sees this discussion of responsibility as a response to those who say that the left has abandoned responsibility and its role in fairness. But Dworkin's handling of it is not quite satisfactory. For Dworkin, what we are responsible for are our preferences, at least those preferences that we welcome. Choice is the outcome of preference, and what each person chooses determines, in part, what he gets. For those inequalities due to our preferences, there is no need to compensate.

Why is this not satisfactory? Because common sense holds us responsible for what is in our control, and our preferences are not generally in our control. This takes us back to the issue of cheap tastes and the "tamed" housewife, who has a preference for the role she plays and may even welcome that preference. Far from being evidence of what it would be fair to allocate to her, her preferences are evidence of the injustice that has already been visited upon her. And in general we do not choose our preferences, but rather pick them up

31 Letter from John Roemer (July 18, 1998) (on file with author). I am deeply indebted to Professor Roemer for clarifying this objection for me.

32 Roemer, *supra* note 3, at 237.

33 *See* Thomas Scanlon, *Comments on Roemer*, Boston Rev. Apr.–May 1995, at 2 ("Those who demand greater equality are seen as denying that individuals should be held responsible for [their] choices. John Roemer offers a version of egalitarianism that he believes is not vulnerable to this charge."). Issue 2 of volume 20 of the Boston Review was devoted to Roemer's earlier work.

from our surroundings. To make matters worse, Dworkin places talents on the preference side of the line, so that no one is to be compensated for a lack of talent. These things seem counterintuitive to Roemer; as a result, although he credits Dworkin with an early appreciation of the importance of responsibility in the work of Rawls and Sen, and for egalitarianism generally, he rejects the line Dworkin has drawn between what we are responsible for and what we are not responsible for.[34]

In the late 1980s, Cohen and Arneson advanced the discussion with two proposals similar to each other in a number of ways. Both would equalize opportunities rather than outcomes, and the very emphasis upon opportunities makes clear the role of personal responsibility. Cohen proposed that the proper equalizandum for an acceptable egalitarianism would be access to advantage; for Arneson, it would be equality of opportunity for welfare. Although Arneson is to this extent a welfarist, his plan is to consider the variety of opportunities available to individuals, bring a level of equality to that, and leave it to the individual how he actually chooses among them. Thus, he is not subject to the objection from expensive tastes: while the opportunity to cultivate expensive tastes may remain open for an individual, he is confronted at the same time with the knowledge that if he goes in that direction he may reduce the level of welfare he is able to achieve. He is responsible for this choice, and he will not be compensated for it.

The problem of cheap tastes, however, does not go away. The level of welfare a person achieves depends upon his tastes and preferences. Giving beer to a person who likes wine and cannot stand beer will contribute little directly to his welfare; but if he appreciates beer, his welfare has gained. Thus, if A has been taught to be happy with less, then a plan which distributes resources so as to equalize opportunity for welfare will end up dealing less to A than to others, for the reason that she requires less to reach the same level of welfare. This objection depends upon the intuition that it cannot be fair to give less to people just because they have been taught that they are entitled to less. To deal with it, Arneson would restrict the preferences that we consider to "ideally considered preferences"; that is, those preferences that a person would arrive at after deliberation with full information.[35] Roemer points out that this is not enough: each of us has settled preferences that dictate what will satisfy us, even after full deliberation. He offers the following in the way of a "friendly amend-

34 *See* ROEMER, *supra* note 3, at 249ff.

35 *See id.* at 263–67.

ment": let the ideally considered preferences or tastes be those of a child who has not yet formed his preferences. Then the already formed preferences of the "tamed" housewife and the "happy" slave will not interfere with the just result.

Structurally, Roemer finds the following problem with Arneson's proposal. If we consider opportunity for welfare to be a question of choice among the branches of a tree, all of whose branches represent different life-plans (determined both by responsible choices and by events beyond the actor's control), then each branch will have associated with it a different set of preferences. One who chooses a liberal arts education at a university will develop a different set of preferences from the set he would develop were he to enter a seminary and train for the priesthood.[36] Neither of these can be the set of preferences in play when he chooses *between* those two branches; otherwise, the choice between them would be determined by the preexisting preferences. Roemer appeals here to the distinction between relative success, decided by the degree to which a chosen life-plan is fulfilled, and overall success, decided by the rank that one's chosen life-plan has among the hierarchy of life-plans that one would prefer to pursue. Roemer believes that it is coherent to distinguish these two sorts of preferences. The welfare a person can achieve by following a certain branch is then determined by how far he is likely to get along that branch, and how high that branch stands among his overall preferences.[37] Of course, one's overall ranking will change as one pursues one life-plan or another; one who becomes a priest may come to value the priesthood more highly than a secular academic life, and vice versa. It is not clear how Roemer deals with this issue.

Cohen's proposal is to equalize access to advantage. Advantage is not welfare, but neither is it simply the acquisition of resources. Cohen does not tell us precisely what it is, according to Roemer, but it is intended to include both the distribution of resources and the distribution of welfare. The distinction between access and opportunity, the other difference between Arneson and Cohen, is also not spelled out by Cohen. Roemer suggests that it is only a semantic difference. Indeed, the impression that Roemer leaves us with is that Cohen's position requires a great deal more filling out before it can be considered a significant alternative.[38]

36 The example is Gibbard's. *See* Allan Gibbard, *Interpersonal Comparisons: Preference, Good, and the Intrinsic Reward of a Life*, *in* FOUNDATIONS OF SOCIAL CHOICE THEORY 167, 176 (Jon Elster & Aanund Hylland eds., 1986).

37 *See* ROEMER, *supra* note 3, at 269–70.

38 *See id.* at 272–76.

Both Arneson and Cohen draw the line between what we are responsible for and what we are not responsible for in a place different from where Dworkin drew it. Both identify responsibility with things over which we have control rather than with things we prefer, but they differ about what those things are. For Arneson, we are to be held responsible (and hence not compensated) for our choice of a life-plan; we have already seen the problems with that. For Cohen, the difference has to do with the ease or difficulty with which we can make that choice. But, for our purposes here, the more interesting proposal is the one that Roemer himself makes.[39]

In connection with any particular policy of compensation to an individual to remedy inequality, Roemer would leave it to the community to decide which factors contributing to the inequality were beyond that individual's control and which were not. Then he would divide those suffering from the inequality in question into rough categories or "types" according to the relevant factors among those that are beyond the individual's control. Within each type, Roemer would determine the distribution of members of that type along a dimension representing factors *within* the actor's control. (If there is more than one such factor, this can be a messy project.) Every such dimension has a direction, depending upon whether more or less of the factor in question tends to contribute to the inequality being compensated for. Every individual within a type falls at some point along that distribution—so many members of the type will have engaged in more of the factor, so many will have engaged in less. Thus, the point at which an individual falls can be represented as a percentile. Where an actor falls, with respect to this factor within his control, will determine how much responsibility he has exercised. Two people of different types who fall at the same place in their respective types will be equally responsible for the inequality, and will be entitled to equal compensation.

Consider, for example, compensation to smokers for the cost of health care related to smoking. Roemer would leave to the community the decision as to which conditions for smoking-related illness are within the smoker's control and which are not. (Because this decision is left to individual communities, he says that his theory is "political, not metaphysical.") Smokers then are to be divided into classes on the basis of these conditions, one class or "type" being, perhaps, all those males, working class, of age between fifty and sixty, having two parents who smoked all their lives. Within such types, smokers may be ranged along a continuum related to those factors that are within

39 *See id.* at 276–308 (discussing and formalizing Roemer's theory).

their control. Let us suppose that for smokers the only such factor is how long the smoker continued to smoke. Then, within each type, we may identify those smokers that have smoked less than ninety percent of the people in their type; those that have smoked less than eighty percent; those that have smoked less than seventy percent; and so on. Naturally, someone who smokes less than ninety percent of the smokers in one group may not smoke less than ninety percent of the smokers in another group. Those with two parents who smoked will tend to smoke longer, for example, than those neither of whose parents smoked.

Now the degree of responsibility that a smoker exercises will be indicated by his place in his own group. For example, a fifty-year-old man, both of whose parents smoked, and who himself smoked for ten years, may be right at the median of his type. If another fifty-year-old male, who had only one parent who smoked, himself smoked for seven years, and that placed him squarely in the middle of his group, then both would be entitled to the same level of compensation. If, on the other hand, the second man also smoked for ten years, then he would have been more responsible for his illness than the first man, and would be compensated less.

The goal of Roemer's egalitarianism, like Cohen's and Arenson's egalitarianisms, is "to compensate people for adverse circumstances beyond their influence but to hold them responsible for the choices they make."[40] And while the goal appeals to many of us, Roemer's approach raises certain questions about his notion of responsibility. The first has to do with his claim that individuals within a given type exercise differing amounts of responsibility depending upon where they fall in the distribution according to factors within the actor's control: "I want to emphasize the main point of the proposal, which is to calibrate the 'degree of responsibility' a person has by virtue of his 'voluntary' choice . . . ."[41]

Let us call the scale of degrees along which responsibility is measured the "responsibility scale." As a number of writers have pointed out, if all the relevant circumstances beyond the actor's control have been factored into the descriptions of the various types, then all the actors within a given type exercise exactly the same degree of freedom with respect to the factors within their control: whether they engage in more or less of the activity that contributes to the inequity, each of them can be held fully responsible for the extent to which they engaged in that activity. It is not right to say that the smoker who

40 Eric S. Maskin, *Reply to Roemer on Inequality*, BOSTON REV. Apr.–May 1995, at 11.

41 ROEMER, *supra* note 3, at 278.

smoked less exercised more responsibility, and the one who smoked more exercised less. Assuming that the division of factors was done right in the first place, the length of time the smoker smoked is within her control, and it is entirely up to the individual how much to engage in an activity within her control. Thus Hurley, commenting upon an earlier version of Roemer's proposal, says, "Within a type, the person at the median—for example, someone who has smoked for 10 years—is just as responsible as the person at the 80th percentile—someone who smoked for 15 years. They simply make different choices."[42]

It may be that this is merely a matter of words, and that Roemer is simply using "responsibility" in a way different from the way Hurley and others are using it.[43] Perhaps he does not mean to suggest that different points on the responsibility scale correspond to different levels of freedom. But the fact is that he does seem to believe that the distribution within a type determines how much freedom a member of that type has to engage in the "voluntary" activity. "To take an extreme case," he tells us, "if all sixty-year-old steelworkers smoked for thirty years, we would say that the choice of 'not smoking' is not accessible to [sixty-year-old] steelworkers: as a steelworker, one would have had no effective opportunity but to smoke for thirty years. Given the type, certain choices are *effectively* . . . barred."[44] And if all choices are barred, none of the members of the type are responsible for the length of time that they smoked.

But surely, although our choices may be made more or less difficult by our circumstances, they are not made more or less difficult simply by a shift in the number of people who make the same choice. Thus Eric Maskin, again commenting upon the earlier work, objects: "[I]n my view this principle is flawed; correlation—even perfect correlation—among different individuals' choices does not imply that they were in any way restricted to those choices. . . . I think that this sort of problem would plague any attempt to make indirect inferences about responsibility from empirical distributions."[45] And Scanlon says, "When factors 'beyond their control' give people in a given class strong reasons for acting in a certain way, a uniform pattern [of] be-

42 S.L. Hurley, *Troubles with Responsibility*, BOSTON REV. Apr.–May 1995, at 12.

43 Roemer acknowledges this point, and in *Equality of Opportunity* he replaces the word "responsibility" in this proposal with the word "effort," and says that the person who has smoked only ten years has expended more effort than the person of the same type who has smoked thirty years. *See* JOHN E. ROEMER, EQUALITY OF OPPORTUNITY (1998).

44 ROEMER, *supra* note 3, at 277.

45 Maskin, *supra* note 40, at 2.

havior may result, but these people may still be fully responsible for what they do."[46]

And if the individuals within a type are equally responsible for the extent to which they engage in behavior within their control, the same must be true across types. If there is anything that makes an actor's behavior less than fully voluntary and responsible, then that element ought to have been selected out and added to the list of relevant factors beyond the actor's control. (The example that Roemer chooses, smoking, is complicated precisely by the existence of such a factor: the individual's propensity to addiction.) Scanlon suggests a distinction that might help Roemer: although all people in a type (indeed, all people in all types) remain equally responsible for the choices that are within their control, still we may *hold them responsible* to different degrees for the resulting inequality—the degree to which it is fair to make them bear the consequences of their actions.[47] "Roemer's proposal is addressed to this question, not to more general issues about 'responsibility.'"[48]

There may be a way, however, to make sense of Roemer's proposal as a proposal about responsibility and not, fundamentally, about fairness. Suppose that two individuals within a given type suffer the same degree of harm and incur the same costs, all as a result of smoking-related disease. Suppose, however, the first smoked only for a year, while the second smoked for thirty years. There is a sense in which, since it took less smoking to activate the possibility of illness in the first smoker, his smoking contributed less; since it took thirty years of smoking in the second smoker, his smoking contributed more. More things would have caused the same result in the first smoker; for example, it may be that five years of exposure to second-hand smoke would have brought about the same result. Fewer things could have caused the same result in the thirty-year smoker. The first smoker must have had a greater physical propensity to succumb to smoking-related diseases, and in that sense his own contribution to, and his own responsibility for, his malady is less. The second smoker's persistence would have broken down a greater number of types of constitution. (Consider the insurance rates for someone who has smoked

46 Scanlon, *supra* note 33, at 2.

47 Notice that the degree to which a person may be *held* responsible varies inversely with the degree to which Roemer wanted to say that they *are* responsible.

48 Scanlon, *supra* note 33, at 2.

only one year; for someone who has smoked only five years; for someone who has smoked for thirty years.)[49]

The second question about Roemer's notion of responsibility has to do with his claim that his theory is political rather than metaphysical, because the decision as to what is in our control and what is not is left up to the individual communities that would implement his egalitarianism; it is "envisioned to be, for each society, a subject of political debate."[50] Now, it is not precisely clear what he means to leave to the individual community. It may be that he is willing to leave the *definition* of responsibility and control up to each community. But he could hardly mean that: what sort of theory of justice would he be offering us if each community could define for itself the crucial factor upon which distribution is to be based? One community might define responsibility in such a way that no one was responsible for anything; and since this is a political matter, I presume that that choice would not be subject to criticism from without the community.

Another possibility is that he would leave it to each community to weigh for itself the *evidence* for responsibility, responsibility being understood as one thing for all communities. But it is always up to each community to weigh the evidence for itself, and if this is what he means it is difficult to know just what sort of theory he is distinguishing his own theory from. The fact that Roemer does seem to have in mind a certain definition of responsibility suggests that this second understanding of "political" is what he intends.

What does he mean by "responsible"? We are responsible for actions that are within our control, and a choice an actor made was within her control if it was the outcome of her "free volition." What is free volition? There are some clues. In 1995, in the exchange published in the *Boston Review,* Roemer seems to have believed that freedom (and thus responsibility) are incompatible with determinism.

> Suppose one believes that a person's behavior is completely determined by a combination of her genetic make-up, and by influences upon her over which she has no control: the country and family into which she was born, the particular teachers and adults to whom she was exposed, etc. One could construct a tree of causes, so to speak, leading backward from any action the person takes, rooted finally in an initial set of genetic and circumstantial variables beyond the

49 All of this supposes that the disease shows up within a relatively short period of time. Things are not so clear if there can be a long delay before the onset of the disease—as of course is the case with many smoking-related illnesses.

50 ROEMER, *supra* note 3, at 278–79.

> reach of her powers. Freedom requires that an alternative action be possible, which this tree of causes does not leave room for.[51]

I take it that in the first two sentences Roemer is describing someone who believes in determinism. But it would seem that the inference in the last sentence that a denial of freedom must follow from that determinism is Roemer's own contribution. That is about as clear a rejection of compatibilism as it is possible to utter, given Roemer's apparent belief that responsibility depends upon freedom.

Now, Roemer may have changed his mind about this by the time he wrote his book. In the only allusion to the problem in the general discussion of responsibility, he says:

> Individuals take actions . . . which lead to welfare in varying degrees . . . . These actions are determined jointly by circumstances beyond their control and by their own free volition. (One who believes in hard determinism can still agree with this statement: she simply says the second category is empty.)[52]

By singling out the hard determinist, Roemer at least suggests that there is another sort of determinist, one who need not deny the existence of free volitions. The hard determinist has traditionally been distinguished from the "soft" determinist. Both believe that determinism is true (or, in a more recent and more perspicuous idiom, that the causal thesis is true[53]); the hard determinist believes that determinism is incompatible with freedom and responsibility; the soft determinist believes that compatibilism is true—that is, that determinism is compatible with freedom. It may be that by the time he wrote that section of the book Roemer had changed his mind about compatibilism, and is now willing to allow that determinism and responsibility may be compatible.

The point of all this is that if indeed Roemer rejects compatibilism, as he seemed to do in the early article,[54] then he believes that there are factual conditions for responsibility for an action, and that among them is the existence of alternatives inconsistent with a com-

---

51 John E. Roemer, *Equality and Responsibility*, BOSTON REV. Apr.–May 1995, at 3.

52 ROEMER, *supra* note 3, at 276.

53 *See* Thomas M. Scanlon, *The Significance of Choice*, *in* 8 TANNER LECTURES ON HUMAN VALUES 149, 152 (Sterling M. McMurrin ed., 1988).

54 Professor Roemer has said in correspondence that he was and remains a compatibilist, and points to his new book, *Equality of Opportunity*, as further evidence of that fact. I do not mean to be difficult about this, but I remain skeptical. His discussion on pages 6 and 7 of that book seem to reinforce the view that he is an incompatibilist: he says in effect that if everything were determined then no room is left for autonomous effort. In my book that is the definition of incompatibilism. *See* ROEMER, *supra* note 43, at 6–7.

plete deterministic history of the action. Now one society may decide that certain actions are free while another decides that those same actions are determined. But one of those societies will be wrong. To say that these decisions are influenced by the particular beliefs of the society in question does not mean that they are beyond criticism. So it would seem that Roemer has left it up to individual societies to distinguish things that are in our control from things that are not *only* in the sense in which every factual decision is up to the society in question. It is not that two different societies may invoke two different definitions of freedom—it is simply that they make different judgments based on the different information they have.

And something similar is true if Roemer believes that compatibilism is possible. Whatever the truth is about "free volition," it is true for all societies. The very idea that there is controversy over whether the correct definition of freedom is compatibilist or not entails that there is a correct definition. And if there is a correct definition, then the distinction between responsible and nonresponsible actions is not political in any very deep sense. It would be different if there really were *degrees* of responsibility distinguishing the one-year smoker and the thirty-year smoker, for then it would be up to the community to decide at one point to draw the line in compensating losses. That would be a normative and not a factual matter. *That* decision may be said to be purely political. But as we have seen, the responsibility scale does not really measure degrees of responsibility. Roemer may have been misled by his own description of the responsibility scale. But, in any case, the notion that his theory is political and not metaphysical has no great bearing one way or the other on the merits of his proposal.

Roemer's discussion of hard determinism raises another issue. According to Roemer, the hard determinist who is an egalitarian would have no place for actions due to free volition,[55] and thus (I presume) would, as an egalitarian, have to compensate for all inequalities, since all inequalities would be due to factors beyond our control. I would like to finish this discussion by trying to motivate, for the hard determinist, some functional equivalent of the distinction between inequalities we are responsible for and inequalities for which we are not responsible.

Perhaps our functional equivalent of the notion of responsibility can be found in the following imperative: equalize each person's opportunity to maximize his own welfare. That is, assign to the notion of equality its place, the community's rational choice, and to the notion

55 *See* Roemer, *supra* note 3, at 276.

of maximization of welfare its place, that is, individual rational choice.[56] Now, there are some factors that contribute to welfare which respond to compensation and other factors which do not respond to compensation. For example, if we compensate a person for welfare lost because of his height, his height will not change. And, if we compensate a person for welfare lost because of a lack of talent, his talent will not change. But by compensating a person for welfare lost because of a lack of effort, we may affect the amount of effort he expends. Let us say that people are "responsible" for changes in the second sort of factor, but not the first, using the scare quotes to indicate the deviance of this usage.

By refusing to compensate for things people are "responsible" for, we increase marginally the incentive for the person to do things that contribute to his own welfare. (This is the insight behind Jeremy Bentham's ultimately misguided attempt at a utilitarian theory of criminal responsibility.) We thereby increase the amount of resources that can be used to bring everyone up to the same level with respect to the other factors, as compared to the distribution that would be possible if every factor would be compensated for. There is no reason to think that such a distribution is fair in any sense having to do with merit. The actor who has equal opportunity but does not bring himself to expend the effort necessary to maximize his welfare, though "responsible," is no more morally responsible for the outcome than he would be if he did not have that opportunity.

That means that the moral desirability of this plan of distribution has to rest on the merits of the plan itself, and not on the merits of the various individuals receiving an allocation. The merit of the plan, as I see it, lies in the promotion of that part of welfare that has to do with achievement. Full equal compensation stifles achievement; compensation only for lack of opportunity creates incentive for achievement; achievement benefits the community and eases suffering. Here is a possible justification for making the distinction between things we are responsible for and things we are not, even if we do not believe in moral responsibility. The appeal of the proposal, if it has any, is not in the distribution scheme, which pretty much follows lines advocated by Cohen and Arneson and others, but in the moral basis for it—or rather, in the moral basis for the distinction between inequalities that are compensated for and inequalities that are not compensated for.

56 There are, of course, objections to maximization even in the individual case. Should an individual undergo great hardship just for the sake of a greater final total of utility? Nevertheless I will disregard these difficulties here.

For it suggests a way of making the Cohen/Arneson/Roemer approach available to the hard determinist.

IV. Conclusion

Roemer's work suggests an alternative to standard law and economics: an economic approach that is normatively egalitarian. Stay tuned.