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## Risk, Responsibility, and Choice:

### Why Should Some Choices Justify Disadvantage While Others Don't?\*

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*To be published in Social Theory and Practice 45.1 (Jan 2019) <https://pdcnet.org/soctheory>*

**Abstract:** Choice-based conceptions of substantive responsibility face a number of powerful counterexamples. In order to avoid some of these counterexamples, it is widely claimed that agents are substantively responsible for disadvantage arising from their choices only when the option set from which they chose satisfied a reasonability criterion. I examine three possible justifications for a reasonability criterion: an agent-responsibility-based motivation, a voluntariness-based motivation, and what I call a 'denied-claim'-based motivation. In each case, I argue that the putative motivation cannot in fact justify a reasonability condition. I end with some comments on what this result means for choice-based conceptions of substantive responsibility.

**Keywords:** luck egalitarianism, substantive responsibility, choice, risk, voluntariness, reasonable avoidability

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\* For helpful written comments on previous versions of this paper, I thank Matthew Clayton, Nir Eyal, Serena Olsaretti, Shlomi Segall, Adam Swift, Patrick Tomlin, and two anonymous reviewers for *Social Theory and Practice*.

## I. INTRODUCTION

It is familiar to distinguish between disadvantage that results from chosen risk and disadvantage that results from unchosen risk. Agents, it is often said, have a weaker claim on others arising from disadvantage of the former type compared to that which arises from disadvantage of the latter type. In Scanlon's terms, their risky choice renders them 'substantively responsible' for their disadvantage.<sup>1</sup> The distinction between chosen risk and unchosen risk has been at the fore of debates about so-called 'luck egalitarianism'. But the more general issue of the relationship between risky choice and substantive responsibility has much broader import.<sup>2</sup> Regardless of one's background view about the claims that disadvantaged agents have on others – whether egalitarian or otherwise – the question arises, how do prior risky choices bear on the strength of those claims?

Call the view that claims normally associated with disadvantage are diminished or entirely voided by risky choices – that is, that agents are substantively responsible for disadvantage resulting from risky choices – 'choice-based responsibilitarianism'. One of the most powerful early objections to choice-based responsibilitarianism was the charge that it is too harsh.<sup>3</sup> According to the harshness objection, choice-based responsibilitarians would sometimes hold agents

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<sup>1</sup> T. M. Scanlon, *What We Owe to Each Other* (Cambridge MA: Harvard University Press, 1998), p. 248. Scanlon defines claims about substantive responsibility as expressing 'substantive claims about what people are required (or [...] not required) to do for each other.' For a similar notion, Dworkin's notion of 'consequential responsibility, see Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, Mass.: Harvard University Press, 2000), p. 287.

<sup>2</sup> There are also questions to be answered about substantive responsibility for disadvantage arising from non-risky choices, but my focus in the present article is on risky choices.

<sup>3</sup> E.g. Elizabeth Anderson, 'What Is the Point of Equality?', *Ethics* 109 (1999): 287–337 at 295-302; Samuel Scheffler, 'What is Egalitarianism?', *Philosophy and Public Affairs* 31 (2003): 5–39 at 18–19; Kristin Voigt, 'The Harshness Objection: is Luck Egalitarianism Too Harsh on the Victims of Option Luck?', *Ethical Theory and Moral Practice* 10 (2007): 389-407.

substantively responsible for disadvantages resulting from chosen risks, even when it would seem intuitively wrong to do so. Consider the following examples.

In a case discussed by Eyal, an agent chooses to continue living in her home in a county where earthquakes occur, albeit rarely. That she chooses to stay put rather than undertake a costly move to a county where earthquakes are even rarer does not seem to justify holding the agent substantively responsible for her disadvantage when an earthquake destroys her home.<sup>4</sup>

In a case described by Otsuka, agents face the risk of going blind or insane as a result of a horrible illness. Insurance is available, but is either unreasonably expensive, or offers only partial insurance against the potential loss. Regardless of how agents choose, the availability of such insurance and the fact of their choice does not seem to justify holding those agents who go blind or insane substantively responsible for their disadvantage.<sup>5</sup>

In a case discussed by Vallentyne, an agent chooses to continue through a lightning storm and is struck by lightning. It seems irrelevant to the agent's substantive responsibility for his disadvantage that he could instead have lain down, which, although reducing the risk of a lightning strike, would have been an unreasonable option in the circumstances.<sup>6</sup>

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<sup>4</sup> Nir Eyal, 'Egalitarian Justice and Innocent Choice,' *Journal of Ethics and Social Philosophy* 2 (2007) 1-18 at 7. Eyal's case is inspired by a similar example in Eric Rakowski, *Equal Justice* (Oxford: Clarendon Press, 1991), p. 79. Eyal argues that his example is best explained not in terms of a reasonability condition, but in terms of the view that agents are not substantively responsible for disadvantages due to *innocent* choice. I agree with Shlomi Segall, *Health, Luck, and Justice* (Princeton: Princeton University Press, 2010), pp. 23-24, that Eyal's criterion is too wide.

<sup>5</sup> Michael Otsuka, 'Luck, Insurance, and Equality,' *Ethics* 113 (2002): 40-54 at pp. 45-46. More precisely, Otsuka claims that we should not hold those agents who go blind or insane substantively responsible for *all* of their disadvantage.

<sup>6</sup> Peter Vallentyne, 'Brute Luck, Option Luck, and Equality of Initial Opportunities,' *Ethics* 112 (2002): 529-57 at 533. Vallentyne ends up rejecting the reasonability condition, and indeed the general framework for substantive responsibility within which the condition features, instead endorsing the view that equality of initial prospects is all that matters.

One way in which choice-based responsibilitarians have sought to respond to the harshness objection has been to argue that agents have a duty to ensure, when not too costly, that others have sufficiently good lives regardless of their own role in bringing about a disadvantage.<sup>7</sup> But such a response offers only a partial response to the harshness objection, because the objection encompasses not only concerns about how badly off agents might end up in absolute terms, but also concerns about the background against which risky choices are made. In all of the above examples, the intuition is not just that the agent's misfortune is somehow problematic, but that it is problematic *because of the nature of the option set from which the agent chose*. Suppose, for example, that the agent in Eyal's case did not lose her home because of the earthquake, but instead suffered some lesser financial loss. According to this line of objection, it would be wrong for the agent's claim for assistance from those who were not disadvantaged by the earthquake to be diminished by her choice, given the structure of the option set from which she chose.

In order to accommodate this latter concern, choice-based responsibilitarians now commonly endorse the view that agents should be held substantively responsible for disadvantage arising from their risky choices only when the relevant choice was made from among a set of options that satisfies some version of a reasonability condition. Authors who have explicitly endorsed this view include Andersen, Elford, Knight, Otsuka, Sandbu, Segall, and Stemplowska.<sup>8</sup>

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<sup>7</sup> E.g. Segall, *Health, Luck, and Justice*, pp. 68-72. In contrast, Zofia Stemplowska, 'Making Justice Sensitive to Responsibility,' *Political Studies*, 57 (2009): 237-59 at 251-54, argues that choice-based responsibilitarians need not endorse a sufficientarian threshold in order to respond to the objection.

<sup>8</sup> Gideon Elford, 'Equality, Choice, and Alternatives: Why Reasonable Avoidability Matters,' *Ethical Perspectives* 19 (2012): 445-468; Martin Marchman Andersen, 'Reasonable Avoidability, Responsibility and Lifestyle Diseases,' *Ethical Perspectives* 19 (2012): 295-307 at 305; Carl Knight, 'Inequality, Avoidability, and Healthcare', *Iyyun: The Jerusalem Philosophical Quarterly* 60 (2011): 72-88 at 78-79; Otsuka, 'Luck, Insurance, and Equality'; Michael Otsuka 'Equality, Ambition and Insurance', *Aristotelian Society Supplementary Volume* 78 (2004): 151-166; Martin E. Sandbu, 'On Dworkin's Brute-Luck-Option-Luck Distinction and the Consistency of Brute-Luck Egalitarianism,' *Politics, Philosophy, and Economics* 16 (2004): 283-312; Segall, *Health, Luck, and Justice*; Shlomi Segall, *Equality*

But to answer the harshness objection successfully, choice-based responsibilitarians are required not only to say *when* agents should be held substantively responsible for disadvantage arising from their risky choices, but also to explain *why* agents should be held substantively responsible for disadvantage arising from their risky choices in some circumstances but not others. Yet there has been surprisingly little discussion of the latter point. This has led to confusion about what the condition actually is; that is, about what the criterion for reasonableness ought to be, and about what it is that must be reasonable in order for the agent to be held substantively responsible for disadvantage arising from their risky choice. More problematically still, without such an explanation the reasonability condition remains open to the charge that it is an unjustified *ad hoc* technical fix which, as Seligman puts it, tries to defend choice-based responsibilitarianism against intuitive counterexamples by ‘gerrymandering the distinction [between choice and chance] to match our intuitions about justice’.<sup>9</sup> Without principled support, we cannot rule out the possibility that such intuitions are founded on mistaken reasoning: that, when an explanation of why choice-based responsibilitarians have those first order intuitions is eventually supplied, it will not turn out to be a debunking one. Choice-based responsibilitarians should not therefore rest content with appeals to a reasonability condition until they have provided a convincing justification for doing so. The need to do so is not merely a matter of good book-keeping. Rather, the very survival of the view is at stake.<sup>10</sup>

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*and Opportunity* (Oxford: Oxford University Press, 2013), pp. 69-70; Stemplowska, ‘Making Justice Sensitive to Responsibility’.

<sup>9</sup> Matthew Seligman, ‘Luck, Leverage, and Equality: A Bargaining Problem for Luck Egalitarians,’ *Philosophy and Public Affairs* 35 (2007): 266-92 at 283. See also Daniel Weinstock, ‘Remarks on Shlomi Segall’s Health, Luck and Justice,’ *Ethical Perspectives* 19 (2012): 316-325 at 319.

<sup>10</sup> Would the problem highlighted be avoided if we were to endorse a desert-based conception rather than a choice-based conception of substantive responsibility (e.g. Kasper Lippert-Rasmussen, *Luck Egalitarianism* (London: Bloomsbury, 2015), pp. 59-62)? I doubt that it would, because what agents deserve does seem to depend, at least

In what follows I ask whether choice-based responsibilitarians can provide a justification for a reasonability condition, by examining three of the most promising candidates: an agent-responsibility-based motivation, a voluntariness-based motivation, and what I call a ‘denied-claim’-based motivation. I do not claim that the three motivations discussed exhaust the possible justifications for a reasonability condition, but I do claim that they are the most plausible.<sup>11</sup> They are also the most strongly suggested, and in some cases explicitly endorsed, in the literature. In each case, I conclude that the putative motivation is not in fact capable of justifying a reasonability condition for substantive responsibility. I end with some comments on what this conclusion implies for the future of choice-based responsibilitarianism.

## II. AGENT RESPONSIBILITY

It is sometimes said that choice bears on substantive responsibility because of a more fundamental concern with what I will call ‘agent responsibility’. Agent responsibility is simply about being in a sense the ‘author’ of an outcome.<sup>12</sup> To be agent responsible for an outcome, two conditions must be

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sometimes, on what they choose. And on those occasions, similar intuitions about the relevance of the agent’s background option set to his substantive responsibility will be encountered.

<sup>11</sup> In discussing drafts of this paper, some readers have suggested that one or other of the putative motivations is the only plausible candidate, and that the others are not worthy of serious consideration. Yet readers who have made this suggestion have differed about *which* of the three putative motivations is the only plausible one. I therefore treat all three as worthy of serious consideration.

<sup>12</sup> See e.g. Stemplowska, ‘Making Justice Sensitive to Responsibility,’ pp. 239-40; Zofia Stemplowska and Carl Knight, ‘Responsibility and Distributive Justice: An Introduction,’ pp. 1-23 in Zofia Stemplowska and Carl Knight, eds., *Responsibility and Distributive Justice* (Oxford: Oxford University Press, 2011), at pp. 11-13. See also Peter Vallentyne, ‘Responsibility and False Beliefs’, pp. 174-86 in Zofia Stemplowska and Carl Knight, eds., *Responsibility and Distributive Justice* (Oxford: Oxford University Press, 2011). Peter Vallentyne, ‘Brute Luck and Responsibility’,

satisfied. First, the agent must be causally responsible for the outcome. Second, the outcome must stem from an appropriate exercise of agency by the agent in question. There are different ways of fleshing out what this exercise of agency might look like. As Stemplowska and Knight write, it ‘may be variously seen as a matter of what people choose as freely willing agents, or what they control, or deliberately choose, or choose when well-informed, or choose in the sense of responding to reasons, or choose in the absence of some autonomy-undermining conditions, or bring about absent mindedly when they should have paid attention, or bring about through forgetfulness, or some combination of those and similar proposals’.<sup>13</sup>

Agent responsibility is a distinct notion from substantive responsibility, which is about the relevance of one’s role in bringing about a disadvantage to the strength of one’s claim against others arising from that disadvantage. It is also a distinct notion from blameworthiness, which unlike agent responsibility, implies some sort of moral wrongdoing, or at least some degree of recklessness or negligence. An agent can be agent responsible for an act such as opening a window, even if no blame (or praise) attaches to the act. Notice that the term ‘moral responsibility’ is sometimes used to refer to what I am here calling ‘agent responsibility’, but is also sometimes used to refer to what I am here calling ‘blameworthiness’. To avoid confusion, then, I shall avoid using the term ‘moral responsibility’ in the paper, instead using ‘agent responsibility’ and ‘blameworthiness’ to distinguish its two possible meanings.

The claim made by the present view is that agent responsibility is a necessary condition for substantive responsibility.<sup>14</sup> On this view, an agent is substantively responsible for the outcome of

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Politics, Philosophy & Economics 7 (2008): 57-80 argues that agents should sometimes be held partially but not fully agent responsible for an outcome.

<sup>13</sup> Stemplowska and Knight, ‘Responsibility and Distributive Justice: An Introduction,’ p. 13.

<sup>14</sup> Some authors have thought that proponents of choice-based conceptions of substantive responsibility, particularly luck egalitarians, ought to be deeply troubled by the possibility that agent responsibility might be impossible, or at least very rare. This seems especially likely if one endorses a regression requirement for agent responsibility, according to



his risky choice only when his risky choice renders him agent responsible for the outcome. This suggests an obvious prima facie case for a reasonability condition, as follows. Where an agent could not reasonably have avoided choosing as she did, the link between choice and agent responsibility, and therefore the link between choice and substantive responsibility, is broken.<sup>15</sup> So, for example,

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which to be responsible for something one must be responsible for its causes. See, for example, Thomas Nagel, *Mortal Questions* (Cambridge: Cambridge University Press, 1979), p. 35; Galen Strawson, 'The Impossibility of Moral Responsibility', *Philosophical Studies* 75 (1994): 5-24; Gary Watson, 'The Problematic Role of Responsibility in Contexts of Distributive Justice', *Philosophy and Phenomenological Research* 72 (2006): 425-32 at 428. I do not discuss the regression requirement herein, because it is only tangentially related to the present argument: one may either affirm or reject it consistently with P2. But suffice to say that there are at least three reasons why proponents of choice-based conceptions of substantive responsibility need not be too worried. First, there are good reasons to doubt that agent responsibility does require a regression requirement (see e.g. Susan L. Hurley, *Justice, Luck, and Knowledge* (Cambridge, Mass.: Harvard University Press, 2003), ch. 3). Second, choice-based responsibilitarians need not be committed to the view that agent responsibility is necessary for substantive responsibility: choice itself, or voluntariness, for example, could do the work instead. Finally, even if agent responsibility is both necessary for substantive responsibility and impossible or rare, this just means that there is never or rarely a choice-based reason not to address disadvantage in the manner recommended by one's background theory of justice, such as, in the case of luck egalitarianism, by fully remedying comparative disadvantage. This would not be such a damaging conclusion to endorse, and indeed would provide a strong response to the harshness objection outlined above (see Martin Marchman Andersen, Susanne Oksbjerg Dalton, Christoffer Johansen, John Lynch, Nils Holtug, 'Social Inequality in Health, Responsibility and Egalitarian Justice', *Journal of Public Health* 35 (2013): 4-8).

<sup>15</sup> Segall, who advocates a reasonable avoidability criterion for substantive responsibility, treats the reasonable avoidability criterion not as grounded in an agent-responsibility criterion for substantive responsibility, but, rather, as an *alternative* to an agent-responsibility criterion for substantive responsibility (*Health, Luck, and Justice*, p. 20; *Equality and Opportunity*, pp. 69-71). In this, Knight supports him, writing that, 'While responsibility and avoidability come apart in some cases, it's not prima facie implausible that it is in just those cases that luck egalitarianism should abandon responsibility' (Knight, 'Inequality, Avoidability, and Healthcare', p. 78). As discussed above, the problem with simply asserting a reasonable avoidability condition for substantive responsibility without explaining the underlying ground for

the choice not to buy unreasonably expensive insurance in Otsuka's example above cannot justify holding the agent substantively responsible for the subsequent disadvantage, because on this view the unreasonable expense of the insurance renders the agent not agent responsible for declining to purchase it. The argument can be summarised as follows:

P1: Agent responsibility is necessary for substantive responsibility.

P2: Reasonable avoidability is necessary for agent responsibility.

C: Reasonable avoidability is necessary for substantive responsibility.

The problem with the suggested argument is that, even if we grant P1, P2 is quite implausible, especially in the light of recent research on the conditions for blameworthiness. As just noted, blameworthiness is distinct from agent responsibility, and also from substantive responsibility, in that blameworthiness requires some sort of wrongdoing. Nevertheless, debates about blameworthiness bear on the present discussion, because agent responsibility is widely regarded as a necessary condition for blameworthiness (but not a sufficient condition – the wrongdoing component is also required). As such, if reasonable avoidability is not necessary for blameworthiness, then it cannot be necessary for agent responsibility as P2 claims. And there are reasons to think that a reasonable avoidability condition blameworthiness would face serious difficulties.

To see why, recall Frankfurt's famous case, and subsequent variations of it, in which an agent could not apparently have done otherwise. In such cases, had the agent been about to choose a different option to the option that he in fact chose, he would have been compelled to choose the option that he in fact chose by some form of external intervention.<sup>16</sup> Many have been inclined to

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the condition is that such an approach leaves open the possibility that the best explanation of the intuitions thought to support the condition is, in fact, a debunking one.

<sup>16</sup> Harry Frankfurt, 'Alternate Possibilities and Moral Responsibility', *Journal of Philosophy* 66 (1969): 829–39.

agree with Frankfurt that the agent in such cases is intuitively blameworthy and agent responsible for choosing the option, even though he could not have done otherwise, reasonably or otherwise. As such, many have concluded that Frankfurt-type cases show that so-called ‘alternate sequence’ requirements for blameworthiness and agent responsibility are false. Such conditions include both the present reasonable avoidability condition and the original, more widely discussed, ‘Principle of Alternative Possibilities’ (PAP) requirement, according to which blameworthiness and agent responsibility simply require the ability to do otherwise, whether reasonably or not. In their place, and against P2, these authors argue, we should instead endorse ‘actual sequence’ requirements for blameworthiness and agent responsibility that focus not on what might have happened but on what actually happened, on the actual causes of the agent’s choice, such as the cognitive mechanism that brought about their choice.<sup>17</sup>

Not everyone endorses the Frankfurtian intuition. But the fact that so many philosophers do endorse the intuition puts pressure on proponents of alternate sequence accounts of blameworthiness to defend their view in a way that does not treat the agent as devoid of blame in Frankfurtian cases. Two defences in particular have received particular attention, and may seem to offer ways to rescue a reasonability condition for agent responsibility from Frankfurt-inspired objections.

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<sup>17</sup> E.g. Susan L. Hurley, *Justice, Luck, and Knowledge* (Cambridge, Mass.: Harvard University Press, 2003), pp. 54-79; Frankfurt, ‘Alternate Possibilities and Moral Responsibility’; Martha Klein, *Determinism, Blameworthiness and Deprivation* (Oxford: Clarendon Press, 1990); Susan Wolf, *Freedom within Reason* (Oxford: Oxford University Press, 1990); John Martin Fischer, *The Metaphysics of Free Will: An Essay on Control* (Oxford: Blackwell, 1994); John Martin Fischer and Mark Ravizza, *Responsibility and Control: A Theory of Blameworthiness* (Cambridge, UK: Cambridge University Press: 1998); Kasper Lippert-Rasmussen ‘Hurley on Reason-Responsiveness, Regression, and Responsibility’, *Philosophical Books* 46 (2005): 199-209 at 201-04.

The first of these responses is the so-called ‘flickers of freedom’ defence.<sup>18</sup> According to this defence, agents in Frankfurt cases do enjoy a minimal freedom of the will, to be compelled to choose a particular option rather than to choose that option without compulsion. They cannot choose a different option, but they can exercise control over how they will come to choose it. This minimal freedom of the will is said to suffice for blameworthiness and agent responsibility: they are blameworthy not for doing what they did, but for doing what they did on their own, without compulsion.

Can the flickers of freedom defence rescue a reasonable avoidability condition for agent responsibility from Frankfurt-inspired objections? I think that we must conclude that it cannot. The problem is that the flickers defence succeeds only as a defence of an especially weak reading of PAP, according to which a sufficient condition for blameworthiness and agent responsibility is that an agent was able to exercise control over how he came to choose an option. It is not compatible with a stronger alternate sequence requirement, such as reasonable avoidability, according to which a necessary condition for blameworthiness and agent responsibility is that the agent had a genuine alternative with a different outcome that he could actually have chosen. This is because the response aims to defend a less exposed position precisely by ceding the core target of the Frankfurt intuition, *viz.*, the claim that blameworthiness and agent responsibility require the presence of a genuine alternative with a different outcome that the agent could actually choose. But by doing so it renders itself incompatible with a reasonable avoidability condition for agent responsibility, which endorses that core target.

A second response to Frankfurt cases is Otsuka’s Principle of Avoidable Blame (PAB).<sup>19</sup> According to PAB, an agent is blameworthy if she could instead have behaved in such a way that

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<sup>18</sup> See Fischer, *The Metaphysics of Free Will*, pp. 134ff, and many subsequent discussions.

<sup>19</sup> Michael Otsuka, ‘Incompatibilism and the Avoidability of Blame’, *Ethics* 108 (1998): 685–701. There are reasons to doubt PAB. For one thing, those who, against Otsuka, maintain the possibility of what Nagel calls ‘moral blind alleys’, deny that it is always possible to avoid blame entirely by behaving least badly in comparison with one’s other

would have left her entirely blameless, by choosing the least morally bad option available to her. Like PAP, PAB is an alternate sequence requirement for blameworthiness. But unlike PAP, PAB accommodates Frankfurt cases without invoking the flickers of freedom defence. PAB claims that agents are blameworthy in Frankfurt cases because they could instead have behaved in a blameless fashion, by bringing it about that they were compelled to choose the option that they in fact chose without compulsion.

Is PAB consistent with P2? If we are willing to adopt a very particular interpretation of reasonable avoidability, in terms of ability to choose a less morally bad option, then we might indeed treat PAB as consistent with P2. But while PAB is consistent with (this interpretation of) P2, it is also consistent with the rejection of P2. Agent responsibility may be necessary for blameworthiness, but it is certainly not sufficient for it, at least not if blameworthiness is understood in the standard moralised sense described above. As such, even if the ability to choose a less morally bad option is a necessary condition for *blameworthiness*, it does not follow that the ability to choose a less morally bad option must also be a necessary condition for *agent responsibility* (and therefore for substantive responsibility).<sup>20</sup> Moreover, it is not plausible that the ability to choose a

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options. (Thomas Nagel, 'War and Massacre', *Philosophy and Public Affairs* 1 (1972): 123– 44 at 143– 44; Otsuka argues that there are no moral blind alleys on pp. 698-701.) For another, Hurley has argued that, in cases where an agent would not have chosen a blameless alternate sequence to the sequence that he in fact chose, it is irrelevant to his blameworthiness whether or not the blameless alternate sequence was in fact available to him (*Justice, Luck, and Knowledge*, pp. 76-78). In what follows I set aside these objections to ask: if one were to endorse PAB as a criterion for blameworthiness, how would this bear on the plausibility or otherwise of P2?

<sup>20</sup> Might one argue nevertheless that if it is a necessary condition for blameworthiness that a person had a less morally bad alternative, this would provide a prima facie reason to think that a similar condition also applies to substantive responsibility, even if not to agent responsibility? The problem with this argument is that it supposes that the further conditions for blameworthiness and substantive responsibility, in addition to the common requirement for agent responsibility, are likely to be similar. Yet the argument provides no justification for such a supposition. Blameworthiness is not a necessary condition for substantive responsibility. One might, for example, believe that agents

less morally bad option could be a necessary condition for agent responsibility. For consider, first, that the formulation speaks only to contexts in which agents must choose between options that have a moral valence: in non-moral contexts the putative criterion would fail to distinguish between outcomes for which agents are agent responsible and those for which they are not. Yet we clearly do make such distinctions. Second, consider that, unlike those who defend PAP, it is never Otsuka's intention to argue that PAB provides a condition not only for blameworthiness but also for agent responsibility. Indeed, the examples that he uses to illustrate the appeal of PAB as a condition for blameworthiness at the same time serve to illustrate why it would be implausible to regard PAB as a condition for agent responsibility. To take one such example, Otsuka writes of the standard trolley 'switch' case that, if he were to flick the switch to kill one and save five, then 'If I were to come across the grief-stricken family of the one *whom I killed*, I am fairly certain that I would suffer feelings of guilt that would survive the thought that *what I did* was perfectly justifiable'.<sup>21</sup> Quite rightly, Otsuka acknowledges that he would be agent responsible for the death of the one, even if, according to PAB, the lack of a less morally bad option means that he would be blameless for the death. This implies that Otsuka's view of agent responsibility does not, like his view of blameworthiness, include the avoidability condition. His argument for PAB, then, provides no support for P2.

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who participate in risky speleological expeditions are substantively responsible for the cost of any rescue that they require (which needn't preclude them from taking out private insurance), rather than having the costs met from the public purse. But one needn't also believe that, if they are substantively responsible in this way, then they must also be blameworthy for participating in the expedition, since they needn't have done anything morally wrong by participating. Any movement from the conditions for moral responsibility to the conditions for substantive responsibility, without further justification, is therefore purely speculative. This is not enough to provide a response to the gerrymandering objection, which requires that we provide an account of the underlying principles that justify a reasonability condition for substantive responsibility.

<sup>21</sup> Otsuka, 'Incompatibilism and the Avoidability of Blame', p. 699. Italics added.

Our interim conclusion is as follows. It may or may not be the case that choice bears on substantive responsibility only because choice reflects a more fundamental concern with agent responsibility. But even if it is the case, the concern with agent responsibility provides no ground for the claim that agents are substantively responsible only when they choose in the presence of a reasonable alternative. This is because the presence of a reasonable alternative cannot, for the reasons given, plausibly be thought to be a requirement for agent responsibility. It does not follow that the presence of a reasonable alternative could not be a requirement for substantive responsibility, but it does follow that we are still without the required justification for its being so.

### III. VOLUNTARINESS

An appeal to agent responsibility provides no ground for a reasonability condition for substantive responsibility. But perhaps the concern with choice is not, in any case, best explained in terms of a more fundamental concern with agent responsibility. Perhaps it should instead be explained in terms of a more fundamental concern with voluntariness, where voluntariness is not merely a matter of choosing a particular option, but of being motivated to choose a particular option in the right sort of way, or for the right sort of reasons.<sup>22</sup> If so, then we might suppose that the intuitions that have been thought to support a reasonability condition reflect the fact that voluntariness, not agent responsibility, requires the satisfaction of a reasonability condition. Just such a claim has been made by Serena Olsaretti, who argues that voluntariness (or, at least, that the type of voluntariness that

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<sup>22</sup> Such a conception of voluntariness is different to, and need not be regarded as necessary for, agent responsibility. The latter, unlike the former, is not commonly thought to require that the agent acted on particular motivations but merely that they were able, in some sense, to act otherwise (on an alternate-sequence account), or that they acted on the basis of something like a particular cognitive mechanism or similar (on an actual-sequence account). As I note below, Olsaretti, on whose account of voluntariness I focus, thinks that her concept of voluntariness is not necessary for agent responsibility.

she regards as necessary for substantive responsibility, but not for agent responsibility) requires that an agent not be motivated by the absence of a reasonable alternative.<sup>23</sup> ‘A choice is voluntary’, Olsaretti writes, ‘if and only if it is not made *because* there is no acceptable alternative to it’.<sup>24</sup>

One problem with the voluntariness-based argument for a reasonability condition is that, as Olsaretti herself notes, her intuitions about voluntariness are very much guided by her intuitions about substantive responsibility in particular cases. She describes her account of voluntariness as a *specification* of a necessary condition for substantive responsibility, rather than as an *explanation* of her intuitions or a *justification* for the condition.<sup>25</sup> She is right to do so: if her notion of voluntariness is tailored to match her intuitions about substantive responsibility, then any attempt to read the account as an explanation or justification for a reasonability condition for substantive responsibility would be entirely question begging. But to answer the gerrymandering objection, we need to justify the condition, by showing that we can motivate it by reference to underlying principles that have intuitive purchase independently of intuitions about substantive responsibility. To do otherwise is merely to repeat that there is an intuitive case for the condition based on particular cases, but not to demonstrate that those intuitions are well-founded.

Second, there are strong reasons to doubt Olsaretti’s claim that the stated criterion provides a necessary condition for voluntariness. Olsaretti provides two accounts of what it means not to be motivated by the absence of a reasonable alternative. The first formulation claims that the agent

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<sup>23</sup> Serena Olsaretti, *Liberty, Desert and the Market* (Cambridge: Cambridge University Press, 2004), esp. pp. 139-40 & 154-60. Olsaretti does not actually say that her concept of voluntariness is not necessary for agent responsibility, but only that it is not necessary for moral responsibility (p. 159), although she grants that some other concept of voluntariness could be necessary for moral responsibility. Since agent responsibility appears necessary for moral responsibility, however, it is reasonable to infer that Olsaretti would not think her concept of voluntariness necessary for agent responsibility.

<sup>24</sup> *Liberty, Desert and the Market*, p. 139.

<sup>25</sup> *Liberty, Desert and the Market*, p. 160.



must choose an option because she finds it ‘very attractive or choiceworthy’.<sup>26</sup> This formulation does not provide a plausible condition for voluntariness. For one thing, it is clear that we would often want to treat an agent’s risky choice as voluntary even if she finds the option that she chooses merely reasonably good, but not good enough to be ‘very attractive’. But even if we drop the bar and suppose instead that voluntary choice merely requires that the agent find the option reasonably good, the first criterion still looks contentious, at least on any non-stipulative account of voluntariness. In support of this claim, consider Eyal’s example above, in which an agent chooses to continue living in her home in a county where earthquakes occur, albeit rarely, rather than undertake a costly move to a county in which earthquakes are even rarer. Assuming that the option to move would, under the circumstances, be unreasonable, Olsaretti’s first criterion would claim that the choice was voluntary, only if the agent found the option to continue living in her home reasonably good. But notice that, in order even to decide whether or not she regarded the option to continue living in her home reasonably good, the agent would have needed to have engaged in a deliberative process by which she would have assessed the merits of the option. The fact that this deliberative process occurred and that the agent acted on the basis of its conclusion will for many be enough to cast doubt on Olsaretti’s claim that the choice was involuntary. This is because the notion of involuntary choice – as compared, for example, with a notion of constrained choice – suggests a lack of freedom to engage in such deliberation, or at least a lack of freedom to act on its conclusion. Moreover, even if the fact of her deliberation is not enough to be certain that her choice to continue living in her home was voluntary, nevertheless the types of condition that have commonly been thought to defeat voluntariness under such circumstances make no reference to whether or not the agent concluded that the alternative was reasonably good. Rather, they have been thought to include such conditions as the presence of duress (understood as involving the agency or threatened agency

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<sup>26</sup> *Liberty, Desert and the Market*, p. 139, n. 3 and p. 155.

of others, not merely background circumstance), or the presence of external manipulation or control over the deliberation that led to the choice.<sup>27</sup>

It is doubtful, then, whether Olsaretti's first criterion really does capture basic intuitions about voluntariness. More problematically still, regardless of its relation to voluntariness, the criterion fails to provide a plausible condition for substantive responsibility. Consider again Eyal's earthquake victim. As Eyal points out, it is intuitive that victims of bad luck in situations like that which he describes are not substantively responsible for disadvantage arising from their risky choices, and so should be given assistance when their home is destroyed by an earthquake.<sup>28</sup> Yet Olsaretti's first criterion would give us the wrong result in this case. Since the agent did, *ex hypothesi*, find the option to remain in the low-but-not-negligible-risk earthquake zone reasonably good, Olsaretti's criterion would have us hold the agent substantively responsible for the outcome of her risky choice. Olsaretti's first criterion therefore fails to give proponents of a choice-based conception of substantive responsibility that which they need in order to accommodate the counterintuitive consequences of their view.

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<sup>27</sup> E.g. H. L.A. Hart and Anthony Honoré, *Causation in the Law*, 2<sup>nd</sup> edn (Oxford: OUP, 1985), p.157. Olsaretti, *Liberty, Desert and the Market*, pp. 159-61 suggests that we might distinguish between two conceptions of voluntariness, one of which specifies a necessary condition for substantive responsibility, the other of which specifies a necessary condition for moral responsibility (where moral responsibility is akin to blameworthiness rather than agent responsibility, along the lines of the distinction discussed above). She could therefore respond that duress and external manipulation or control are relevant to the latter, but not to the former. The difficulty with this response is that, as noted above, Olsaretti fails to demonstrate that the former of her putative conceptions of voluntariness, that which specifies conditions for substantive responsibility, can be supported by intuitions about voluntariness which have force independently of intuitions about substantive responsibility. Against this background, her endorsement of a second conception of voluntariness only serves to reinforce the suspicion that the first is entirely stipulative.

<sup>28</sup> Eyal, 'Egalitarian Justice and Innocent Choice,' p. 5.

Olsaretti's second criterion claims that a choice is voluntary only if the agent would have chosen the option that she did even if she had had a reasonable alternative.<sup>29</sup> The problem with this formulation is that it is entirely indeterminate what the reasonable alternative, about which we are to enquire, should be.<sup>30</sup> The agent might have chosen some reasonable alternatives over the option that she chose, but she might not have chosen other reasonable alternatives over the option that she chose. We are given no grounds to distinguish between hypothetical reasonable alternatives that are relevant and those that are not. Nor can we read the formulation as saying that a choice is voluntary if and only if the agent would not have chosen *any* imaginable reasonable alternative over the option that she chose. Such a reading would generate the implausible conclusion that no-one is ever responsible for anything, because we can always imagine a reasonable alternative so much better than the chosen option, such that the agent would have chosen it over the option that she in fact chose.

#### IV. DENIED CLAIM VIEWS

Consider, finally, a class of motivation for a reasonability condition that has been endorsed by Otsuka, Stemplowska, and, on Lippert-Rasmussen's reading, by Ronald Dworkin.<sup>31</sup> Each of these

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<sup>29</sup> Olsaretti, *Liberty, Desert and the Market*, p. 139, n. 3. Olsaretti suggests that we should use this criterion to settle the question of voluntariness only when an agent acts from mixed motives: when she acts both because she finds the option that she chooses very attractive or choiceworthy, and because she lacks a reasonable alternative. The indeterminacy objection applies whether one uses the criterion in all cases, or only in mixed motive cases.

<sup>30</sup> C.f. Hurley, *Justice, Luck, and Knowledge*, p. 29, who discusses a similar problem for hypothetical choice accounts of agent responsibility.

<sup>31</sup> Otsuka, 'Luck, Insurance, and Equality'; Otsuka, 'Equality, Ambition and Insurance'; Stemplowska, 'Making Justice Sensitive to Responsibility'; Zofia Stemplowska, 'Harmful Choices: Scanlon and Voorhoeve on Substantive Responsibility', *Journal of Moral Philosophy* 10 (2013): 488-507; Kasper Lippert-Rasmussen, 'Egalitarianism, Option

authors provides a slightly different case for a reasonability condition and, as a result, each endorses a different version of the condition. But all of the authors share in common the view that agents have a legitimate moral claim to a reasonable option or options, and that agents who are disadvantaged by risky choices that they make in the absence of such options are not substantively responsible for at least some of that disadvantage.<sup>32</sup> The view that Lippert-Rasmussen attributes to Dworkin, a view that Lippert-Rasmussen calls the ‘Revised Sufficiency View’, is perhaps the clearest example of this type of motivation. On the Revised Sufficiency View, agents ought to have the opportunity to achieve a sufficiently good outcome for certain. In Lippert-Rasmussen’s terms, they ought have a ‘Reasonable, Guaranteed Minimum’. If an agent does not have such an option, then he ought not be held substantively responsible for disadvantage arising from his risky choice.<sup>33</sup>

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Luck, and Responsibility,’ *Ethics* 111 (2001): 548-579 at 557-62. I merely note herein that Lippert-Rasmussen attributes a view of this type to Dworkin: I make no claim about whether or not Dworkin in fact held such a view. Another view which I do not discuss here, but which shares certain key features with Stemplowska’s view, and which is subject to the same objections, is Gerald Lang, ‘Luck Egalitarianism, Permissible Inequalities, and Moral Hazard’, *Journal of Moral Philosophy* 6 (2009): 317-338. According to Lang, agents have a claim to social insurance against certain risks, provided that such insurance would not cause unreasonable degrees of moral hazard.

<sup>32</sup> Unless they are substantively responsible for having placed themselves in a situation in which they lack such an option or options. Note that the language of claims is dispensable, and indeed is not always used by the authors discussed. What really matters to denied claim views is that there is some sense in which agents ought to have a reasonable option or options.

<sup>33</sup> Lippert-Rasmussen (‘Egalitarianism, Option Luck, and Responsibility,’ pp. 561-62) rejects the requirement that he attributes to Dworkin on the following two grounds. First, Lippert-Rasmussen argues that the revised sufficiency view cannot explain why we should treat the *disadvantage* as bad, rather than the situation in which the agent finds himself as a result of his choice, whether disadvantageous or not. This is because the revised sufficiency view has nothing to say about disadvantage, but only about sufficiency. Second, Lippert-Rasmussen objects, it seems *ad hoc* to suppose that minor differences in the value of an agent’s options, when such differences occur across the line between sufficiency and insufficiency, could lead to disproportionately large differences in judgements about substantive responsibility. Yet I think that there are ready responses to both these objections. In response to the second objection, we might suppose

Otsuka also claims that agents who face risky options have a claim to a safe, non-risky option that meets some minimum threshold for sufficiency. In addition, however, Otsuka claims that the safe option to which agents have a claim should be sufficiently good relative to the risky option such that it would not be reasonable to reject the safe option in favour of the risky option. When an agent does not have such an option, Otsuka claims, then he is not substantively responsible for disadvantage arising from his risky choice.<sup>34</sup> Stemplowska's view is different again: Stemplowska argues that each agent has a claim to an option or options that are reasonable not merely by reference to the agent's own interests, but by reference both to the agent's own interests and to the interests of other agents, who would pay the cost of providing the agent with the relevant option.<sup>35</sup> Specifically, Stemplowska argues that agents have a claim to indemnity against any risk that they may choose to face if and only if the interest that they have in being indemnified against the risk outweighs the interest that other agents have in not offering such an indemnity.

In each of the above cases, the nature of the reasonable option or options to which agents are said to have a claim is slightly different, as is the background story about why agents have such a claim. Both Otsuka and Stemplowska describe their views as grounded in egalitarian concerns, whereas Lippert-Rasmussen describes the Reasonable, Guaranteed Minimum Requirement as grounded in sufficientarian concerns. But, crucially, all of the above views have in common the

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that an agent's substantive responsibility depends on *the extent to which* the options fell short of guaranteeing a reasonably good outcome, thereby removing the sharp line between options that clear a threshold and options that fail to clear a threshold. And in response to the first objection, we can respond that the objection makes an unwarranted leap from the claim that the revised sufficiency view does not include or entail a concern with disadvantage, to the claim that the revised sufficiency view gives us *no reason at all* to be concerned about disadvantage. The former is true, the latter is more contentious, for the reasons given below.

<sup>34</sup> Otsuka, 'Equality, Ambition and Insurance', pp. 155-56 (see also Otsuka, 'Luck, Insurance, and Equality').

<sup>35</sup> Stemplowska's view allows for claims to multiple options, depending on the balance of interests. The views discussed by Otsuka and Lippert-Rasmussen suggest that the claim will be to just one option.

claim that, when agents do not enjoy an option or options to which they have a claim, they are not substantively responsible for disadvantage arising from their risky choices. Call views of this type, *denied claim views*. Denied claim views seek to explain the intuitions with which I opened this paper by arguing that:

- (1) Agents have a claim to an option or options that are reasonable in a specified sense.
- (2) When an agent's claim under (1) is not satisfied, such that the agent was denied a reasonable alternative to the option that he chose, the agent is not substantively responsible for disadvantage that he suffers as a result of his risky choice.

All denied claim views endorse some version of both (1) and (2). The two commitments are, however, separable, in that one could consistently endorse (1) without also endorsing (2). (1) tells us that the agent in question had a claim to a reasonable option of a specified type, but it does not tell us what to think if the agent's claim to such an option was not satisfied. One *could* suppose that agents are not substantively responsible for disadvantage suffered as a result of their risky choice under such circumstances. But this claim would be a further, separate commitment, not entailed by (1) itself. Nevertheless, one might reasonably insist that, while (1) does not itself *require* us to endorse (2), it does at least strongly suggest that we should do so. If agents have a claim to an option that is reasonable in a specified sense then, one might reasonably argue, surely something should follow if their claim is not met: otherwise, their claim looks like an unusually weak, inconsequential sort of claim. Moreover, we tend to think that, in general, the correct way to remedy past wrongs is to remedy their deleterious effects. So (goes the argument) on those occasions when an agent chooses in the absence of an option to which he has a claim, it would be quite appropriate not to hold him substantively responsible for disadvantage arising from that choice. Those who endorse denied claims views do not always make this reasoning explicit as the ground for their

moving from (1) to (2), but in the absence of any alternative account it is reasonable to think that some implicit commitment to something like this account must underlie the move.<sup>36</sup>

Consider the following objection to denied claim views, which I will call the *objection from hypothetical choice*. The objection begins by noting that, when an agent did not have a reasonable option to which he had a claim, but would in any case have declined such an option in favour of the risky option that he chose, then the same outcome would have eventuated even if the reasonable option had been present. As such, claims the objection, the fact that the agent did not have the reasonable option should have no bearing on the agent's substantive responsibility for the outcome.<sup>37</sup> The objection can be illustrated by an example given by Richard Arneson, albeit that Arneson himself intends the example to illustrate a slightly different point.<sup>38</sup> Arneson writes that, 'If

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<sup>36</sup> Proponents of denied claim views must endorse some ground for moving from (1) to (2), because (2) does not straightforwardly follow from (1) alone. For example, in the absence of such a ground, the denied claim view that Lippert-Rasmussen attributes to Dworkin would be vulnerable to the first of Lippert-Rasmussen's objections described in n. 33 above.

<sup>37</sup> This objection resembles Hurley's 'irrelevant alternative' objection to alternate sequence requirements for agent responsibility, according to which it is irrelevant to agent responsibility whether or not an agent was able to do otherwise, if she would not have done otherwise (*Justice, Luck, and Knowledge*, pp.61-66). But the objections are nevertheless quite distinct. Whereas Hurley's objection concerns agent responsibility, the present objection concerns substantive responsibility, and does not rely on Hurley's claims about agent responsibility for its force.

<sup>38</sup> Richard J. Arneson, 'Does Social Justice Matter? Brian Barry's Applied Political Philosophy', *Ethics* 117 (2007): 391–412 at 399. Arneson himself does not intend his example to illustrate the present objection from hypothetical choice, which is an objection to the claim that the *absence of a reasonable alternative* suffices to waive substantively responsibility. Rather, he intends his example to illustrate a similar objection to the different claim that the *absence of equality of options* suffices to waive substantive responsibility. The equality of options condition and the reasonable alternative condition for substantive responsibility are both commonly endorsed by choice-sensitive egalitarians. Nevertheless, it is important to the present argument to recognise that they are conceptually distinct. Equality of options is a comparative criterion, whereas reasonableness is a non-comparative criterion.

I was bound and determined not to take an umbrella to the picnic in any case, my claim to compensation from society due to losses I suffer when rain spoils my picnic is not enhanced if in fact there was no umbrella available for me to take, given that the umbrella option would have had no impact on events in any case.’

The objection from hypothetical choice poses a powerful challenge to denied claim views, not only because it resonates at the intuitive level, but also because it undermines the story about why (2) is an appropriate response to the denial of claims under (1). As outlined above, the case for (2) relies on the thought that we should waive substantive responsibility for disadvantage in cases where agents are denied the option to which they have a claim under (1), because we ought remedy the deleterious effects of past wrongs. But if an agent would not have chosen the option to which he has a claim under (1), then any subsequent disadvantage that he suffers as a result of his making a risky choice does not result from the denial of his claim under (1), and so cannot be regarded as a deleterious effect of the denial of his claim. In such cases, the justification for moving from (1) to (2) is therefore undermined.

How might a proponent of a denied claim view respond to the objection from hypothetical choice? One thing they might say is that the objection from hypothetical choice assumes that what matters to substantive responsibility is what is sometimes called counterfactual causation: whether the same outcome would have eventuated in a hypothetical world in which there was a reasonable alternative. They might reject this assumption and instead invoke an actual-sequence account of causation, according to which what matters to substantive responsibility is whether the absence of a reasonable alternative played a role in the actual sequence of events that generated the outcome. On an actual-sequence account, it might seem that the agent’s choice and subsequent disadvantage was overdetermined: it was caused both by his preference for the option *and* by the absence of a reasonable alternative.

Yet this response looks unlikely to succeed. For one thing, while the objection from hypothetical choice does indeed invoke a counterfactual account of causation, there are nevertheless



good reasons for adopting a counterfactual account of causation over an actual-sequence account in this case. One might, for example, point to the predominant use of counterfactual causation in matters of criminal and civil law to support the use of such a standard in the case of judgements about substantive responsibility.<sup>39</sup> If what appears salient to us in matters of criminal and civil law is what would have happened otherwise, then, in the absence of strong reasons to the contrary, which the putative objection does not supply, we might reasonably suppose that counterfactual causation is also what matters to substantive responsibility. More damagingly still, however, is that it is well recognised that, while counterfactual accounts of causation can easily make sense of the claim that the *absence* of something can serve as a cause, it is much more difficult and perhaps impossible for actual-sequence accounts of causation to make sense of such a claim.<sup>40</sup> Yet what is at stake in the present argument is precisely whether or not the *absence* of a reasonable alternative was a cause of the agent's disadvantage. A reply to the objection from hypothetical choice that appeals to an actual-sequence account of causation therefore looks in danger of simply leaping from the frying pan into the fire, replacing the conclusion that the lack of a reasonable alternative did not in fact bring about the disadvantage with the conclusion that the lack of a reasonable alternative could not possibly have brought about the disadvantage.

A second response to the objection from hypothetical choice is as follows. The objection from hypothetical choice claims that the absence of a reasonable alternative makes no difference to the outcome when the agent would not have chosen it, and so should make no difference to substantive responsibility. But the absence of a reasonable alternative could make a difference to substantive responsibility not because it affected the outcome, but for some other reason. In particular, as noted, many of the proponents of a reasonable avoidability condition for substantive responsibility have

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<sup>39</sup> See e.g. Jane Stapleton, 'Causation in the Law', in *The Oxford Handbook of Causation*, ed. by Helen Beebee, Christopher Hitchcock, and Peter Menzies (Oxford: Oxford University Press, 2009), pp. 744-769 at p. 747.

<sup>40</sup> See e.g. L. A. Paul, 'Counterfactual Theories', in *The Oxford Handbook of Causation*, ed. by Helen Beebee, Christopher Hitchcock, and Peter Menzies (Oxford: Oxford University Press, 2009), pp. 158-184 at pp. 168-169.

been luck egalitarians. Such proponents might therefore claim that the absence of a reasonable alternative can make a difference to substantive responsibility if and because the absence of a reasonable alternative meant that the agent lacked a reasonable option to which other agents had access, regardless of whether or not it would have been chosen.<sup>41</sup> On this view, the inequality of options which thereby obtains between agents, either in itself or as an indicator of some deeper inequality such as inequality in Razian autonomy,<sup>42</sup> provides a reason not to hold the comparatively disadvantaged agent substantively responsible for the outcome of his choice.

What should we make of this response to the objection from hypothetical choice? For one thing, it relies on an appeal to equality of options, and therefore speaks only to those proponents of a choice-based conception of substantive responsibility who also endorse egalitarian commitments. But even on its own terms, the putative response does not succeed. The most straightforward way to demonstrate this is to note that it offers no response at all in cases where *all* agents lack a reasonable option to which they have a claim. Suppose, for example, that all agents at Arneson's picnic lacked umbrellas, that all faced an equal chance of being rained on, and that half got rained on whilst the other half stayed dry. Are those agents who get rained on substantively responsible for their comparative misfortune? Here the objection from hypothetical choice will deny what (2) affirms, *viz.*, that we should waive substantive responsibility even for those agents who would not

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<sup>41</sup> Most luck egalitarians do treat equality of options as a prerequisite for the claims that they make about the conditions under which agents are substantively responsible for disadvantage suffered as a result of their risky choices. E.g. Stemplowska, 'Making Justice Sensitive to Responsibility', pp. 238 & 243-44; Richard Arneson, 'Equality and Equal Opportunity for Welfare', *Philosophical Studies*, 56 (1989): 77-93 at 85-86; Vallentyne, 'Brute Luck, Option Luck, and Equality of Initial Opportunities', p. 542; Lippert-Rasmussen, 'Egalitarianism, Option Luck, and Responsibility', pp. 564-65; Otsuka 'Equality, Ambition and Insurance', p. 153 n. 9. For a more nuanced view, according to which inequality of risks matters to fairness only when pursuant to prudent conduct and when resulting in unequal outcomes, see Segall, *Equality and Opportunity*, pp. 64-82.

<sup>42</sup> Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), pp. 155 & 204. Raz claims that autonomy depends in part on the availability of a variety of acceptable options.

have chosen to take an umbrella to the picnic, simply because they lacked a reasonable option. And in such cases there will be nothing that the putative response can say, by appeal to inequality of options or autonomy, in defence of the claim that we should waive substantive responsibility.

More generally, the problem with the putative response is that, in order to defeat (2), the objection from hypothetical choice need only claim that the absence of a reasonable option does not *itself* provide sufficient reason to waive substantive responsibility. It need not claim that, in the absence of a reasonable option, if the agent would not have chosen the reasonable option, then we *must* hold the agent substantively responsible for disadvantage arising from his choice. As such, the objection is compatible with the thought that, even where the agent would not have chosen the reasonable option, there might nevertheless be other reasons – such as inequality of options or autonomy – why the agent is not substantively responsible for disadvantage arising from his choice. In Arneson's example, it suffices to defeat (2) that the lack of an umbrella does not, *qua absence of a reasonable option to which the agent has a claim*, automatically provide a reason to waive substantive responsibility. It is a further question, the answer to which is independent of (2), whether or not the lack of an umbrella, *qua option that would have put the agent on an equal footing with other agents*, provides a reason to waive substantive responsibility.<sup>43</sup> We should therefore conclude that the putative response to the objection to hypothetical choice does not succeed in defending denied claim views against the objection.

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<sup>43</sup> As noted in n. 38 above, Arneson himself deploys a similar hypothetical choice objection to the claim that inequality of options suffices to waive substantive responsibility. It seems likely that if we should endorse the present hypothetical choice objection to a reasonable alternative condition for substantive responsibility, then we should for much the same reasons also endorse Arneson's hypothetical choice objection to an equality of options condition for substantive responsibility. If so, then the putative response considered herein can be rejected not only on the ground that it confounds the two conditions, but also on the ground that it wrongly claims that inequality of options suffices to waive substantive responsibility.

Finally, a proponent of a denied claim view might attempt to accommodate the objection from hypothetical choice, and thereby rescue their view, by replacing (2) with the following modified claim:

(2\*) When an agent's claim under (1) is not satisfied, such that the agent was denied a reasonable alternative to the option that she chose, then the agent is not substantively responsible for disadvantage that she suffers as a result of her risky choice, *provided that the agent would have chosen the reasonable alternative to which she had a claim under (1) over the option that she chose, had the reasonable alternative been available to her.*

The difficulty with the proposed new formulation (2\*) is that it runs into exactly the same indeterminacy problem that, as we saw above, Olsaretti's second criterion for voluntariness also runs into. There are various hypothetical reasonable options that would satisfy an agent's claim under (1), some of which the agent might have chosen over the option that she chose, others of which she would not have chosen over the option that she chose. It is therefore an indeterminate matter whether or not (2\*) will be satisfied in any particular case, such that (2\*) cannot provide a useful way to defend denied claim views against the objection from hypothetical choice.

## VI. CONCLUSION

I have argued that a reasonability condition for substantive responsibility cannot be justified by any of the most plausible candidates: an appeal to agent responsibility, voluntariness, or a denied claim view. At the same time, choice-based responsibilarians are still left with the challenge of explaining why, intuitively, agents do not seem to be substantively responsible for the disadvantage arising from risky choices in examples such as those with which I opened this paper. One

possibility is that these intuitions are grounded in the mistaken belief that an underlying commitment to agent responsibility, voluntariness, or a denied claim view requires a reasonability condition. If so, then the argument of this paper could be read as a debunking argument, one which shows that choice-based responsibilitarians should reject these intuitions and willingly endorse the view that agents should be held substantively responsible for disadvantage arising from all their risky choices, at least provided that they were not coerced.<sup>44</sup> Rakowski comes closest to endorsing such a view, but most have found it unpalatable.<sup>45</sup> Another way to read the paper is as exposing the reasonability condition as precisely the sort of unjustified *ad hoc* gerrymandering that opponents of choice-based responsibilitarianism charge that it is. We should, according to this reading, conclude that the intuitions adduced by the stated examples ought actually be treated as grounds to reject choice-based responsibilitarianism altogether.

It remains possible, of course, that egalitarians might ground a reasonability condition in some further commitment not discussed in the present paper. But until such a justification is provided, choice-based responsibilitarians should not assume that they can accommodate intuitive counterexamples by endorsing a reasonability condition. To avoid the threat posed by such cases, without encountering the charge of gerrymandering, they must provide a justification for the

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<sup>44</sup> Some might add: and any background claims to relevant information were met (e.g. Alex Voorhoeve, ‘Scanlon on Substantive Responsibility’, *The Journal of Political Philosophy* 16 (2008): 184–200. Egalitarians might add: and they started from a position of equality of options (e.g. Lippert-Rasmussen, *Luck Egalitarianism*, pp. 60-61). In the remainder of the paper, I assume that we are considering circumstances in which any background conditions for substantively responsibility, other than the reasonability condition, have already been met.

<sup>45</sup> Rakowski, *Equal Justice*, esp. ch. 3. Zofia Stemplowska, ‘Rescuing Luck Egalitarianism from History’, *Journal of Social Philosophy* 44 (2013): 402-419 argues that even early statements of luck egalitarianism by Cohen, Dworkin and Arneson, which are sometimes thought of as having endorsed the view that agents are always substantively responsible for the outcome of their risky choices, did not in fact endorse such a view.

condition, or something like it. And the central challenge of providing that explanation remains, as yet, very much unmet.