

What Do You Mean I Should Take Responsibility for My Own Ill Health?

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Abstract

Luck egalitarians think that considerations of responsibility can excuse departures from strict equality. However critics argue that allowing responsibility to play this role has objectionably harsh consequences. Luck egalitarians usually respond either by explaining why that harshness is not excessive, or by identifying allegedly legitimate exclusions from the default responsibility-tracking rule to tone down that harshness. And in response, critics respectively deny that this harshness is not excessive, or they argue that those exclusions would be ineffective or lacking in justification. Rather than taking sides, after criticizing both positions I also argue that this way of carrying on the debate – i.e. as a debate about whether the harsh demands of responsibility outweigh other considerations, and about whether exclusions to responsibility-tracking would be effective and/or justified – is deeply problematic. On my account, the demands of responsibility do not – in fact, they can not – conflict with the demands of other normative considerations, because responsibility only provides a formal structure within which those other considerations determine how people may be treated, but it does not generate its own practical demands.

Keywords: responsibility, distributive justice, luck egalitarianism, public health policy, alcoholism, smoking.

1. Luck Egalitarianism, Public Health Policy and The Appeal of Tracking Responsibility

Intuitively, it seems right that a gambler who gambles away all of their money and is now living in squalor should have a weaker entitlement to claim benefits to remedy their poverty than someone else who was born into poverty, and the reason for this seems to be that the gambler is presumably more responsible for their own deprivation than the person who was born into it. Whether gamblers are indeed responsible for their own financial difficulties or not is not the issue; my point is rather that *if* we think them responsible for their own financial difficulties *then* we will likely also think that they have a weaker claim to receive financial assistance to bail them out of those difficulties than others who were not responsible for their otherwise similar financial strife.

Arguably, the same underlying intuition about how people's entitlements should *track their responsibility*

also finds expression in many versions of the luck egalitarian position.¹ For example, to luck egalitarians like Eric Rakowski and Richard Arneson, responsibility plays a fairly straight forward regulatory role in shaping people's entitlements. Rakowski believes that if someone is responsible for their own deprivation then they and not anyone else should suffer the burdens associated with that deprivation. This interpretation of Rakowski's (1991) position is suggested by Elizabeth Anderson who argues: "Consider an uninsured driver who negligently makes

1 In much luck egalitarian thinking responsibility also plays a role in shaping people's duty to contribute something to helping others, and not just their entitlement to be helped – this feature is clearly visible in the cameos of Rakowski's and Anderson's positions that I provide below, as well as in much of the work that will be cited and quoted below – however for the sake of readability in what follows I will sometimes drop the reference to this other important role that responsibility plays in luck egalitarian thinking, and just talk about its role in shaping people's entitlements.

an illegal turn that causes an accident with another car. Witnesses call the police, reporting who is at fault; the police transmit this information to emergency medical technicians. When they arrive at the scene and find that the driver at fault is uninsured, they leave him to die by the side of the road. According to Rakowski's doctrine, this action is just, for they have no obligation to give him [publicly funded] emergency care[; and i]f the faulty driver survives, but is disabled as a result, society has no obligation to accommodate his disability" (Anderson 1999, 295-6).

And although Arneson's responsibility-catering prioritarian account is more subtle and sophisticated – roughly, he believes that priority should be given to helping those people who are worse off and who were not responsible for their own deprivation over those who were, and that the funds used to help them should preferably be obtained from those who are better off and who were not responsible for their own good fortune rather than from those who were – on his account people's entitlements should still track their responsibility. For instance, Arneson argues that it is better to help the unlucky poor rather than the imprudent poor because the former are not responsible for their own deprivation, and that it is better when those who pay for making others better off are less rather than more responsible for their greater holdings because the former are less entitled to their holdings than the latter (Arneson 2000, 344). In a sense, Arneson's responsibility catering prioritarianism recommends that those who are responsible for their own situation (whether good or bad) should be largely left alone wherever possible, and that redistribution should mainly take place between those who are not responsible for their own situation (again, whether good or bad), with resources flowing from the undeserving rich to the undeserving poor.

Thus, on both Rakowski's and on Arneson's accounts, it is largely automatic that if someone *was* responsible for their own deprivation then their entitlements to assistance should be affected because they rather than others should now *take* responsibility for it, and the main difference between their positions is in how closely people's entitlements will track their responsibility. On Rakowski's account responsibility entails ineligibility to claim benefits, and on Arneson's account responsibility affects who gets priority over whom, both in terms of eligibility for receipt of benefits as well as providing the funds for payment of benefits to others.²

Others also think that something like the responsibility-tracking intuition sits at the core of luck egalitarianism. For instance, in discussing luck

egalitarianism Susan Hurley argues that "[w]hen responsibility plays a ... role in distributive justice, it tells us ... that goods are exempt from redistribution to the extent to which people are responsible for them and that distributive justice is only concerned with redistributing goods that are a matter of luck for people" (2002, 63). Eli Feiring summarizes this idea as follows: "The concern of distributive justice is 'to eliminate so far as possible the impact on people's lives of bad luck that falls on them through no fault or choice of their own'. Inequalities generated by the individual's voluntary choices are, however, acceptable and do not give rise to redistributive claims on others. Nobody is required to mitigate the effects of these choices" (2008, 33). This also seems to be the point of Gerald Cohen's suggestion that "genuine choice excuses otherwise unacceptable inequalities" (1989, 931), and of Ronald Dworkin's distinction between "brute luck" and "option luck" (1981). Alexander Kaufman also attributes this intuition to luck egalitarians when he speaks of "[t]he luck egalitarian intuition that egalitarians should compensate only for disadvantage for which persons cannot reasonably be held responsible" (2004, 822). Similarly, Maureen Ramsay argues that luck egalitarians "share a common commitment to the intrinsic moral importance of holding people responsible for what they freely choose to do", because to their mind "unequal distributive consequences that are due to ... voluntary choices [are things] for which people are responsible" (2005, 434). And some even take a harder stance and argue that not only is it *not necessary* to eradicate such departures from strict equality, but that we positively *ought not* to eradicate them – for instance, Daniel Markovits commits himself to this position by arguing that the two aims of egalitarianism (i.e. choice preservation and luck eradication) compete with one another, and that when they come into conflict with one another the former aim should *never* be sacrificed for the sake of the latter aim (2003).

Consequently, luck egalitarians may endorse a social welfare policy under which a smoker who refuses to quit and consequently becomes ill, would have a weaker entitlement to receive publicly funded medical treatment than someone else who suffers similar health problems but not due to things for which they are responsible. The reason why on their accounts this person's entitlements would be reduced is precisely to take account of the fact that the smoker is allegedly responsible for their own deprivation whereas the other person is not.³ That

2 More precisely, what is tracked is the *extent* of people's responsibility, since responsibility is not a light switch (an on/off thing) but something that comes in *degrees*.

3 I am not endorsing any particular claims here about who is responsible for their respective health problems and who is not, but rather I am only reporting that others think that some smokers, alcoholics and obese people are more responsible than others for their health problems, and that to

is, given the scarcity of medical resources, if some people must miss out on receipt of medical treatment, then it should surely be those who were responsible for their own ill health rather than those who were not. This seems to be the point of Arneson's reply to Anderson's critique when he urges that considerations of responsibility *must* play a role in determining people's entitlements, for otherwise "some individuals [who] behave culpably irresponsibly, again and again, [will end up] draining resources that should go to other members of society" (Arneson 2000, 349). Claims along similar lines are also made about alcoholics who due to their excessive consumption of alcohol develop liver cirrhosis and now need a liver transplant; here it is claimed that their position on the waiting list for a liver transplant should be demoted in relation to others who are not responsible for their liver cirrhosis. This, for instance, seems to be Walter Glannon's position – he argues that given the scarcity of medical resources "entitlements to healthcare for a diseased condition are inversely proportional to control and responsibility" – and he also claims that "[t]his view is supported by the egalitarian ethic espoused by certain political philosophers [he names Rawls, Dworkin, Arneson and Roemer] who argue that society should indemnify people against poor outcomes that are the consequences of causes beyond their control, but not against outcomes ... for which persons are responsible" (1998, 35). Finally, similar claims about how some people's entitlements should be reduced on account of their responsibility for their own ill health are also made about people who become obese because of poor eating habits and insufficient exercise and who now also need expensive medical treatment for such conditions as type two diabetes and coronary heart disease. For instance, the World Health Organization (WHO) claims that there are causal links between obesity and "increases in blood pressure, unfavourable cholesterol levels[,] coronary heart disease, stroke, diabetes mellitus, and many forms of cancer" (2002, 9), and although they do not endorse such a harsh public health policy, Martens (2001, 172-3) points out that this kind of argument could be mounted.

2. Some Arguments For and Against Luck Egalitarianism

The responsibility-tracking intuition – i.e. the intuition that people should *take* responsibility for those things for which they *were* responsible, and that no one is entitled to expect others to take this responsibility for them – has some harsh consequences. But are these

take account of this responsibility their entitlements to utilize public health care resources should be reduced.

consequences *excessively* harsh – for instance, might some of this harshness perhaps be justified – and might luck egalitarians perhaps find ways of legitimately *avoiding* the harshness that can't be justified? Critics think either that all of this harshness is excessive, or else that even in their best-case scenario luck egalitarians will still have to endorse at least some excessive harshness; but luck egalitarians think that all of the harshness that is excessive can be avoided, and that the remaining harshness can be morally justified. In this section I will explain why I find the critics' complaints to be ultimately unconvincing or misguided, but why the luck egalitarians' position also strikes me as flawed.

2.1. The Critics' Complaints and some Problems with those Complaints

Most objections to luck egalitarianism fall into one of four groups: (i) *harshness* objections, (ii) disagreements about the *extent* of people's responsibility or about our ability to *know* that extent, (iii) claims that luck egalitarianism would be *intrusive* or *wasteful*, or that choice and luck are too *intertwined* to ever be untangled from one another, and (iv) claims that medical decisions (e.g. about organ transplants) should be made purely on the basis of *clinical* considerations.

Firstly, ever since Elizabeth Anderson's (1999) influential paper, critics have argued that luck egalitarianism is *excessively harsh* and thus morally unattractive, because it would be awful to abandon someone in their time of need and to offer them little or even no aid just because they were responsible for their own current plight. Anderson asks "If much recent academic work defending equality had been secretly penned by conservatives, could the results be any more embarrassing for egalitarians?" (1999, 287), and in response she charges luck egalitarians with having lost sight of truly egalitarian aims such as addressing "the concerns of the politically oppressed"; redressing "inequalities of race, gender, class and caste"; and eradicating "nationalist genocide, slavery and ethnic subordination" (Anderson 1999, 288).⁴

However, this criticism seems weak because the luck egalitarian's point is not that it is *nice* to abandon someone who has fallen on hard times (even if this is due to their own bad choices), but it is rather that these people have no entitlement or claim on the rest of us *as a matter of justice* to help them out – that was surely Rakowski's and Arneson's position in the passages that were quoted earlier. Whether there are other reasons to help these people – e.g. reasons of charity – is besides the point, because the luck egalitarian's rather minimal position is that equal treatment *qua equal* does not entail

4 For recent expressions of this worry see (e.g. Voigt 2007, 394; or Cappelen and Norheim 2005, 477).

that we must eradicate *all* departures from strict equality, but *only those* departures for which those people who are affected by them are not responsible, and that nobody has a legitimate claim on the rest of society *as a matter of justice* to eradicate their voluntary disadvantages (e.g. see Kaufman 2004, 830). Thus, although Anderson claims that such severe responsibility-based disentitlement clauses are inequalitarian because they fail to take up the cause of the needy, those luck egalitarians who endorse such disentitlement clauses will probably not be swayed by Anderson's appeal to our sympathy since they will see such harshness as merely an expression of the plausible intuition which lies at the heart of all luck egalitarian thinking – namely, that equality requires the preservation of people's choices, but only once those choices have been cleansed of the distorting effects of luck (e.g. see Markovits 2003; or Vincent 2006a), or what I also referred to above as the responsibility-tracking intuition – and hence they maintain that there is therefore nothing inequalitarian about their recommendations, even if there is something cold, stark and uncaring about them.

Secondly, many critics have also argued that the people whom luck egalitarians identify as legitimate candidates for harsh treatment were actually not (fully) responsible for their own deprivations – for instance, they argue that alcoholics who now need a liver transplant due to alcohol-induced liver cirrhosis are not (fully) responsible for the fact that they now need a liver transplant – or they cast doubt over whether we can ever really know the extent of their responsibility for their own deprivations. Here, the addictive nature of tobacco and alcohol, the unavailability of reasonably priced healthy food alternatives as well as the proliferation of unhealthy but inexpensive junk food (and advertisements for such), and the declining number of public parks and other recreational facilities in large and densely populated cities where people could engage in physical activity, are among the most commonly cited reasons for why these people are allegedly not fully responsible for their own ill health or for why we face epistemic barriers in trying to ascertain the degree of their responsibility (e.g. Buyx 2008, 873; Steinbrook 2006; Banja 2004).

However, this way of defending the interests of those whom luck egalitarians would otherwise abandon is also unsatisfying. One reason for this is that it is surely implausible to maintain that these people bear absolutely *no* responsibility whatsoever for their current state of health – for instance, that the alcoholic with liver cirrhosis is no different *at all* as regards their responsibility for their current ill health than someone whose liver packs it in due to a genetic liver degenerative disorder – and yet that is the sort of thing which opponents of this harsh policy would have to maintain if they really wished to establish that these people should be treated no worse than victims of bad

luck. But secondly, even if it were not implausible to suppose that these people are completely innocent, the other reason why I do not think that this is a promising line of argument for the critics is because if I get their sentiments right, then their concern is not just to establish that everyone who is *not* responsible for their own ill health should be cared for properly under the public health system, because this is not something that luck egalitarians would take issue with.⁵ Rather, their core concern is surely that we should not abandon even those who *are* responsible for their own ill health, and that the public health system should take just as good care of them as it does of those people who are not responsible for their own ill health. And if I am right in thinking that this is their core concern, then the debate about whether alcoholics, smokers and the obese *are* in fact responsible for their health problems or not is quite peripheral (though not unimportant), since the real issue is not what should happen to those people who are *not* responsible for their own ill health, but rather what should happen to those people who *are* responsible (or who are partly responsible) for their own ill health. Put another way, the real question is who should take responsibility for what Cohen might call *voluntary disadvantages* (e.g. see Cohen 1989, 916) – i.e. those disadvantages for which the affected parties *are* responsible – and my concern is that even if we took on board what the critics say about various responsibility-undermining factors, we would still have to abandon some people to a harsh fate when their disadvantages are voluntary, because this objection leaves intact the idea that people should take responsibility for their own voluntary disadvantages.

Thirdly, critics have also argued: (a) that a luck egalitarian society would be terribly *intrusive*, since the state would need to send out inspectors to periodically check on everyone to see whether they had been the beneficiaries of some undeserved good fortune or the victims of undeserved bad luck; (b) that all of this checking would be very *wasteful*, because too great an administrative cost would need to be borne by society to unearth all of the undeserved burdens and benefits; and (c) that what luck egalitarians ask us to do – namely, to pull apart those effects which are due to people's choices from those effects which are due to people's luck – can not be done because our choices are far too *intertwined* with luck for them to ever be pulled apart from one another. Elizabeth Anderson levels the first charge

⁵ Indeed, many of the refinements that have been made to luck egalitarian theories (see the end of the next paragraph for Maureen Ramsey's citation of luck egalitarians who attempt to make such refinements) have had to do with identifying cases in which the parties concerned are not fully responsible for their own situation, and excluding them from the harsh treatment.

when she writes that a luck egalitarian “system requires the state to make grossly intrusive ... judgments of individual’s choices. Equality of fortune thus interferes with citizens’ privacy” (1999, 310). And, for instance, Ramsay levels the second and third charges: the second, when she claims that even if we could disentangle luck from choice, in political philosophy any “procedure [used to accurately determine the extent of people’s responsibility] would be ... *prohibitively costly*” (2005, 446, my emphasis); and the third when she claims that Rawls and Dworkin do not satisfactorily disentangle choice and luck from one another – that they still have “difficulty [in] determining [what is] genuine choice” – and she frames Arneson, Cohen and Roemer’s positions as unsuccessful⁶ attempts to find a better way of negotiating the “inter-relatedness between abilities and ambitions” (2005, 434).

However, these objections are also rather counter-productive, because they too sound more like endorsements of what luck egalitarians are saying rather than like genuine critiques. After all, no effort is made here to resist the basic assertion that *this* is how those people who are responsible for their own deprivations should be treated – i.e. that they should take responsibility rather than expecting others to do this – but rather there is only the sad resignation or lament that unfortunately we will not be able to treat them as we ought to because doing so would either result in a terribly intrusive society, in resource wastage, or because it is simply humanly impossible to untangle luck and choice from one another. And although these objections have not gone unaddressed by the theorists whose positions they target – for instance, Ramsay (2005) and Feiring (2008) mention various luck egalitarian responses which in my opinion meet the critics’ challenge – in the end I think that much of this back-and-forth argument is wasted effort because these objections miss the main point in the first place. At the end of the day, even if luck egalitarians could not meet those objections, those who raise them would still have to concede that luck egalitarians’ hearts are in the right place because *if only we could* disentangle choice from luck in an economically efficient way and without unduly intruding into people’s lives, then we *should* after all do precisely what luck egalitarians recommend, and thus the only thing that saves people’s bacon are these annoying practical limitations!

Finally, some critics also argue that when it comes to such things as organ transplant decisions, those

decisions should only ever be made on the basis of *clinical considerations* – e.g. whether a prospective liver transplant recipient’s health problems can be treated using a less intrusive method (e.g. living a healthier lifestyle or perhaps taking certain medications), or whether they are likely to resist the temptation to drink alcohol after their surgery, or even by assessing their chance of surviving a liver transplant operation – rather than on the basis of whether one person is more responsible for their present need for a liver transplant than another person (e.g. Neuberger 1999; Beresford 2001). However, this response seems to ignore the problem rather than dealing with it, since in a climate of scarcity – for instance, more people need a liver transplant than the number of livers that are available, and more money could always be thrown at the public health system – we may sometimes need to make difficult choices between cases which are otherwise identical *except* for the fact that one person is apparently more responsible for the fact that they are now deprived than another, and the question that needs answering is whether in *such* cases it is legitimate to use such considerations as tie-breakers.

In my opinion the critics’ position is not strong. Firstly, nobody denies that luck egalitarianism will sometimes be harsh, but on the luck egalitarian account that harshness is not excessive because that is simply what justice is like – i.e. justice is cold, stark and uncaring. Secondly, luck egalitarians can accommodate the critics’ complaints about mis-attributions of responsibility – indeed, many have refined their positions precisely as a response to such criticisms – and in any case this objection offers little solace to those who are (partially) responsible for their own deprivations, since it does not protect them from being treated in a second- or third-rate manner. Thirdly, the *intrusive*, *wasteful* and *intertwined* objections sound more like sad laments about the practical difficulties associated with treating people in the way that justice requires – i.e. they sound like endorsements of what luck egalitarians are saying – rather than like genuine criticisms. And fourthly, even if we accept the claim that clinical considerations should play the most important role in informing medical treatment decisions, we may still have to make difficult choices when we are faced with clinically identical cases, and what critics would have to explain is why considerations of responsibility should not be used as tie-breakers in such cases. For these reasons I find the objections that critics level at luck egalitarianism to be either unconvincing or misguided.

2.2. Problems with the luck-egalitarian position

However, this should not be taken as an endorsement of the luck egalitarian position; I shall now offer two minor and one main argument against luck egalitarianism.

6 On her account, neither Arneson, Cohen nor Roemer offers us an acceptable way to “separate out the relative contributions of heredity, environment and voluntary choice to estimate the extent to which anyone is justifiably advantaged or disadvantaged because of their own actions or behaviour” (Ramsay 2005, 444).

First of all, there is reason to be weary of the reply that was offered earlier to the harshness objection on the luck egalitarians' behalf – i.e. the reply that justice is simply like that (cold, stark and uncaring), and hence that for this reason there is nothing unjust about abandoning people who were responsible for their own disadvantages to suffer the consequences of their own actions. In essence, the problem with this reply is that it merely asserts, rather than establishing, that the proper concern of justice is narrow (i.e. that justice need only concern itself with responsibility-tracking) rather than wide (i.e. that a plurality of considerations inform what is just and what is not). Without dwelling on this issue, my point is simply that one way to interpret the critics' harshness objection is as an objection to the narrow understanding of justice – i.e. as a call to re-assess the sorts of considerations which we take to be relevant to decisions about justice – and if we understand their objection in this way then this reply will simply beg the question against their position.⁷

Secondly, although luck egalitarians have indeed refined their positions to take account of the various objections that critics have levelled against them – for instance, they recognize that people's responsibility can be undermined by such things as constitutional and circumstantial bad luck, by addictions, etc. – we may worry that at least some of these refinements seem rather *ad-hoc*. For instance, although one reason to not reduce people's entitlements to (e.g.) healthcare even when those people happen to be responsible for their current health deprivations might indeed be that doing so may reduce their ability to be responsible agents in the future, technically *any* prejudicial treatment of a person (i.e. irrespective of whether it has to do with the provision of healthcare or of some other benefit) may reduce people's range of future life options, and that in turn may adversely affect their ability to be fully responsible agents in the future. But since we do not take this to be a reason to refrain from tracking responsibility in *all* cases, it is not clear why we should take this to be a reason to refrain from tracking responsibility in the specific cases that luck egalitarians wish to exclude (e.g. healthcare) from the harsh treatment. As Stemplowska points out, "people often disagree over which disadvantages are acceptable" (2009, 239), and my worry is that once we allow ourselves to exclude one domain of disadvantages from the responsibility-tracking rule, then there will be no principled way of excluding other domains of disadvantage as well.

However, most importantly, the third reason why I

7 The distinction between a *narrow* and a *wide* understanding of justice is brought to mind for instance by Zofia Stemplowska's comparison of "all-things-considered justice" to "narrowly defined egalitarian justice" (2009, 238-9).

find fault with the luck egalitarian position is because I think that the responsibility-tracking intuition upon which it rests – i.e. the intuition that people should *take* responsibility for those things for which they *were* responsible, and that no one is entitled to expect others to take this responsibility for them – is itself lacking in justification. In what follows, I will first argue that claims about what outcomes or states of affairs people *are/were* responsible for having brought about refer to a very different kind of responsibility concept than claims about *taking* responsibility. Secondly, I will argue that since these two claims refer to two different kinds of responsibility concepts, that claims about the former kind of responsibility need not necessarily entail anything about the latter kind of responsibility. On my account, if we wish to deduce conclusions about how people should be treated from premises about what they have done, then some kind of normative bridging premises will need to be cited. But since normative premises themselves stand in need of justification – for instance, we can't just state that all murderers should be executed without citing any supporting arguments, because as the literature on this topic has shown while utilitarian considerations may support treating people in one way, deontological considerations may justify completely different sort of treatment – it is therefore far from clear that a finding that someone was responsible for their own ill health will automatically lead to the harsh conclusion that their entitlements to have that deprivation remedied should now be reduced.⁸

(i) *Six different responsibility concepts*

Responsibility is more of a "syndrome" than it is a single concept, or put another way, there is not just one single concept which answers to the name "responsibility", but rather there are many different though related concepts each of which under various circumstances – e.g. depending on what we are trying to express – legitimately answers to that name. To see this, consider this parable about Smith the ship captain (adapted from Kutz 2004, 549; adapted from Hart 1968, 211):

(1) Smith had always been an exceedingly *responsible* person, (2) and as captain of the ship he was *responsible* for the safety of his passengers and crew. However, on his last voyage he drank himself into a stupor, (3) and he was *responsible* for the loss of his ship and many lives. (4) Smith's defense attorney argued that the alcohol

8 Despite some superficial similarities between Feiring's (2008) recent argument and the argument which I will present here, our arguments are in fact very different because while Feiring's claims are based on Hurley's (2002) previously-cited analysis of what we ought to do about *involuntary* disadvantages, my analysis relates to *voluntary* disadvantages.

and Smith's transient depression were *responsible* for his misconduct, (5) but the prosecution's medical experts confirmed that Smith was fully *responsible* when he started drinking since he was not suffering from depression at that time. (6) Alas, his employer will probably have to take *responsibility* for this tragedy, since the victims families' claims for damages far outstrip the limits of Smith's personal indemnity insurance policy.

The word "responsibility" is used in this passage in at least six different ways. First, there is a claim about his *virtue responsibility* – Smith was normally a dependable person, someone who took their duties seriously, and who normally did the right thing. Second, there is a claim about Smith's *role responsibility* – in his role as the ship's captain Smith had certain duties to various parties, both on and off his ship (these are sometimes referred to as our "responsibilities"). Third, there is a claim about his *outcome responsibility* – it is alleged that various states of affairs or outcomes, such as the loss of the ship and many of its passengers and crew, are rightfully attributable to him, as something that he did. Fourth, there are two claims about *causal responsibility* – Smith's defense lawyer alleged that Smith's aberrant behaviour was caused by the alcohol and by his depression. Fifth, there is a claim about Smith's *capacity responsibility* – since Smith was not suffering from depression at that time, the prosecution therefore argued that his mental capacities were fully functional, and hence that his moral agency was fully intact. And finally, comments are made about *liability responsibility* – about who should now do what in order to "take" due responsibility for what has happened; in this case financial liability is mentioned because this is apparently one way in which responsibility might be "taken", but we might also suppose that to take due personal responsibility Smith should also apologise to the bereaved families and then spend a term in prison.⁹

(ii) *Backward-looking and forward-looking responsibility concepts*

However, these various responsibility concepts can be roughly apportioned into the following three groups, the last two of which are particularly relevant to the point which I wish to make: while some of them are largely *descriptive* (i.e. virtue- and capacity responsibility), others look *backwards* in time towards things which have allegedly already happened in the past (i.e. causal- and outcome responsibility), and others look *forward* in time towards things that allegedly ought to be done in the future (i.e. role- and liability responsibility).

⁹ For an indepth discussion of these different responsibility concepts as well as of the relationships which obtain between them see (Vincent 2006b and 2009).

Thomas Scanlon notices the different directional orientation of the concepts that fall into the latter two groups when he argues that "[t]o say that a person is responsible, in th[e backward-looking] sense, for a given action is only to say that it is appropriate to take [that action] as a basis of moral appraisal of that person[; on the other hand], judgments of responsibility [in the forward-looking sense] express substantive claims about what people are required ... to do for each other" (Scanlon 1998, 248).¹⁰ Peter Cane and Antony Duff also note the different directional orientation of responsibility claims that fall into the latter two groups. For instance, Cane draws a distinction between attributions of what he calls "historical responsibility" which allocate responsibility to people "for past conduct", and claims about what "prospective responsibilities" are imposed upon someone by the law (Cane 2004, 162). Cane argues that "[i]n a temporal sense, responsibility looks in two directions. Ideas such as accountability ... look backwards to conduct and events *in the past*. ... By contrast, the ideas of roles and tasks look *to the future*, and establish obligations and duties" (Cane 2002, 31, my emphasis). On the other hand, Duff distinguishes "*prospective* responsibilities [which] are those I have before the event, those matters that it is up to me to attend to or take care of" and which look forward in time, from "*retrospective* responsibilities [which] are those I have after the event, for events or outcomes which can be ascribed to me as an agent" and look backwards in time (1998, 290-1, original emphasis).¹¹

I cite these different authors to show that even if we only carve up the domain of responsibility claims in the roughest of ways, we should at least notice their inherent temporal directionality – while some responsibility claims aim to report something about the past, other responsibility claims aim to make some sort of prescription for the future. Thus, my first point is that in the sort of debates with which this article concerns itself, claims about what people *are/were* responsible for refer to a different kind of responsibility concept than claims about *taking* responsibility – they are

¹⁰ Scanlon uses the terms "responsibility as attributability" and "substantive responsibility", but I think that these are equivalent to my outcome responsibility and liability responsibility respectively. Christopher Kutz (2004, 549), Stephen Darwall (2006, 91-1, notes 5 and 7) and E. Feiring (2008, 36) also seem to interpret Scanlon as I have, and Feiring even adopts Scanlon's term "substantive responsibility" to refer to this forward-looking responsibility concept.

¹¹ Duff elaborates on this in a later article (2004-5). In actual fact, Cane and Duff carve up the domain of responsibility concepts somewhat differently to the way that I do, but at least the main idea that responsibility concepts can look in two temporal directions is the same.

different responsibility concepts because they have very different content – and this leads me to think that the responsibility-tracking intuition which states that *if* you are responsible for something *then* you (and not others) should take responsibility for it, cites *two different* responsibility concepts – outcome responsibility is cited in the antecedent and liability responsibility is cited in the consequent. Thus, a more accurate statement of the responsibility-tracking intuition would read something like this: if you are outcome responsible for something then you (rather than others) should take liability responsibility for it.

(iii) *The transition from outcome responsibility to liability responsibility*

The reason why it is important to observe that the responsibility-tracking intuition makes use of two different responsibility concepts rather than just one generic responsibility concept, is because it is not obvious how consequent claims about liability responsibility are derived from antecedent claims about outcome responsibility.

One source of the problem here is that if these are indeed two different concepts – one that looks backward in time and is used when we wish to report something about the past, and the other which looks forward in time and which is used to make prescriptive claims about the future – then it is not clear why claims about the former (i.e. outcome responsibility) tell us anything about the latter (i.e. liability responsibility). What sort of transition is it that is allegedly made when we move from the backwards-looking claim that some state of affairs is rightfully attributable to a particular person, to the forward-looking claim that this person should now respond by doing various things?

Is the idea meant to be that claims about liability responsibility are already *contained within* claims about outcome responsibility? Given that each of these concepts has a radically different kind of content – one looks forward in time while the other looks backwards in time – I can not see how this could be so, and Scanlon also urges that it is crucially important to distinguish these senses of responsibility from one another, precisely because a failure to do so “leads to the view that if people are responsible ... for their actions [in the backwards-looking sense] then they can properly be left to suffer the consequences of these actions”, or even that nobody else has the responsibility to help them. However, he argues that this conclusion “rests on the *mistaken* assumption that taking individuals to be responsible for their conduct [in the backwards-looking sense] ... *requires* one to also say that they are responsible for its results in the [forward-looking] sense” (Scanlon 1998, 293, my emphasis). On his account these are two separate issues – conclusions about a person’s forward-looking

(liability) responsibility are not already contained within prior claims about their backward-looking (outcome) responsibility. Similarly, Robert Goodin also argues that “[t]ask responsibility [which appears to be the name that he gives to what I call liability responsibility] is often thought to flow, automatically (indeed, analytically), from blame responsibility [my outcome responsibility]. To determine whose responsibility it should be to correct some unfortunate state of affairs, we should on such logic simply determine who was responsible for having caused that state of affairs in the first place. Those who are responsible for causing an unfortunate situation are responsible for fixing it. ... Nothing, it seems, could be simpler, more analytically straightforward” (Schmidtz and Goodin 1999, 151). However, on subsequent pages he points out that it is far from obvious that this assumption is justified because these are two separate concepts.

Alternatively, is the idea perhaps meant to be that conclusions about liability responsibility are logically deduced from premises about outcome responsibility? A number of authors have argued that if this is indeed meant to be a logical transition, then it is one that will only be valid if we also include some normative bridging premises in the deduction. For instance, Howard Klepper has argued that since these are two very different responsibility concepts, the transition from claims about outcome responsibility to claims about liability responsibility must be some form of *moral* implication – presumably what he means is that a person’s outcome responsibility does not *automatically* entail any particular conclusion about their liability responsibility unless we also add some further moral premises about what duties befall those people who are outcome responsible for some kind of state of affairs (Klepper 1990, 235-9). However, if Klepper is right, then somewhere between our premises about outcome responsibility and the conclusions about liability responsibility we must also find some further normative premise which specifies what should be done to outcome responsible parties. Hence, if we wish to derive claims about liability responsibility from premises about outcome responsibility, then we will also need to cite some further normative premises over and above claims about these parties’ outcome responsibility, and since the responsibility-tracking intuition assumes that this transition happens automatically – i.e. that it is obvious that those who *are* responsible should *take* responsibility – it must therefore be rejected.

A related kind of problem with the responsibility-tracking intuition can also be observed when we notice that claims about taking responsibility are not generic, because whenever someone claims that another person should take responsibility for something, they nearly always have some specific kind of treatment in mind – some specific things which those parties should allegedly

now do – in order to now take the responsibility which they think it is their due to take. Suppose for instance that I am responsible for causing a car accident in which your child is seriously injured or maybe even killed; precisely *how* should I now take responsibility for what I have done? Exactly what should I now do in order to take the allegedly due responsibility? Would it be enough, for instance, if I just rang my insurer and arranged for them to compensate you for the medical and special care costs that you will now incur, or for the funeral costs, and perhaps a little extra to cover your family's pain and suffering? No? Well, if that would be a bit too light, then perhaps I should instead (or also?) be made into your child's permanent carer (if they survived); would that suffice as me taking responsibility for what I have done? Or maybe I should be punished in some way – would that suffice?

The point is that even if we agree *that* I should now take responsibility on account of having *been* responsible for your child's misfortune (i.e. a position which I just rejected), we will still be very far from figuring out precisely *how* I should now take that responsibility, because this depends on a wide range of normative considerations which concern themselves with determining what would be an appropriate way of responding to this kind of tragedy.¹² Thus, my second point is that even if we thought that claims about liability responsibility do automatically follow from (or are already contained within) premises about outcome responsibility – i.e. that we need not cite normative bridging premises to deduce *that* someone should take responsibility from the fact that they were responsible – then there would still be another role for normative bridging premises – namely, to tell us *how* that responsibility should now be taken.

Hence, there are at least two reasons to reject the responsibility-tracking intuition. Firstly, we have insufficient reason to suppose that by themselves claims about a person's outcome responsibility entail *that* they should now take or accept liability responsibility. Secondly, even if claims about outcome responsibility alone had been sufficient for the derivation of conclusions about liability responsibility, then they would still not be sufficient to determine precisely *how*

12 For instance, Feiring also points out that “[i]t is ... not obvious *exactly* what [it] means” to say that “people should be held responsible for their medical condition in virtue of their prior conduct” (2008, 33, my emphasis). Serena Olsaretti has also recently argued that it is often far from clear precisely what the consequences of a person's actions – i.e. those consequences that they must allegedly bear when they happen to be responsible for their own current deprivation – might be; after all, “if no one did anything after the dices [sic] are tossed, [then] there would be no loss for the gambler to bear at all” (2009, 7).

the party in question should now take their liability responsibility. On my account, the fact that someone *was* outcome responsible for something entails neither *that* they should now take liability responsibility for it, nor that they should take liability responsibility for it *in some specific way*. Thus, for both of these reasons I urge that to derive conclusions about liability responsibility from premises about outcome responsibility, we must also make reference to some normative premises.

(iv) *Reactive norms, the normative premises that bridge the gap*

These premises which help bridge the inference gap between the backward-looking outcome responsibility and the forward-looking liability responsibility claims will presumably look something like this: those who are outcome responsible for X should take liability responsibility in manner Y. And given that the duties which these premises confer will befall only those who we have already established *are* outcome responsible – i.e. one will only ever incur those duties as a reaction to being outcome responsible – I shall refer to them as *reactive norms*, since they are *norms* that govern our *reactions* to outcome responsible parties.

Once reactive norms are added to this picture, it ceases to be a mystery how the transition from backward-looking claims about outcome responsibility to forward-looking conclusions about liability responsibility is made – the fact that the latter are forward-looking whereas the former are backward-looking is no longer a problem because reactive norms help bridge this temporal and logical inference gap. So, for instance, if one of our reactive norms stated that someone who is outcome responsible for another's quadriplegia should become that person's carer, then that is indeed what those who are outcome responsible for others' quadriplegia could now be asked to do. Likewise, if another one of our reactive norms stated that those who slander others shall be publicly flogged, then that too is what could be done to those who slander others. Finally, if another one of our reactive norms stated that those who are outcome responsible for another's losses shall compensate them for the full extent of those losses, then that too is how outcome responsible parties could be treated.

(v) *Normative considerations and the justification of reactive norms*

However, this now raises the question of where such reactive norms might come from, because even if we grant that some sort of normative premise is indeed required to bridge the gap between the backward-looking claims about outcome responsibility and forward-looking conclusions about liability responsibility, given that in the end such premises may justify treating people in various often-coercive ways, these premises must surely

also stand in need of justification.

To see how reactive norms might be justified, let us momentarily look at what goes on in debates within the criminal law where people address the question of whether (e.g.) the death penalty is a fitting sentence for certain criminal offences. This question is often approached from two different angles: while some approach this question from the utilitarian angle and argue that such severe punishments can only be justified if in the end their benefits (e.g. deterrence of others from committing similar crimes and prevention of those who have already committed those crimes from re-offending) will outweigh their costs (e.g. from a utilitarian perspective, killing a criminal is also an evil), others approach this question from the deontological angle and argue that such severe punishments can only be justified if considerations of (e.g.) retributive justice warrant them. However, putting these details aside, what I wish to highlight about this debate is that what people involved in it are doing is that they are trying to settle the question of whether a particular reactive norm of the criminal law – in this instance, the death penalty – is justified by either utilitarian (deterrence) or deontological (justice-based) arguments.

Presumably, in other areas reactive norms are justified in a similar manner too. For instance, in tort law one reason why we might expect outcome responsible people to compensate their victims for their losses, is because of the deterrent effect that the knowledge that financial liability will be imposed onto us if we are found to be outcome responsible for another's losses will have on everyone's actions – e.g. presumably people will take greater care while driving. Or, this same reactive norm might also be argued for by citing the alleged requirements of corrective justice, and here there is plenty of room for disagreement about whether corrective justice supports this reactive norm or not. Never the less, this discussion is only intended to provide a sketch of what role arguments about justice or utility (and presumably other normative considerations such as beneficence, caring and so on) play in disputes about responsibility – namely, they are often intended to inform our beliefs about what *reactive norms* there is most reason to endorse – and those reactive norms are in turn needed to support drawing subsequent conclusions about how people should be treated (i.e. about their liability responsibility) from earlier claims about what they have allegedly done (i.e. on account of their outcome responsibility).

(vi) *The relevance of the above discussion for my assessment of luck egalitarianism*

I have argued that it is far from clear that if you are responsible for something then you should now take responsibility for it, or that you should take responsibility

for it in some specific way. On my account, to be justified in deducing conclusions about how people should be treated from premises about what those people are responsible for having done, we must also cite some relevant reactive norms, and those norms must themselves be justified through normative arguments. But since luck egalitarians assume that the transition from outcome responsibility to liability responsibility is largely automatic – that is, after all, why they treat responsibility-tracking as a default position from which any proposed departures must be justified *qua* departures from a legitimate norm – their position therefore rests on a deeply flawed assumption.

Put another way, on my account luck egalitarians should not be as quick as Rakowski and Arneson to reduce the entitlements of those people who were outcome responsible for their own deprivations, because normative considerations also have a role to play in determining whether this should indeed be done or not, and these considerations are intrinsic to the egalitarian project – i.e. they inform us about what taking responsibility should involve – and not extrinsic distractions from that project's main concerns. While luck egalitarians assume that people's entitlements should *automatically* track their outcome responsibility, on my account this is not automatic for two reasons: firstly, it is not automatic that people's entitlements should track their outcome responsibility because *whether* someone's outcome responsibility should affect their entitlements or not depends on a possibly wide range of normative considerations, and some of these may recommend against doing this; and secondly, because it is also plausible that outcome responsibility may only be relevant to *other aspects* of how outcome responsible parties should be treated, but not to their *entitlements per se*.¹³

3. Misgivings about the Debate

Although I find fault with both sides' positions, my critique of the luck egalitarians' position has broader consequences for the debate treated as a whole.

To see this, notice that two features are common to much of the discussion that I summarized in the first half of this paper. Firstly, considerations which tame the alleged harshness of the luck egalitarian commitment

¹³ For instance, we may instead decide that those who are outcome responsible for their own ill health should be compelled to attend compulsory cooking classes, or that they should be involuntarily committed to drug detoxification clinics, but that they should still all get the same sort of medical treatment as others who are not responsible for their similar ill health.

to responsibility are often conceived of by both sides to this debate as exclusions, constraints or restraints on the default responsibility-tracking rule which states that the degree of a person's responsibility for their own situation should to some extent determine the degree of their entitlement to receive public assistance, and the legitimacy of expecting some to contribute to funding the provision of such assistance to others. And secondly, depending on whether one is an advocate or a critic of luck egalitarianism, these exclusions, constraints and restraints are seen as either effective or ineffective, and as either justified or not justified. However, if my critique of the responsibility-tracking intuition is correct, then both of these features are problematic because considerations which tame the harshness of the responsibility-tracking rule are not external constraints that are imposed upon responsibility from the outside, but rather they are internal to the concept of responsibility – i.e. they are the source of the reactive norms which mediate the transition from backward-looking claims about what a person is allegedly responsible for having done or brought about, to forward-looking claims about how (and even that) they ought to now take responsibility – and so assessing such considerations along these two dimensions (i.e. as effective/ineffective exclusions to- and as justified/not justified departures from an otherwise legitimate responsibility-tracking norm) is also inappropriate. Put another way, if my rejection of the responsibility-tracking intuition is correct, then the demands of responsibility will not – because they can not – conflict with the demands of these other normative considerations, because responsibility only provides a formal structure within which those other normative considerations determine how people may be treated, but contrary to what most people seem to think, responsibility does not generate practical demands of its own which might conflict with other normative considerations and which must therefore either be justified or overturned by those other considerations.

This critique of the standard way in which debates about luck egalitarianism are carried out is useful for two reasons. First, it helps to explain precisely why the harshness objection is not merely a lament about the cold, stark and uncaring nature of justice (i.e. an outsider's lament about the unkindness of justice), but rather why it is indeed as I suggested above an objection to luck-egalitarianism on grounds of justice (i.e. an insider's complaint about the unjustness of luck-egalitarianism). The harshness objection is a justice-based objection because normative considerations – i.e. claims like “this is too harsh”, and their supporting arguments – play a key role in validating the transition from claims about a person's outcome responsibility to conclusions about their liability responsibility, and so such claims should be taken seriously by luck

egalitarians. Although it may indeed turn out that people's treatment should *in some way* be affected by their outcome responsibility, it is far from clear either *that* or precisely *how* their outcome responsibility should affect their treatment because these things depend to a large extent on a wide range of normative considerations.

Second, as regards debates about how smokers, alcoholics the obese and others in similar situations should be treated, the foregoing discussion entails that more effort should be devoted (on all sides in this debate) to exploring the reasons which allegedly support treating outcome responsible parties in various ways, because on my account the mere fact that someone is outcome responsible for their own ailment (where this is indeed the case) can never be sufficient to by itself establish either that they (rather than society) should now take responsibility for their own ill health, nor to tell us precisely how they should take that responsibility. Unfortunately, both sides in this debate have tended to assume that the only point which needs to be settled is the one about these people's outcome responsibility – i.e. *whether* alcoholics, smokers, the obese and others *are* outcome responsible for their respective positions – and so debates about whether such people are outcome responsible for their own situation or not tend to occupy centre stage in this area. But on my account, even if eventually both sides in this debate came to agree on who is outcome responsible for their own ill health and about the extent of their outcome responsibility for it, they would still need to reflect more on what this entails about how those people should be treated, because it is far from clear that what should now happen (if they are to take due responsibility for their actions) is that such people's access to publicly funded health care should be restricted. In essence, it is far from clear that even if smokers, alcoholics and the obese all turn out to be outcome responsible for their own ill health, then they should have their access to public health care restricted to take account of their responsibility, because this is just as much a normative issue as it is a matter of whether they were responsible for their own ill health or not.

4. Conclusion

Many modern luck egalitarian theories rest on the claim that to obtain/maintain equality we must preserve the effects of choice while eliminating the effects of luck; on the luck egalitarian account, to treat people as equals we need not eradicate all departures from strict equality but only some, since people who are responsible for their own departure from strict equality should, wherever possible, be left alone. However, this claim presupposes some version of the responsibility-tracking intuition, and I have argued that this intuition is remiss because the

mere fact that someone *was* responsible for some state of affairs is sufficient to establish neither *that* they should now take responsibility for it, nor that they should now take responsibility for it *in some specific way*. On my account, to establish either of these things, in addition to premises about what someone was responsible for bringing about, we also need premises about what ought to be done to/by people who happen to be responsible for those sorts of things – i.e. we also need some normative premises and arguments to support them – and we need to realize that the role which those premises play in generating practical conclusions about how people should be treated is not as external constraints imposed upon the harsh demands of responsibility, but rather that they are the very sources of the practical demands of responsibility.

In a way, on my account people are entitled to say: “So what that I’m responsible for my own ill health? In itself, this shows neither *that* I should now take responsibility for my own ill health, nor does it tell us *how* I should now take this responsibility.” To justify substantive claims about how people should be treated on account of the fact that they are responsible for something, we need a lot more than just claims about what they *are* responsible for – we also need substantive normative debate, and we should be a lot clearer about what role that normative debate will play in generating practical conclusions about how we may treat one another.¹

Endnote

This paper is an extended and revised version of the paper “Taking responsibility for voluntary disadvantages” which was published in the *Proceedings of the Third International Applied Ethics Conference in Sapporo* (2008, 297-312). It contains ideas and some text from the author’s PhD thesis *Responsibility, Compensation and Accident Law Reform* (2006) – especially from §6.3. – and those ideas were originally presented in 2006 at the Australian Society of Legal Philosophy conference at the University of Auckland, New Zealand in a paper entitled “A Critique of Responsibility-Tracking Egalitarianism”.

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Editorial Note

The Journal of Applied Ethics and Philosophy is an interdisciplinary periodical covering diverse areas of applied ethics. It is the official journal of the Center for Applied Ethics and Philosophy (CAEP), Hokkaido University. The aim of *The Journal of Applied Ethics and Philosophy* is to contribute to a better understanding of ethical issues by promoting research into various areas of applied ethics and philosophy, and by providing researchers, scholars and students with a forum for dialogue and discussion on ethical issues raised in contemporary society.

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