Distributive Luck[1]

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Abstact
This article explores the Rawlsian goal of ensuring that distributions are not influenced by the morally arbitrary. It does so by bringing discussions of distributive justice into contact with the debate over moral luck initiated by Williams and Nagel. Rawls' own justice as fairness appears to be incompatible with the arbitrariness commitment, as it creates some equalities arbitrarily. A major rival, Dworkin's version of brute luck egalitarianism, aims to be continuous with ordinary ethics, and so is (a) sensitive to non-philosophical beliefs about free will and responsibility, and (b) allows inequalities to arise on the basis of option luck. But Dworkin does not present convincing reasons in support of continuity, and there are compelling moral reasons for justice to be sensitive to the best philosophical account of free will and responsibility, as is proposed by the revised brute luck egalitarianism of Arneson and Cohen. While Dworkinian brute luck egalitarianism admits three sorts of morally arbitrary disadvantaging which correspond to three forms of moral luck (constitutive, circumstantial, and option luck), revised brute luck egalitarianism does not disadvantage on the basis of constitutive or circumstantial luck. But it is not as sensitive to responsibility as it needs to be to fully extinguish the influence of the morally arbitrary, for persons under it may exercise their responsibility equivalently yet end up with different outcomes on account of option luck. It is concluded that egalitarians should deny the existence of distributive luck, which is luck in the levels of advantage that individuals are due.

1. Introduction

In a key passage of his classic work *A Theory of Justice,* John Rawls makes this observation:

> once we are troubled by the influence of either social contingencies or natural chance on the determination of distributive shares, we are bound, on reflection, to be bothered by the influence of the other. From a moral standpoint the two seem equally arbitrary (Rawls 1999: 64-5).

Rawls sought to harness the morally arbitrary distributive influence of such things as class and native ability for the morally compelling objective of improving the condition of the worst off group. Much recent work on egalitarian justice has, however, been concerned with a different response to the bothersome distributive influence of variations in social circumstances and natural talent. Rawls says little about *why* such influence is morally arbitrary, or *why* it is that '[n]o one deserves his greater natural capacity nor merits a more favorable starting place in society' (Rawls 1999: 87). One obvious answer, which Rawls himself does not offer, is that the influence is not the upshot of *choice* on the part of those who benefit or lose out from it. The resulting inequality people suffer is therefore a matter of *luck* for them – it results from something other than their choices. This explanation of the problem with distributions that are influenced by differential social circumstances and natural talents takes such distributions to be morally arbitrary, and hence unjust, because they are influenced by luck in one way or another. We may fill out this explanation in several ways.

Ronald Dworkin suggests that inequality might be acceptable were it the upshot of *option luck:* were it, that is, 'a matter of how deliberate and calculated gambles turn out - whether someone gains or loses through accepting an isolated risk he or she should have anticipated and might have declined' (Dworkin 2000: 73). But where social circumstances and natural talent have created inequality, it is the upshot of *brute luck* - 'a matter of how risks fall out that are not in that sense deliberate gambles' (Dworkin 2000: 73). The view that inequalities traceable to choice are justifiable, but that inequalities not so traceable are objectionable, might be called *brute luck egalitarianism.* Where there are no deliberate gambles, and distributions are only affected by brute luck, it demands equality.[2] Where, however, option luck is in play, inequalities may arise. As Dworkin puts it, '[i]n principle … individuals should be relieved of consequential responsibility for those unfortunate features of their situation that are brute bad luck, but not from those that should be seen as flowing from their own choices' (Dworkin 2000: 287). Brute luck egalitarianism maintains that the social and natural variations that Rawls describes are morally arbitrary because they only reflect brute luck. People do not in any way choose their social starting positions or native abilities. But brute luck egalitarianism allows that other variations between people may reflect option luck, and so be non-arbitrary grounds for distributive inequality. On this view, an individual's holdings may be influenced by luck – influenced, that is, by things they have not chosen – but only insofar as exposure to that luck is itself chosen. This allows the results of a typical gamble to stand, for though each gambler has not chosen the result, as they might have had they loaded the dice, they have chosen to gamble.

In spite of what Dworkin holds applies in principle, his settled position does not seek to fully neutralize brute luck, and he explicitly distances himself from luck egalitarianism (Dworkin 2003). Nevertheless, there is clearly a brute luck egalitarian strand to his political philosophy, and it may be the most influential of its strands. This article is concerned with examining Dworkin's brute luck egalitarianism, particularly regarding its ability to address the issue of morally arbitrary distributive influences. Will Kymlicka has interpreted Dworkin's theory as handling this issue, as raised by Rawls, more effectively than Rawls himself (Kymlicka 1990). Much of the implicit appeal of Dworkin's position relies on the effectiveness of its response to moral arbitrariness. But I argue that its response suffers from several shortfalls.

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2   For discussion of the 'equality-default view' see Hurley 2003: 153-4, 172.

A further concern is to show that a shift from Dworkin's non-metaphysical sense of brute luck – one which is unconcerned by the wider philosophical debate about free will and responsibility – to the metaphysical sense of brute luck suggested by Richard Arneson and G. A. Cohen is justified (Arneson 1989; Cohen 1989). This justification can be rendered in terms of better realizing the goal of eliminating the influence of those things which are morally arbitrary. But I want to suggest that that goal, which has shaped much of the post-Rawlsian discussion of the roles of responsibility, choice and luck in egalitarian justice, ought to motivate a further shift away from Dworkin.

In making my argument I seek to bring the recent discussion of luck and distributive justice into contact with another prominent strand of contemporary philosophical investigation which it has thus far remained detached from, in spite of obvious similarity of theme.[3] This is the debate over *moral luck,* or luck in becoming worthy of praise, blame, reward, or penalty. Drawing on Bernard Williams' and Thomas Nagel's seminal essays on this debate, I argue that contemporary egalitarians ought to *deny the existence of* a relative of moral luck – specifically, *distributive luck,* or luck in the levels of advantage people are due. That is, they should insist that distributions must be unmediated by any form of luck.

The article is arranged as follows. In section 2 I argue that Rawls' own position arguably admits moral arbitrariness in the form of arbitrary equalities, and that brute luck egalitarianism provides a suitable corrective to that problem. In section 3 I argue that Dworkin's brute luck egalitarianism may nevertheless treat people arbitrarily where actual choice and agent responsibility come apart, and that his appeal to personal ethics does not provide any valid justification for such treatment. In section 4 I describe the position of mainstream luck egalitarians such as Arneson and Cohen and show that they do not treat persons arbitrarily as Dworkin does, this being on account of their focus on agent responsibility. In section 5 I enumerate three forms of luck – constitutive luck, circumstantial luck, and option luck – and explain the difference between the moral and distributive versions of them. In section 6 I suggest that these three kinds of luck correspond to three forms of arbitrariness that Dworkinian brute luck egalitarianism fails to address, and that one of these – that arising from distributive option luck – also poses a problem for Arneson and Cohen's revised luck egalitarianism, for it is morally arbitrary for some to gain and some to lose out from identical gambles. In section 7 I argue that egalitarians would do best to abandon brute luck egalitarianism and instead deny the existence of distributive luck or (what comes to the same thing) endorse 'all luck egalitarianism', thereby expunging moral arbitrariness from distributions.

2. An Argument for Brute Luck Egalitarianism

Rawls' response to the arbitrariness of social and natural inequalities is to use them to the benefit of the worst off. As he puts it, 'the basic structure can be arranged so that these contingencies work for the good of the least fortunate' (Rawls 1999: 87). But Rawls' favoured 'difference principle' actually arranges *all* social and economic inequalities to the benefit of the least advantaged.[4] Such an indiscriminate regime may seem inappropriate given that some inequalities appear less arbitrary than others. As Kymlicka asks, '[w]hat if I was not born into a privileged social group, and was not

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3   An exception is Otsuka 2009, which uses notions of luck in distributive justice to illuminate the moral luck debate. My strategy here is quite the reverse.

4   Provided, that is, that equal basic liberties and fair equal opportunity are provided; see Rawls 1999: 266.

born with any special talents, and yet by my own choices and effort have managed to secure a larger income than others?' (Kymlicka 1990: 58). Rawls does not explain why the difference principle regulates all inequalities, rather than just – to use Dworkin's terminology – brute luck inequalities. On the face of it it seems unfair to subsidize the choices of those who want to play tennis all day at the expense of the identically endowed who instead engage in productive gardening. But applying the difference principle to undo chosen inequalities has just that effect (Kymlicka 1990: 73-6).

These considerations bring out the attractions of brute luck egalitarianism. Rawls' difference principle effectively addresses the problem of arbitrary inequalities, but in doing so it creates a new problem of 'arbitrary equalities' – distributive shares are equalized even though inequalities would be more appropriate given the differences in people's choices. Brute luck egalitarianism appears able to overcome both problems. Where the effects of brute luck are equalized, all remaining inequalities and equalities have arisen non-arbitrarily in that the inequalities have come about as a result of choice, and the equalities have come about as a result of the absence of (relevant) choice.

Brute luck egalitarianism is, in my view, an advance on Rawls' 'justice as fairness', as it acknowledges that equalities can sometimes be morally arbitrary, unfair, and even unequal in the relevant sense.[5] But different forms of arbitrariness may be introduced by (a) Dworkin's favoured interpretation of choice as non-metaphysical and (b) his focus on combating only brute luck. I consider (a) in detail in the next section, and (b) in section 6. In the remainder of this section I describe a core feature of Dworkin's position that explain his stance on both (a) and (b).

Dworkin observes that '[w]e take responsibility for our choices in a variety of ways' (Dworkin 2000: 323). We blame ourselves when we decide that we should have chosen differently, we assess the ambitions which motivate our choices, and we are willing to change our character where it has led us to make disfavoured choices. Our choices contrast with our circumstances, which we do not take responsibility for (except where they follow from our choices). This distinction is essential to 'first-person ethics' in Dworkin's view:

> We might think ourselves persuaded, intellectually, of the philosophical thesis that people have no free will, and that we are no more causally responsible for our fate when it is the upshot of our choices than when it flows only from a handicap or from society's distribution of wealth. But we cannot lead a life out of that philosophical conviction. We cannot plan or judge our lives except by distinguishing what we must take responsibility for, because we chose it, and what we cannot take responsibility for because it was beyond our control (Dworkin 2000: 323).

Dworkin goes on to identify his theory of justice as being '[e]thically sensitive (or "continuous")' in the sense that it 'grow[s] out of our internal lives' and bases its judgements 'on assignments of responsibility drawn from ethics – assignments that distinguish between choice and circumstance in the way just described' (Dworkin 2000: 323).

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5   'Rawls requires that [the gardener] pay for the costs of her own choices, and also subsidize [the tennis player's] choice. That does not promote equality, it undermines it' (Kymlicka 1990: 74; see also Cohen 1989: 911).

On Dworkin's view, then, choices and their consequences (matters of option luck) must be assigned to the individual, and circumstances and their consequences (matters of brute luck) not assigned to the individual, even when it comes to a political distribution of benefits and burdens. Furthermore, whether something is a matter of brute luck or option luck – that is, whether it has arisen from an earlier choice – is independent of the best philosophical account of free will and responsibility. Both of these features are explained by Dworkin's insistence on continuity between everyday ethics and political philosophy.[6]

3. Against Continuity

It seems broadly right to say that people distinguish between choices and circumstances in the stark way Dworkin describes, and it is probably also correct that people generally can not help but blame themselves for their bad choices and blame others (or no one at all) for their bad circumstances. But it is quite a jump from there to the conclusion that distributive justice should track the same distinction. If 'hard determinism' is true, so there can be no free will and no true agent responsibility – no responsibility in a deep, morally- and metaphysically-valid way – it might follow that the people had best continue as though free will and responsibility did exist. This may have beneficial consequences in terms of both social regulation and individuals' mental well-being. But it does not at all follow that social institutions should fall under the same spell. Treating individuals as though they are responsible for outcomes when it is known they are not is manifestly arbitrary and unfair.

Suppose Sandy and Tony are both unemployed. Sandy's unemployment largely or wholly derives from a widely recognized congenital disability. The source of Tony's unemployment is rather different as he does not have any condition that is publicly accepted as a disability. His unemployment is, on the face of it, a direct result of his previous choices to not turn up at his workplaces on time: he has made choices which are unmediated by luck in the sense that they could only possibly have led to his unemployment. Tony blames his current circumstances on himself, while Sandy does not. A brute luck egalitarian will note Sandy's disability as an unfavourable circumstance as regards getting a job, and therefore treat her relatively favourably, while Tony's recalcitrance is considered his choice, and so he is treated unfavourably – maybe his state income support payments will be reduced to subsistence level, or cut off altogether.[7] Now suppose that free will and responsibility are impossible. Even if we know that this was the case, brute luck egalitarianism, following Dworkin, thinks it should make no difference to how social institutions treat Tony. But why should we treat Tony as responsible for being unemployed when we know that he is not? Sandy and Tony have identical levels of responsibility for their predicaments – no responsibility whatsoever – but brute luck egalitarianism treats them very differently. It compensates Sandy but

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6   A third feature, Dworkin's subjective account of advantage, is similarly grounded; see Knight 2009: ch. 1.

7   Some critics of luck egalitarianism find it hard to see how *any* assistance to imprudent persons such as Tony might be justified by the view; see Fleurbaey 1995; Anderson 1999; Scheffler 2003. Elsewhere I have defended the view that luck egalitarianism mandates at least some assistance; see Knight 2009, ch. 4.

not Tony on the mere appearance that Sandy is less responsible than Tony. To compensate the two at different levels is to distribute on morally arbitrary grounds.[8]

Brute luck egalitarianism is not only undermined where hard determinism, or similar strongly sceptical views on free will and responsibility, are true. Any philosophical account of responsibility that requires something more than actual choice for responsibility to be present refuses to assign the kind of decisive weight to the choice/circumstance distinction that Dworkin says we assign in every day life. In a variant of the unemployment scenario, we might imagine that responsibility is very much possible, but that Tony has simply failed to satisfy one or more conditions for responsibility. Suppose, for instance, that the correct view of responsibility is some form of compatibilism that makes reason-responsiveness a condition for responsibility (see Fischer and Ravizza 1998). In that case, if Tony's choices were not responsive to reasons (he acted very impulsively, say, and could not help but act in that way), he is not responsible for the consequences. In this case, as with the last one, brute luck egalitarianism will treat Sandy better than Tony, even though neither is responsible for being unemployed.

It might be replied that the differential treatment of Sandy and Tony is justified because of the necessity of them taking responsibility for their choices but not for their circumstances. At first glance, this may not seem to present any justification at all. The problem identified above was not that Sandy denied responsibility and Tony accepted it. They could, in principle at least, continue to do that while distributions are made on the basis of a different distinction, in (to use Dworkin's terms) ethically insensitive and discontinuous fashion.

The justification for treating Tony as consequentially responsible may, however, attempt to enter via the back door. It might be thought very hard or impossible for Sandy and Tony to continue to track the choice/circumstance distinction in their personal ethics when society, through its distributive actions, tracks a contradictory distinction. I think even this indirect defence of brute luck egalitarianism is unsuccessful. When Dworkin says that personal ethics necessarily follows the choice/circumstance distinction he could mean this descriptively: this tracking will continue regardless of what happens with distributive justice. This seems correct to at least some significant extent, but it also undermines the claim that distributive justice must follow personal ethics, lest personal ethics is deprived of its essential distinction between choices and circumstances.

The brute luck egalitarian might then interpret the necessity of tracking the choice/circumstance distinction as a moral necessity: it is possible for us not to track it, but our personal ethics will then be unsettled, possibly with appalling consequences for society. This echoes one of the insights of socially-regulative compatibilism, which holds that, even in a world without free will, we will do best to hold people responsible as this has good consequences. But the brute luck egalitarian's argument is much harder to make than is the socially-regulative compatibilist's. Our compatabilist explicitly has consequentialist – usually utilitarian – goals in mind, and need make no claim to treating people fairly or equally. By contrast, the brute luck egalitarian, if she is to be truly egalitarian, must combine a consequentialist justification for tracking the

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8   Of course, if Sandy's disability had disadvantages other than those relating to employment – for instance, if it reduced her mobility – she may have a legitimate claim for assistance that would not be due to Tony. But even then it would still be true that, *as regards unemployment,* their cases appear relevantly identical, but are not treated as such by brute luck egalitarianism.

choice/circumstances distinction with a commitment to not treating persons arbitrarily. Moreover, her consequentialist justification does not look particularly egalitarian: if people stop tracking the choice/circumstances distinction, there might be some confused ethical lives, and there might be problems of social organization, but there is no clear reason for thinking that there would be increased *inequality*. There is no general tendency for increased anxiety or disorder in society to make things less equal.

The brute luck egalitarian might claim that Tony is not worse off arbitrarily as worsening his position is necessary to avoid the deleterious consequences of the choice/circumstance distinction being widely abandoned. But that sort of treatment of Tony is arbitrary in the relevant egalitarian sense. When Rawls says that we are bothered by the arbitrary influence of social contingencies and natural chance, he intended – or at least, egalitarians read him as intending – that these things are arbitrary regardless of whether they have good consequences. In certain circumstances a society structured along lines of caste might yield the most well-being, but members of lower castes would still be able to legitimately claim that they were arbitrarily disadvantaged.

Even if the choice/circumstances distinction might be undermined by a discontinuous account of justice that disregarded it, and even if an abandonment of the distinction by the general population would have bad consequences, there is no egalitarian argument for maintaining widespread recognition of the distinction by means of a continuous account of justice that acknowledges it. Given that, in some conditions, the choice/circumstances distinction is compatible with treating some persons less favourably than others, on the flimsy grounds that some have a façade of responsibility while others do not, it should not form the basis of a theory of egalitarian justice. Given our attachment to the distinction in our personal ethics, it therefore seems that we must reject continuity between personal ethics and distributive justice.

One result of this is that an argument for allowing option luck inequalities to stand, as brute luck egalitarianism does, is removed. I will later discuss other such arguments which do not rely on continuity. But the main result is that the basis for Dworkin's non-metaphysical sense of choice has been rejected. Theories of justice should be sensitive to the best philosophical account of free will and responsibility. I will now consider a version of brute-luck egalitarianism that is just that.

4. Revised Brute Luck Egalitarianism
Despite being the original form of the view, Dworkin's brute luck egalitarianism is not the standard version of the view. Luck egalitarians do not typically place significant value on the choice/circumstance distinction as it is fleshed out by Dworkin, nor do they recommend that brute bad luck, as it is described by Dworkin, be compensated while the effects of option luck be allowed to stand. Writers such as Arneson and Cohen require that justice responds only to *genuine* choice, or only to *agent responsibility* – responsibility for really having brought something about. They do then reject Dworkin's goal of being consistent with ordinary people's ethical beliefs (see Dworkin 2000, 289-90), and are metaphysically sensitive to the extent that, were hard determinism true, their luck egalitarianism would amount to outcome egalitarianism, for the relevant kind of choice would be impossible.[9] I will refer to the standard luck

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9   Arneson 1989: 86; Cohen 1993: 28. These and other statements by those two influential luck egalitarians show a clear metaphysical commitment, but misunderstandings of their positions are possible as they take the understandable terminological shortcut of continuing to talk of choice and brute luck with-

egalitarian position as *revised brute luck egalitarianism.*[10] It aims, in Cohen's words, 'to eliminate involuntary disadvantage, by which I (stipulatively) mean disadvantage for which the sufferer cannot be held responsible, since it does not appropriately reflect choices that he has made or would make' (Cohen 1989: 916).

Arneson suggests the norm '[o]ther things equal, it is bad if some people are worse off than others through no voluntary choice or fault of their own' (Arneson 1989: 85). Cohen makes a similar suggestion:

> In my view, a large part of the fundamental egalitarian aim is to extinguish the influence of brute luck on distribution … . Brute luck is an enemy of just equality, and, since effects of genuine choice contrast with brute luck, genuine choice excuses otherwise unacceptable inequalities (Cohen 1989: 931).

On the face of it these remarks appear to be supportive of Dworkin's brute luck egalitarianism. This support is, however, qualified in a significant way. Arneson is clear that his luck egalitarian position, 'equal opportunity for welfare', is sensitive to the metaphysics of free will and responsibility:

> The norm of equal opportunity for welfare is distinct from equality of welfare only if some version of soft determinism or indeterminism is correct. If hard determinism is true, the two interpretations of equality come to the same (Arneson 1989: 86).

Cohen's requirement that choices be 'genuine' if they are to have distributive consequences has similar implications. He is willing to acknowledge that placing 'choice central to distributive justice lands political philosophy in the morass of the free will problem', and that '[r]eplacing Dworkin's cut [between preferences and resources] by the one I have recommended subordinates political philosophy to metaphysical questions that may be impossible to answer' (Cohen 1989: 934). According to Cohen, '[t]he right cut is between responsibility and bad luck' (Cohen 1989: 922), and according to Arneson inequalities between people are justified only where they 'are due to their voluntary choice or differentially negligent behavior for which they are rightly deemed personally responsible' (Arneson 1989: 86).

Revised luck egalitarians seek to equalize the effects of a *metaphysically-sensitive* form of brute luck on how well people's lives go – or what comes to the same thing, neutralize the effects of metaphysical brute luck on how well people's lives go. They hold that inequalities are only justified where they reflect differential exercises of responsibility. While Dworkin views our philosophical beliefs about free will and responsibility as irrelevant to distributive justice, Arneson and Cohen view them as central to our understanding of distributive justice. As Arneson puts it when explaining his equal opportunity for welfare principle, 'talk of "opportunity" is a stand-in for whatever factors affecting preference formation we decide should be treated as matters of individual responsibility' (Arneson 1990: 175).

out always explicitly marking the important break from Dworkin. This is because Dworkin was not clear that he intended the option luck/brute luck distinction to correspond to a *metaphysically shallow* choice/circumstance distinction.

10 It is tempting to refer to the view as 'thin luck egalitarianism', using Susan Hurley's definition of 'thin luck' as the inverse of responsibility (Hurley 2003: ch. 4). However, this may not be exactly accurate as Hurley seems to have something closer to moral responsibility than agent responsibility in mind. Luck egalitarians like Arneson and Cohen need not require that agents are *morally* responsible for some thing in order for it to be distributively significant (cf. section 5 below).

Revised brute luck egalitarianism deals well with the challenge posed by the unemployment example. If Tony has not *genuinely* chosen to have such a poor track record in employment – if, for instance, responsibility is impossible, or if due to some feature of his upbringing it is impossible for him to hold down a job – he is due full compensation on the revised account. He has on the face of it made a different choice from Sandy, but if that appearance does not track a difference in agent responsibility he will be treated no differently from how Sandy is treated, so there will be no arbitrariness or unfairness in how their cases are handled.

5. Moral Luck and Distributive Luck

Thus far we have only encountered one of several powerful objections to Dworkinian brute luck egalitarianism. Furthermore, one kind of unfairness may arise even under revised brute luck egalitarianism. To see this first consider three specific forms of luck, each of which corresponds to a specific form of potential unfairness, and each of which is discussed in two classic papers by Bernard Williams and Thomas Nagel (Williams 1976; Nagel 1976). Williams and Nagel were canvassing varieties of *moral luck,* or luck in becoming worthy of praise, blame, reward, or penalty. In due course I will explain how their insights can be adapted to our questions of political philosophy.

First, there is *constitutive luck,* which in Williams' and Nagel's context refers to luck in one's 'dispositions of morality, however far back they are placed in the area of intention and motive' (Williams 1976: 116). Some people have characteristics – of warmth, or attentiveness, or industry, say – that are commonly held to make them appropriately subject to praise, while others' coldness, thoughtlessness, or laziness make them appropriate subjects of condemnation according to everyday morality. Neither praise nor condemnation in such cases is dependent on correspondingly good or bad actions, nor is it dependent on the underlying characteristics having any grounding in agency. It seems, then, that one may have good or bad moral luck in being constitutively disposed or disinclined towards performing one's duties and supererogatory actions.

Second, there is *circumstantial luck,* or luck in the challenges we are presented with. As Nagel recognizes, '[t]he things we are called upon to do, the moral tests we face, are importantly determined by factors beyond our control' (Nagel 1976: 145). One person might dive into a fast-flowing river to save a child while another, who is disposed to display similar heroism, never has any such opportunity. It would seem strange to extend the same degree of acclaim to both persons, even were we certain that the second person would make the same decision. There is at least a prima facie case for saying that moral appraisal can be influenced by luck in the circumstances to which individuals have to respond.

Finally, there is what Nagel describes as 'luck, good and bad, in the way things turn out', and which for the sake of terminological consistency can be referred to as *option luck.*[11] In a famous example, a lorry driver has not checked his brakes recently, and this minor negligence contributes to the death of a child. Nagel writes that 'what makes this a case of moral luck is that he would have to blame himself only slightly for the negligence itself if no situation arose which required him to brake suddenly and violently to avoid hitting a child' (Nagel 1976, 141). Ordinary morality, at least, rec-

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11 Nagel 1976: 140. In the literature on moral luck this concept is usually referred to as consequential luck or resultant luck; see Enoch and Marmor 2007: 40; Zimmerman 1987: 376.

ommends that luck in the consequences of our actions makes a difference to how we appraise them. The difference between a case where negligence leads to a death and a case where negligence has no adverse consequences may, perhaps, be morally significant, even if there is no difference in agency.

Before considering how constitutive luck, circumstantial luck, and option luck might result in unfairness we should briefly consider what the relevant kinds of luck are in these cases. First there is the question of luck itself, on which Williams is explicitly ambiguous: 'I shall use the notion of "luck" generously, undefinedly, but, I think, comprehensibly' (Williams 1976: 117). We can be more precise. As we have accepted the ethically discontinuous views of Arneson and Cohen, the appropriate forms of constitutive luck, circumstantial luck, and option luck are metaphysically sensitive, which is to say that they all feature an absence of responsibility.[12] When we address constitutive luck we are concerned with features of persons' dispositions for which they are not responsible. When we address circumstantial luck we are concerned with challenges people have to face in their lives for which they are not responsible. When we address option luck we are concerned with how individuals' actions affect the world, where the individual is responsible for the actions but not fully for how they pan out.

We must provide one further specification of the relevant kinds of luck. Luck egalitarianism claims to be an account of distributive justice, not an account of morality. Our focus should therefore not be on moral forms of constitutive, circumstantial, and option luck, but on distributive forms of them. We are, then, concerned not with moral luck, or luck in becoming worthy of praise, blame, reward, or penalty, but rather with *distributive luck,* which is luck in being due higher or lower levels of advantage. Distributive luck is a close relative of the more commonly discussed moral luck, but it differs from it in being focused on distributive effects. Instances of distributive luck need not be cases of moral luck, and vice versa.

Some distributive consequences may be morally irrelevant. Political philosophers in several different traditions hold that someone may be due some benefit or burden without there being any corresponding moral appraisal. Both Rawls and the utilitarians he was reacting against agree that distribution need not have anything to do with virtue or praiseworthy conduct. Similarly, libertarianism allows historical entitlement to be the measure of justice in the allocation of holdings without thereby being a measure of moral worth. Its adherents do not typically hold, with Gordon Gekko in *Wall Street,* that 'greed … is good', or even that 'securing entitlements is good': securing entitlements is just good as regards one's just holdings. It is conceivable that individuals have good or bad distributive luck on account of actions which have no impact on how we should assess them morally, and therefore have no moral luck effects.

It is also possible that some moral consequences are distributively irrelevant. The most obvious cases here concern superogatory action. When a passer-by jumps into a river to save a struggling child, at such personal risk that he was not obligated to do so, it is not usually thought that society is obligated to reward the Samaritan as a matter of justice. Moreover, on most moral views, even when an action is morally obligatory, it need not have implications for justice. Most would hold that, were the child

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12   Cf. Nagel on non-moral assessments of people: 'We deplore madness or leprosy in ourselves and others, we rejoice in beauty or talent, but these, though very basic, are not moral judgments. If we ask ourselves why, the natural explanation is that these attributes are not the responsibility of their possessors, they are merely good or back luck [sic]' (Nagel 1976: 138).

drowning in a shallow pond, the passer-by ought to wade in and rescue the child, and that censure would be appropriate should such risk-free assistance not be offered (Singer 1972). But many would also hold that the rescuer did not, by virtue of the rescue, have a just claim to be compensated for their efforts. The concept of distributive luck is, then, doubly dissociable from that of moral luck: in principle at least one can have distributive luck without moral luck and moral luck without distributive luck.

6. Against Brute Luck Egalitarianism

The previous section suggests that our concern should be with distributive luck. But it remains to be shown how constitutive luck, circumstantial luck, and option luck so conceived might be problematic for the luck egalitarian. I will argue that each of these kinds of distributive luck presents a different challenge to brute luck egalitarianism, and that one of them casts doubt even on revised brute luck egalitarianism.

Distributive *constitutive* luck is, on the definitions provided above, something which a person is not responsible for that affects the advantages they are due and which arises from their dispositions. Constitutive luck seems problematic for Dworkin, but not for Arneson or Cohen. The most familiar examples of (alleged) distributive constitutive luck from the political philosophy literature concern individuals who are disposed to have 'expensive tastes' – that is, who need above average resources to achieve average welfare – and not on account of anything for which they are agent responsible (Arneson 1989: 81; Cohen 1989: 911, 918-20, 923, 927). Such cases may well be instances of bad constitutive luck, but only if welfare provides (part of) the correct account of advantage, something which Dworkin and others deny, and which I stay neutral on here. Our earlier example of Tony provides a case of constitutive luck which is less contingent on conceptions of advantage. Even if Tony is not responsible for the fact that he is disposed to be an unsuitable employee, the upshot of that disposition (his 'chosen' unemployment) is grounds for him being disadvantaged, in terms of resources and (we can assume) welfare, by Dworkinian brute luck egalitarianism. But where revised brute luck egalitarianism is operative, there is no bad constitutive luck here. Tony remains non-responsible for the fact that is disposed to be an unsuitable employee, but the upshot of that disposition is no longer grounds for him being disadvantaged relative to others. Constitutive luck is a manifestation of the anti-egalitarian arbitrariness of treatment that we have been trying to avoid, and the revised view, unlike the original one, appears to be equipped to resist it.

When we are concerned with distributive *circumstantial* luck we are talking about the challenges which a person faces but is not responsible for bringing about, and which nevertheless affect the advantages they are due. Most central cases of circumstantial luck would be effectively handled by both versions of brute luck egalitarianism. For example, the children of the poor generally face greater challenges than the children of the rich in achieving similar goals, and the individual children of both groups are neither responsible for nor have chosen these differential starting positions. Any inequalities resulting from those starting positions rather than from responsible acts or choices are matters of brute luck however we construe it, and as such are not justified on brute luck egalitarian accounts of justice. It is in key cases of circumstantial luck such as these that luck egalitarianism provides at least a prima facie appealing account of why Rawls' morally arbitrary influences are arbitrary.

In some conceivable cases, however, Dworkinian brute luck egalitarianism may allow circumstantial luck to affect distributions. Suppose Tony is just as talented as Vinny, but Vinny makes prudentially better decisions and holds down a job. Suppose also that it is impossible for either Tony or Vinny to be responsible for their choices (maybe hard determinism is true). Under brute luck egalitarianism Vinny will not only have had good constitutive (dispositional) luck, but he will now have good circumstantial luck, as he will face a more favourable context of choice, with a more favourable selection of career options. Even if Tony's character is altered and he is now just as motivated to work as Vinny is, he still has bad circumstantial luck on account of his patchy CV. But that bad luck would be eradicated were our brute luck egalitarianism to be of the revised form. Society would no longer penalize Tony for having created his current bad circumstances as it would treat the fact that he was not responsible for creating them as decisive. Revised brute luck egalitarianism does, then, seem able to cope with circumstantial luck.

How might distributive *option* luck be a problem for brute luck egalitarianism? Just as in the out of control truck example where 'the *negligence* is the same in both cases, and the driver has no control over whether a child will run into his path' (Nagel 1976: 141), so two agents may make similar decisions in the distributive realm, but one have good results and the other bad. In fact, one kind of example often presented in support of luck egalitarianism has this general form. Arneson criticizes equality of welfare on the basis that '[i]ndividuals can arrive at different welfare levels due to choices they make for which they alone should be held responsible' (Arneson 1989: 83). He supports this point with the example of two people of identical abilities, tastes, and resources who 'voluntarily engage in high stakes gambling, from which one emerges rich (with high expectation of welfare) and the other poor (with low welfare expectation)', concluding that 'it would be inappropriate to insist upon equality of welfare when welfare inequality arises through the voluntary choice of the person who gets lesser welfare' (Arneson 1989: 84; see also Arneson 1990: 176). Option luck clearly presents the strongest case for both forms of brute luck egalitarianism to allow distributive luck. Although individuals do not choose, and are not responsible for, the differences in outcomes of identical gambles, individuals have chosen and are responsible for gambling. This is sufficient grounds for the brute luck egalitarian to let inequalities stand, as they standardly require only that inequalities result from choice (be it Dworkinian actual choice or Cohenian genuine – i.e., agent responsible – choice).

Why should option luck be allowed to stand? Why not prohibit gambles, or fully compensate the losers at the expense of the winners? We have already rejected one argument Dworkin presents in favour of option luck inequalities, which concerns their consistency with ordinary ethics. But this is not his only argument. He notes that 'we can say that the possibility of loss was part of the life they [gamblers] chose – that it was the fair price of the possibility of gain'.[13] But it is unclear why an egalitarian should be interested in securing for individuals the possibility of creating inequalities between themselves and others who have made similar (genuine) choices. This seems like a recipe for the kind of moral arbitrariness that egalitarians seek to avoid. How can the roll of a dice or toss of a coin be thought to carry sufficient moral weight to

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13   Dworkin 2000: 74-5. In the same passage Dworkin suggests that there is no unfairness in some gamblers being better off than those who do not gamble. Although this is also a matter of option luck, I focus on luck among gamblers as this is the simplest case of option luck. For discussion of the issue I here leave aside see Lippert-Rasmussen 2001: 552-4.

(potentially) make one person's life go much better than a similarly responsible other person's?

Dworkin makes a suggestion that may seem to provide some of the missing moral salience: 'If winners were made to share their winnings with losers, then no one would gamble, as individuals, and the kind of life preferred by those who in the end win and those who lose would be unavailable'.[14] The most obvious way of reading this is as drawing attention to the harm that redistribution from winners to losers would do to those individuals, and maybe to the character of society as a whole. Part of the attraction of luck egalitarianism may be the way it apparently combines a left-wing concern with equality with a right-wing respect for individual choice (see Cohen 1989: 933). A position that refused to allow the results of individuals' choices to stand might seem to have given up too much ground to the old left. But as Dworkin recognizes, this objection is not available to egalitarians. If equality could only be achieved where gambles were prohibited or corrected after the event, egalitarians would be committed to such action, even if it did make their position less attractive to those with weaker commitments to equality.

Committed egalitarians would hardly be surprised or dismayed by the possibility that some individuals would have to give something up to achieve social equality. But might prohibition or correction of gambles make egalitarianism too unattractive for those with a weaker attachment to equality? This worry is perhaps clearest where we depart from classic gambles. For instance, if egalitarianism is the enemy of option luck, it seems it would have to prohibit risky but potentially rewarding activities such as mountain climbing and/or handsomely compensate injured climbers at the expense of uninjured ones, and not as a matter of charity but as a matter of justice. Neither option may seem very appealing, but there is a simple reply. What egalitarians require qua egalitarians need not be what they require all things considered. Brute luck egalitarians are usually pluralists, endorsing values other than equality (see Arneson 1999; 2000; 2011; Cohen 2008). There is no reason why egalitarians opposed to option luck inequalities cannot take a similar stance. If, for instance, equality was endorsed as a value alongside welfare promotion, as brute-luck egalitarians often suggest, the latter would provide good reasons for keeping open risky but potentially rewarding activities, provided that the rewards were sufficiently large relative to the risks (and if they were not, it is hard to see much justification for allowing the activity in the first place). The egalitarian strand of the view could then be accommodated by some form of 'soft' compensation from uninjured risk takers to injured risk takers, with the revenue raised by, for instance, the sale of climbing licences or a tax on climbing equipment. The proposal of combating option luck can thus be combined with non-egalitarian values for those of more qualified egalitarian views.

Might committed egalitarians object to this proposal? Dworkin's concern with allowing the results of choices to endure is framed in terms of equality:

14   Dworkin 2000: 75. Dworkin here appears to be pushing for the strong conclusion that egalitarians have course for regret when opportunities for option luck inequalities are cut off. But I do not see this as an essential part of the brute luck egalitarian position, as brute luck egalitarians are indifferent between equalities and inequalities, provided no brute luck is present. I therefore set aside Dworkin's strong position, which positively appraises (some) option luck inequalities, and instead consider his arguments as support for the weaker position that we should be indifferent between option luck equality and inequality. If the weaker position can be defeated – that is, if we should favour option luck equality over option luck inequality – then of course the stronger position will also have been defeated.

> [T]he effect of redistribution from winners to losers in gambles would be to de-
> prive both of lives they prefer, which indicates, not simply that this would pro-
> duce an unwanted curtailment of available forms of life, but that it would de-
> prive them of an equal voice in the construction of lots to be auctioned …'
> (Dworkin 2000: 75).

Although Dworkin here refers to his hypothetical auction mechanism for setting fair shares, the details of which need not detain us as our concern is with luck egalitarianism (which typically uses unrelated measures of equality),[15] the more general point must be addressed. Would cancelling the effects of option luck lead to a disadvantaging of would-be gamblers *relative to non-would-be gamblers?*

I do not see why this would be the case. In the first place there is the possibility that gamblers would be unfairly advantaged were they to be allowed to gamble. Maybe as a group the unfairly advantaged wealthy gamble more often, since they have greater disposable income, and a prohibition on gambling (and risk taking of other sorts) is an effective way of bringing their welfare levels into line with their responsible acts and choices.[16] Or maybe the unfairly disadvantaged poor gamble more often, but gambling actually reduces their welfare levels below where they would be even on a regime where gambling was prohibited (maybe there are more losers than winners and/or the cost of losing is greater than the benefit of winning). It is quite possibly the case that something close to both of these conditions applies – that the unfairly advantaged rich gamble in a way that advantages them, that the unfairly disadvantaged poor gamble in a way that disadvantages them, and so prohibition or redistribution serves luck egalitarian goals twice over.

Furthermore, even if ruling out gambling (in its effects or altogether) did itself disadvantage gamblers unfairly (that is, in a way they were not responsible for) there would be nothing to stop the luck egalitarian from compensating gamblers monetarily or otherwise. Luck egalitarianism is often thought to justify large scale compensation to disadvantaged individuals including many of the disabled and untalented. So why could they not compensate gamblers using the redistributive mechanisms they would already have in place? It might be replied that the difference is that gamblers would be compensated for a disadvantage that the luck egalitarian distributive agency had created, rather than for some naturally or socially occurring disadvantage, and that it would make more sense for the distributive agency to not impose the disadvantage in the first place, just as it would make sense for them to prevent severe disabilities and talent shortfalls were it simple to do that. But the crucial difference is in the two preventative measures. The inexpensive prevention of severe disabilities and talent shortfalls would prevent unchosen disadvantages without creating any additional ones, so there is some good and no bad to the measure from an egalitarian perspective. But allowing gambling and not redistributing the result would prevent one form of unchosen disadvantage (frustration derived from reduced gambling opportunities) at the cost of creating inequalities between people who have made identical choices (and thus exer-

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15   For detailed discussion of Dworkin's argument see Lippert-Rasmussen 2001: 554-7.

16   I only refer to welfare, not resources, in this and the subsequent two paragraphs as preventing gambles would have no effect of disadvantaging gamblers as a group in terms of objective resources (for example, money). Preventing gambles might, as Dworkin suggests, reduce resource shares in his preferred subjective sense, which takes into account individual preference, but that sense is not preferred by luck egalitarians. Arneson and Cohen are typical in measuring advantage using welfare and a welfare/objective resource hybrid respectively; see Arneson 1989; 1990; Cohen 1989; 1993.

cised their responsibility identically). In the gambling case, moreover, the good (no frustration from reduced gambling opportunities) is significantly outweighed by the bad (unequal gambling outcomes). This is because the frustration *could have been compensated for,* while the unequal outcome *cannot be compensated for* (unless we effectively undo the gamble).

I submit that to allow gambles to stand is to allow a morally arbitrary influence on distribution, while preventing them or redistributing their effects need not create a morally arbitrary influence on distribution if would-be gamblers are compensated for their reduced opportunities. Furthermore, I believe that we should not only prohibit or correct for gambles, but prohibit or correct for all forms of option luck. The wager which turns on a coin toss or roll of the dice is special only in that things are clear cut. Any action for which there is a range of possible outcomes is a gamble of a sort, even if the action is involuntary, and the unfairness of an outcome where two persons make identical choices but receive different results remains the same even if those results are not immediately obvious. If two identically capable people choose to pursue different careers with identical prospects and identical demands, and each exerts an identical degree of conscientious effort in support of it, there is moral arbitrariness in an out-come of one becoming a millionaire and the other a pauper on account of some change in the marketplace which neither foresaw. The best strategy for the egalitarian is therefore to prevent gambles or redistribute after the event to losers from winners and, if redistribution is made, to compensate the 'winner' wherever an unchosen welfare loss arises.[17] In the next section I suggest how this strategy might be incorporated in an account of egalitarian justice. We must abandon brute luck egalitarianism of any form as it is not true to the motivation of combating the effects of the morally arbitrary.

7. Denying Distributive Luck

I propose that the best egalitarian position agrees with the revised brute luck egalitar-ian that distributive justice should be discontinuous with personal ethics but disagrees on the question of option luck. This position is a strongly sceptical view on distribu-tive luck. That is, egalitarians should deny distributive luck in all its forms – as option luck as well as as constitutive and circumstantial luck. To deny distributive luck is to say that people can only be due more than others through exercising their responsibility differently.

The motivation for this position should be clear given the foregoing discussion. Egalitarians seek to ensure that no individual is arbitrarily advantaged over another. One compelling construal of non-arbitrary advantaging appeals to the significance of individuals' choices and exercises of responsibility. While revised brute luck egalitari-anism comes close to realizing the goal of non-arbitrary inequalities it fails in one cru-cial regard, for its focus on allowing inequalities where they reflect genuine choice is insufficiently discriminating. Some inequalities reflect genuine choices, as they reflect the gambles individuals have chosen to take, yet are unfair as the results of the genu-ine choices are uneven. By denying distributive luck we refuse to allow this element of arbitrariness to creep in, and so remain true to the egalitarian goal. We require not merely, as the revised position requires, that inequalities are traceable to exercises of

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17 It is even possible that the 'loser' should receive compensation beyond the return of their stake. In some cases it may be that the welfare loss resulting from the gamble being undone exceeds the welfare value of the stake.

responsibility, but that the inequalities arise from differences exercises of responsibility. For the revised brute luck egalitarian, two identical genuine choices may have different distributive implications on account of how they work out. For the denier of distributive luck identical genuine choices always have the same distributive implications, and only different choices have different implications.

The proposal that egalitarians should deny distributive luck has arisen in the literature in the last few years but not under that name. Alexander Cappelen and Ole Frithjof Norheim approvingly cite luck egalitarianism's apparent implication 'that individuals should be held responsible for their choices, not for the consequences of their choices', with individuals being held responsible for consequences 'only in the special case where the outcome depends solely on the individual's choices and not on any other factors'.[18] As we have seen, it is central to the brute luck egalitarian position that individuals are held responsible for some of the consequences of their choices – specifically, those that derive from option luck – and so Cappelen and Norheim's position is a departure from brute luck egalitarianism. Shlomi Segall has described this new position, which he calls 'all-luck egalitarianism', in terms that bring out the similarity of motivation and content with the proposal to deny distributive luck very clearly.[19] All-luck egalitarianism holds that 'since luck is morally arbitrary, differential option luck should be considered as unjust as differential brute luck'.[20] The motivation of distributive luck denial and all-luck egalitarianism is the same – the need to address the arbitrariness of luck – as is their content: the positions seek to remove the differential distributive effects of all forms of luck.[21] So these two positions are really just one position, which holds that advantages must be the upshot of exercises of responsibility *without mediation by any form of luck.*

I do not, then, claim that the positive position suggested by the foregoing critique of brute luck egalitarianism is a new one. Nevertheless, there is an advantage to presenting the positive view in terms of denying distributive luck. The advantage is that it makes clear the relationship between important positions in political philosophy and important positions in ethics. If, as I have suggested, all-luck egalitarianism amounts to denying distributive luck, then it is very closely related to those views which deny moral luck or are otherwise strongly sceptical about it (see Jensen 1993; Rescher 1993; Richards 1993; Sverdlik 1993). Both views deny one aspect of luck's purported normative relevance. The difference between the views comes in whether the relevance is moral or distributive. I understand the latter as specifically concerning advantage levels, while the former may just concern praise or blame. Similar connections between legal and moral philosophy have been explored in some detail (see Enoch and Marmor 2007; Enoch 2008). The fact that discussion of the role of luck in political philosophy has, up to now, remained so isolated from similar discussions in neigh-

18 Cappelen and Norheim 2005: 478-9.
19 Segall 2010: ch. 3. Elizabeth Anderson, like Segall a critic of all-luck egalitarianism, refers to the view as 'desert-catering luck egalitarianism' (see Anderson 2008). For discussion of all-luck egalitarianism and related positions see Roemer 1993; Lippert-Rasmussen 2001; 2005; Barry 2008; Cohen 2009.
20 Segall 2010: 47.
21 There is a terminological difference here which has no practical impact. While I have presented distributive luck denial as being concerned with eliminating the effects of constitutive, circumstantial, and option luck, Segall presents all-luck egalitarianism as being concerned with eliminating option luck and brute luck. This has no impact as the two groupings are each intended to be exhaustive of available forms of luck; for this point regarding option luck and brute luck see Lippert-Rasmussen 2001: 551.

bouring fields may be partly because of the barrier presented by terms such as 'luck egalitarianism'. My suggestion is that we need not respect that barrier.

   As is implied by my claim in section 4 that moral luck and distributive luck are doubly dissociable, scepticism about one does not imply scepticism about the other. For instance, in one of the very few passages that discusses moral luck in a distributive context, Segall appears to be sceptical about moral luck but accepting of distributive luck.[22] Similarly, my sceptical position on distributive luck is compatible with that of writers such as Williams and Nagel who accept moral luck (Williams 1976; Nagel 1976; see also Andre 1993; Walker 1993). But considerations that support the existence or non-existence of moral luck will also often support the existence or non-existence of distributive luck (and vice versa), for the simple reason that if luck is (not) normatively relevant in one regard, it is more likely to (not) be normatively relevant in another regard. David Enoch argues that '(1) [t]here is no moral luck', '(2) [i]f there is no moral luck, there should be no legal luck', and '(3) [t]herefore there should be no legal luck'.[23] It is fanciful to suppose that no analogous arguments connecting moral luck and distributive luck can be fashioned.[24] In general, the stronger the evidence for denying that it is relevant to our moral appraisal of Nagel's mildly negligent truck driver that he happened to run over a child, the stronger the evidence for denying that it is relevant to distributive justice that a gambler happened to lose. And even where that is not the case, we can learn much about distributive justice by paying attention to the ways in which it is relevantly different from morality as regards luck.

8. Conclusion

I have suggested that egalitarians are committed to the Rawlsian goal of ensuring that distributions are not influenced by the morally arbitrary, and that this commits them to more than is usually supposed. The main existing accounts of egalitarian justice - Rawls' own justice as fairness and brute luck egalitarianism – appear to be incompatible with this commitment. Dworkin's version of brute luck egalitarianism aims to be continuous with ordinary ethics and so is sensitive to actual choices. But Dworkin does not present convincing reasons in support of continuity, so there is no justification for the three sorts of morally arbitrary disadvantaging – based on constitutive luck, circumstantial luck, and option luck – which the focus on actual choice allows. Revised brute luck egalitarianism has the advantage of being sensitive to the right thing – agent responsibility or genuine choice – and as a result does not disadvantage on the basis of constitutive or circumstantial luck. But it is not as sensitive to responsibility as it needs to be to fully extinguish the influence of the morally arbitrary, for persons under it may exercise their responsibility equivalently yet end up with different outcomes on account of option luck. Egalitarians would do well to reject brute luck egalitarianism and instead deny that there can be any luck in the levels of advantage that individuals are due.

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22 '[W]hile I disagree with the common approach to moral luck … according to which there is some moral difference between lucky and unlucky drivers, I also disagree with its critics who say that the absence of such moral difference requires equalizing their fates' (Segall 2010: 54-5).
23 Enoch 2008: 24.
24 Michael Otsuka supports option luck versions of both moral luck and distributive luck; see Otsuka 2009; 2002.

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