

Draft (February 2009) – Please do not circulate or cite without permission

Responsibility and the consequences of choice*

Serena Olsaretti
St. John's College, Cambridge
mso24@cam.ac.uk

Introduction

Over twenty year ago, in a discussion of Ronald Dworkin's theory of equality of resources, G.A. Cohen remarked that "Dworkin has, in effect, performed for egalitarianism the considerable service of incorporating within it the most powerful idea in the arsenal of the anti-egalitarian right: the idea of choice and responsibility"¹. This form of egalitarianism, which is now commonly referred to as luck egalitarianism,² holds that not all inequalities are unjust, but only those that are traceable to people's unequal brute luck, or features for which people are not responsible.³ By qualifying the demands of just equality in this way, luck egalitarianism is able to escape familiar anti-egalitarian criticisms like the claim that it panders to the undeserving poor at the expense of hard-working citizens.

In the intervening years since Cohen's remark, the literature on luck egalitarianism has burgeoned.⁴ There have been lively discussions about the exact nature and place of the central cut between luck and responsibility; about how different ways of locating this cut affect our views about what we should equalise; about whether it is possible to draw a principled distinction between different types of luck; about the relation of desert and responsibility; and about the relation between long-standing debates on free will and moral responsibility and those initiated by defenders of luck egalitarianism. Many of these discussions have been sympathetic to the incorporation of responsibility into egalitarianism, but recently a new wave of contributions have started to express some discontent with luck egalitarianism. According to these recent critics, luck egalitarianism is unduly harsh towards those who end up in dire straits through their own choices, and egalitarians should reconsider their commitment to giving choice and responsibility the pride of place they have come to occupy.⁵

It seems fair to say that most discussions of luck egalitarianism, both sympathetic and hostile, have made certain assumptions about the notion of responsibility luck egalitarianism adopts that, so I shall suggest, need to be reconsidered. These assumptions are, firstly, that whether inequalities between persons are justified is something that turns solely on whether they are traceable to features of persons for which they are responsible. This assumption goes hand in hand with a second one, namely that, once the demands of equality are met,

the consequences of a person's choice for which a person may be liable include any outcomes that emerge from her and others' exercise of their negative freedom. Thirdly, both defenders and critics of luck egalitarianism have assumed that any condemnation of the inequalities that are traceable to features individuals are responsible and others' exercise of their freedom amounts to showing that we should constrain the role of responsibility in our distributive theory.

In this paper I argue that we should revise all three assumptions I have just mentioned. Against the first assumption, I argue in section 1 that any responsibility-sensitive theory of justice needs to defend what I will call a *principle of stakes*, that is, an account of what costs can justifiably be attached to features that are the appropriate grounds of responsibility (i.e. features which people are responsible for). Against the second assumption, in section 2 I consider some views about stakes that could be presupposed by luck egalitarianism, and I suggest that even the most plausible one seems problematic. Finally, in section 3 I introduce two alternative approaches to stakes and argue that adopting either one of these, or any other view of stakes, amounts to fleshing out the demands of responsibility rather than posing limits on those demands.

My main concern in what follows is to identify an area of investigation that needs attention, and to show how, by paying attention to it, we can gain greater insight into luck egalitarianism. These conclusions are broadly supportive of the luck egalitarian project. I claim that even if we accept the importance of holding individuals responsible for their choices, it is an open question what consequences those choices should have, and that our view on this issue presupposes substantive moral convictions that are independent of our commitment to responsibility itself. So, in light of those substantive moral convictions, it is possible to condemn inequalities even if they are traceable to features which people are responsible for, and to do so not in contravention of, but, rather, in fulfilment of, the commitment to holding people responsible for the consequences of their choices.

1. The need for an account of stakes

Consider the following statements of luck egalitarianism. According to G.A. Cohen, '[b]rute luck is an enemy of just equality, and, since the effects of genuine choice contrast with brute luck, genuine choice excuses *otherwise unacceptable inequalities*.⁶ John Roemer writes that on the view he defends, "(...)

society must provide a "level playing field," and individuals should face the consequences of their own choices; those who do well are entitled to the fruits of their success, and those who fare poorly cannot ask for rectification".⁷ According to Samuel Scheffler, luck egalitarianism holds that "unequal outcomes are just if, and only if, they arise from factors for which individuals can properly be held responsible. What is it to hold an individual responsible for a factor? It is at least to say that nobody is required to mitigate *the effects of that factor* on the individual's situation".⁸ Brian Barry remarks: "A just society is one whose institutions honour two principles of distribution. One is a principle of compensation...The other principle is one of personal responsibility. It says that social arrangements should be such that people finish up *with the outcomes of their voluntary act*".⁹ Elizabeth Anderson states that luck egalitarians "accept the justice of whatever inequalities result from adults' voluntary choices".¹⁰

These and other statements of luck egalitarianism's central commitment to holding people responsible proceed as if the question of stakes need not be addressed, because the choices or voluntary acts people perform have determinate consequences or outcomes (by which I mean consequences or outcomes that are both self-evident and justified). Moreover, the examples of cost-incurring conduct that are often cited in the literature confirm the impression that there are determinate costs attached to different types of conduct. The cases of a smoker who gets lung cancer as a result of smoking, the gambler who loses all his money at the roulette table, and Ronald Dworkin's character, Louis, who has an expensive taste for claret and caviar, all seem to involve determinate consequences of actions (it seems, at least at first, undeniable that the risk of lung cancer is a consequence of smoking, that the risk of financial loss attaches to the option of gambling, and that having to pay the market price of goods is the cost of the choice to consume those goods).

Taking these consequences for granted, the only question that is asked about them is under what conditions they should be internalised. So we ask, for example, whether the smoker satisfies the conditions for genuine choice – whether he can be said to really *appreciate* the information he has about the risks of smoking, given that he belongs to a social group among which smoking is the norm, for example -, whether the gambler gambles out of a pathological addiction, and whether Louis has deliberately cultivated his expensive taste, and/or could get rid of it now.¹¹ We seem to assume as given that certain consequences would have to be internalised if a choice can legitimately be attributed to a person, and concentrate our attention solely on whether the latter

condition is fulfilled. In other words, we focus on what I will refer to as the question of attribution, and neglect the question of stakes.

The question of attribution asks: "What factors determine whether actions or choices are attributable to individuals in a way that justifies making them internalise some costs of their actions or choices?". The question of stakes, by contrast, asks, "Just what costs should attach to actions or choices which are attributable to individuals?" In order to yield determinate judgements about responsibility, we must answer both of these questions and provide both a principle of attribution, which determines who must bear responsibility, and a principle of stakes, which determines what those who bear responsibility bear responsibility for.¹²

As I have already mentioned, answers to the question of attribution are part of the staple diet of scholars of responsibility: they include views that identify a person's genuine choice of a course of action as a necessary condition for his being held responsible for it, views which, by contrast, posit identification with an action as sufficient, and the many familiar discussions concerning the conditions that excuse a person of responsibility and the requisite background conditions in which a person must act if he is to be held responsible. These answers all aim to identify the factors that render an action attributable to an agent in the relevant sense (that is, in a sense that justifies his being left to bear some costs). But, aside from a few recent exceptions, discussions of luck egalitarianism have said very little about the need for a principle of stakes.¹³ Below I suggest that this is plausibly explained by the fact that those discussions assume particular answers to the question of stakes – answers which we may find wanting. In the rest of this section I would like to show that an account of responsibility, and therefore the egalitarian theory that accommodates it, needs a principle of stakes in order to yield determinate judgements of responsibility.¹⁴ The commitment to holding people responsible if their choices meet certain conditions does not settle the question of what costs they should be held responsible for.

The paradigmatic case in which qualifying the demands of equality by the adoption of a principle of responsibility seems apt is that of an imprudent person who ends up poorly off as a result of deliberately and knowingly taking a risk, say that of driving a motorbike at high speed without wearing a helmet. The imprudent motorcyclist, Bert,¹⁵ seems responsible for his predicament if his gamble turns out to be a bad bet - that is, the risk materialises, and he is injured in an accident. Justice, defenders of luck egalitarianism say, does not require that others improve his situation (though demands of charity or beneficence might

well do so). It is easy here to assume that we have a well-formulated idea of the set of consequences that can be deemed to be “the consequences of Bert’s actions”, and which Bert may be left to bear for himself provided his choice to expose himself to the risk meets the demands of the principle of attribution. And so we may think that this is a clear illustration of a determinate judgement of responsibility we can make by presupposing only a principle of attribution (on which the choice of a risk is a necessary and sufficient condition for being held responsible for the consequences of taking that risk). No principle of stakes is needed.

But consider Bert’s case more closely. On reflection, it appears that what these consequences are is not so self-evident after all. For example, do these consequences include being left to the side of the road? Even if not, is the strength of the obligation on passers-by obligation to take him to a hospital conditional on the gravity of Bert’s condition and/or on the costs, to them, of taking him to a hospital? Should Bert pay for treatment only of those injuries that resulted from the accident itself, or also for medical conditions that resulted from the unforeseeable effect of the accident on certain hitherto unknown predispositions to illnesses? Or even for any medical treatment he will need henceforth? And at what price should the treatment be charged, so that that price may also be deemed “a consequence of his actions”? (May a hospital have a policy of charging imprudent motorcyclists more than others?) Are the consequences of Bert’s action also that passers-by may appropriate his motorbike from the side of the road? May he lose his job if, once he has recovered from his accident, his limpness makes him a less attractive employee? May he be denied life insurance henceforth?

The list of questions could go on. The point is that it is not enough to hold that a person who meets whatever principle of attribution we favour should bear the consequences of her actions: we need to know what those consequences justifiably include and why. That is what the principle of stakes specifies. Without a principle of stakes, our judgements of responsibility are arbitrary at worst – we just assume that some costs rather than others should attach to given actions, without any principled reason for why that should be the case – or, at best, indeterminate. A principle of stakes is needed, then, to complete an account of responsibility.

2. Principles of stakes assumed by luck egalitarianism

So far, I have claimed that discussions of responsibility have neglected the question of stakes, and have proceeded as if it was thought that the principle of attribution could do all the requisite work in settling questions of responsibility. Someone might object that, if most discussions of the notion of responsibility to date have not focused on the principle of stakes, this is not because they have assumed that no such principle is necessary for luck egalitarianism to be complete, but because they have taken for granted what is, in fact, a perfectly sensible answer to it. This objection might come in two forms, depending on what is deemed to be the supposedly sensible answer luck egalitarians have taken for granted.

First, it might be thought that luck egalitarians take for granted a *natural consequences* view of stakes. According to this view, all actions have some consequences that are clearly identifiable and justified, namely, those consequences that are "natural". I think the idea of natural consequences is one that occupies pride of place in people's ordinary judgements about responsibility, and I think that this idea has also infused our understanding of luck egalitarians' view of the consequences of choice. But once we ask what consequences count as "natural", it quickly becomes apparent that this naïve way of thinking about stakes is not promising. Furthermore, even the best interpretation of that view, a *contextualist* one, is problematic.

Secondly, it might be thought that luck egalitarians take for granted an *equal shares* view. This view extracts implications about stakes from the egalitarian commitments of luck egalitarianism: people should bear certain costs rather than others because, unless they internalised those costs, they would be leaving others with less than their equal share. I argue that the egalitarian commitments of luck egalitarianism do not yield exhaustive conclusions about what the stakes of choice should be. They only tell in favour of the internalisation of only some but not all costs. In my view luck egalitarians are charitably viewed as having endorsed a mix of the contextualist and the equal shares view, but it is not clear, I suggest, that this approach to stakes is defensible.

a) From natural consequences to the contextualist approach

A naïve view of stakes holds that actions have some natural consequences and that these are the consequences people should bear responsibility for. But what counts as a "natural" consequence?

A first proposal is that a consequence or cost of an action count as natural if and only if it is one that would attend an action in the absence of anyone else's acting. The problem with this proposal is that virtually no consequences of actions

would pass this counterfactual test, since in virtually all cases one's actions have the consequences that they do as a result of the actions of other people as well as the agent's own. The smoker's increased risk of lung cancer, for example, is the result of tobacco manufacturers' actions as well as his own; and the motorcyclist's injuries are also in part the result of the roads being more or less dangerous as a result of the actions of other drivers and the way in which road maintenance authorities maintain them.

On a second and different construal, a consequence of an action counts as natural if and only if it is one that would attend an action in the absence of anyone else's acting *after the action has taken place*. There are many difficulties with this suggestion. For one thing, it is tricky to identify the action whose temporal location is supposed to have relevance (if I smoke for twenty years, is the relevant act that of smoking for twenty years, or that of smoking each and every cigarette I smoke?); furthermore, the temporal condition the test assumes, namely the absence of action by others *after* my action, seems arbitrary. Quite aside from these difficulties, however, the problem with the view that people should internalise the consequences of their actions that are natural in this sense is that, once again, hardly any of the consequences of choices would qualify. The smoker's increased risk of lung cancer might qualify (on the grounds that if I smoke heavily for twenty years, my risk of getting lung cancer increases by some amount even if no one else does anything after I have smoked for so long); we might also describe the motorcyclist's accident and injuries as natural (once roads are in place and he sets off on his journey, his having an accident on a solitary road and suffering a certain harm can occur in the absence of anyone else's intervention). But very few of the consequences people are often held responsible for would count as natural, since, once again, most of the outcomes that we consider to be consequences of one's actions obtain as a result of others' acting in particular ways after, as well as before, those actions have taken place. For example, if no one did anything after the dices are tossed, there would be no loss for the gambler to bear at all. The "natural consequences" criterion of what the stakes of actions are, if adopted, would be radically revisionary, and does not seem to be the one that theorists of responsibility normally invoke.

There is a third interpretation of what counts as a "natural" cost one might appeal to here. It identifies as natural those costs that as a matter of fact follow choices in any given context in which the agent acts. We take as given the existing structure of stakes within which people choose, and then hold people responsible for costs that actually follow from actions within that structure, provided that they are aware before making their choices that those costs

typically attend those choices.¹⁶ On this reading, “natural” really means “actual”, and it seems that most of the outcomes that we think of as “consequences of one’s action” are in fact the actual consequences choices happen to have in any given context.¹ I will call this suggestion the “contextualist approach”.

The problem with the contextualist approach is that it does not seem true that any and all actual consequences of choices are justified. To see this, imagine that it were publicly known that, when people have accidents while driving at high speed without helmets, their motorbikes are considered as being up for grabs, and typically appropriated by passers-by while the motorcyclist lies on the side of the road waiting for an ambulance. The fact that, in this context, this outcome is an actual and even foreseeable consequence of people’s choice of driving a motorbike does not seem to suffice to justify it. Motorcyclists could justifiably complain at this practice of treating the choice to go motorcycling as a choice to expose oneself to the risk of forfeiting one’s private property rights. The fact that a structure of stakes is in place rather than an alternative one (in this case, one that is more respectful of people’s private property rights in emergency situations) needs justification. That justification is what the principle of stakes should provide, a point the view under consideration does not take into account.

b) The “equal shares” view of stakes

The second answer to the question of stakes that someone might argue luck egalitarians have assumed extracts a principle of stakes from the egalitarian commitments of luck egalitarianism. Instead of thinking about stakes as part of an independent account of responsibility that constrains the demands of equality, we should tease out some implications about stakes from the luck egalitarian views themselves.¹⁷ We may think, for example, that what is problematic about the scenario I mentioned above, in which the consequences of Bert’s choice of driving at high speed include that of his forfeiting his property rights over his motorcycle, is that in that scenario just background conditions are not in place, and Bert is not describable as having his equal share. More specifically, a regime of stakes of the kind in question, we may think, is in some sense biased against motorcyclists, who cannot be described as enjoying equality of opportunity for advantage. For motorcyclists to have equal opportunity for advantage, it may be necessary, say, that the risky option they face be no worse than the risky option faced by individuals with different preferences.¹⁸

The reasoning would continue as follows: when that opportunity is secured and all have their equal share, we have a satisfactory answer to the question of stakes: motorcyclists should internalise all and only those costs which, if they

were not internalised, would make their share greater than others', thereby disrupting equality of opportunity for advantage itself. Richard Arneson's old view of equality of opportunity for welfare has this implication. As Arneson remarks: (...) A young adult may behave in an irresponsibly careless way that fails to meet the (...) standard of responsibility, but just by a smidgeon, then encounter incredibly bad luck, and end up facing horribly grim life prospects that we could alleviate by further provision of resources to her at modest cost. The fair equality of opportunity for welfare account responds to such a case by insisting that justice demands no transfers of resources to alleviate the errant individual's plight *because any such transfer of resources would diminish the fair equality of opportunity for welfare to which others are entitled*".¹⁹ Dworkin's view is committed to something similar: to ensure that each person has her equal share of resources just is to require each person to bear responsibility for any costs his or her choices may have, since to require others to internalise some of these costs would be to give them less than their equal share.²⁰

Even if we accepted these claims, they would not show that the egalitarian commitments of luck egalitarianism can do all the requisite work in answering the question of stakes. This is so for two related reasons. First, we may think that a plausible construal of responsibility should accommodate non-comparative, as well as comparative, constraints on stakes; the views under considerations would not accommodate those. To illustrate: we could hold, on this view, that it would not be fair if the consequences of motorcyclists' choices included that of risking forfeiture of some of their rights while the consequences of the choice to sustain an unhealthy diet, say, only included mild social disapproval, despite the fact that both choices create comparable costs for others. But we may think that the worries raised by the motorcyclist's case go beyond these comparative ones. We may think that, even if Bert did enjoy equal opportunity for advantage, it still does not seem right that he or anyone else should potentially risk forfeiting their private property rights. This sort of concern is what is ultimately troubling, I think, about the scenario depicted by Brian Barry in which the demands of equality of opportunity are satisfied by having a randomising device that assigns individuals at birth to different castes in a caste system.²¹ The worry, I think, is not (or at least not only) that giving people an equal chance by relying on a randomising device does not amount to giving people a genuine opportunity: rather, the worry is that ending up in a low caste should not be at stake in any choice people make, no matter how voluntary or genuine that choice,

A second limitation of equality-based claims about stakes is that they could, at best, identify only *some* of the stakes of people's choices – namely,

those of which it is true that their externalisation would disrupt equality. Bert could legitimately be held responsible for these costs, for otherwise his share would be greater than others'. But compatibly with holding Bert responsible for these costs, he could also be required to bear many other costs of which it is *not* true that their externalisation is required by the commitment to equality. The cost of forgoing his motorbike is a case in point: denying passers-by the liberty to appropriate vehicles involved in accidents does not, typically, amount to giving Bert a greater opportunity than others enjoy.²² (Allowing them that liberty would typically amount to giving Bert a lesser opportunity than others enjoy; but since this has, we are stipulating, come about as a result of his exercise of responsibility, *that* is not in itself an objection against holding Bert responsible for these costs.) In other words, the commitment to equality will only have implications for the *redistributive* stakes of choices, that is, for identifying the permissible extent of coercive redistributive taxation; but, as the list of question concerning the stakes of Bert's choice showed, we also need to settle questions about liberties and duties that people have other than those to redistributive taxation. For example, we need to know whether Bert may justifiably be held to the side of the road, or have his motorbike be considered as up-for-grabs, or whether it is permissible for passers-by to offer him a lift to safety only in exchange for a job offer "he can't refuse". These questions about the stakes of Bert's choice are not answered by considerations about whether people's equal shares. So, we are back to the worry that, with regard to these costs on whose allocation luck egalitarians' egalitarian commitments are silent, luck egalitarians' judgements will be either arbitrary or indeterminate if they rely on our commitments to equality and responsibility alone.

In fact, with regard to these costs, it seems to me plausible to think that luck egalitarians are typically committed to a contextualist approach to stakes. Elizabeth Anderson gets this right in her well-known critical discussion of luck egalitarianism when she states: "For the outcomes for which individuals are held responsible, luck egalitarians prescribe rugged individualism: let the distribution of goods be governed by capitalist markets and other voluntary agreements".²³ About the non-redistributive consequences of choice, anything that emerges from people's exercise of their freedom is permissible. To return again to Bert's example, since others are acting within their rights by not helping stranded motorcyclists or by making them what some would call a coercive wage offer, those can be identified as being the consequences of Bert's choice if they do occur.²⁴

Luck egalitarians' view on the consequences of choices, then, seems to be a mix: some of those consequences of people's choices include those whose internalisation is required by their favoured understanding of equality; moreover, beyond being responsible for those consequences, people are also responsible for any consequences that in fact arise in any given context in which people make their choices, provided people are informed in advance about the stakes structure. The idea behind the adoption of a contextualist approach is that people's negative freedom should be respected as much as possible – as much as is compatible, that is, with the egalitarian aim of neutralising the unequal effects of brute luck. Provided that aim is met, we should not interfere with people's freedom and we should accept as legitimate whatever results from people's exercise of their freedom.

A full assessment of this equality-constrained contextualist approach will have to proceed by looking at each luck egalitarian theory in its own right. This is because the implications about stakes that result from the commitment to equality actually reflect specific interpretations of the requirement to neutralise the unequal effects of brute luck, and several different interpretations are offered by different luck egalitarians. For example, Arneson's theory of equality of opportunity for welfare has the implications about stakes it does in part because it holds that what people should have equal opportunity to obtain is the highest possible equal welfare *if they behave reasonably prudently*. It is conceivable that people should, instead, have equal opportunity to obtain the highest possible equal welfare if they behave *reasonably altruistically*. The implications about what the "consequences of people's choices" would be are different on these two interpretations of equality of opportunity for welfare. Consider, for example, the case of someone who chooses to adopt a child: on Arneson's construal of equality of opportunity for welfare, the adoptive parent would arguably be deemed to be responsible for a less than equal welfare level (so, the costs of raising her child would count as "the consequences of her choice"); on the alternative construal, arguably she would not. On Arneson's view, substantial work in generating conclusions about the demands of equality and on justified inequalities is being done by the fact that prospects of maximal welfare are anchored to a standard of (self-regarding) prudence, and at least some of the objections we may have to that proposal may not extend to alternative construals of the ideal of equality of opportunity for welfare, or interpretations of equality like Dworkin's.²⁵

In light of my discussion thus far, however, there are two things I think we can say about all luck egalitarian views that adopt an equality-constrained contextualist view of stakes. First, it would be a mistake to think that the

judgements of what costs people should be held responsible for which these views support are entailed either just by the principle of attribution these views defend, or even by the principle of attribution *together with* any particular interpretation of the egalitarian commitment. Further considerations – such as those that are expressed by the contextualist principle - must also be assumed in order to yield determinate judgements about the consequences of choice. Second, having exposed the role the contextualist principle seems to play in luck egalitarians' conclusions about what people are responsible for, we should ask whether the considerations that are expressed by that principle are defensible. Should egalitarians believe that people should have as large an area of negative freedom as possible, so long as we have neutralised the differential impact of brute luck on the distribution of advantage? Should that be so regardless of how people exercise that freedom and regardless of the effects that that exercise has on other people's situations? ²⁶ As I have intimated above, it seems plausible that we should answer this question negatively: the importance of ensuring that whatever rights people have are robust, that people make truly voluntary choices, and that no one be at the short end (or, for that matter, at the high end) of hierarchical systems of privilege like a caste system, all tell against the contextualist approach to stakes. That approach is not forced upon egalitarians by their acceptance of responsibility. Instead, it may be one idea too many imported from the arsenal of the anti-egalitarian right.

3. Alternative principles of stakes and the demands of responsibility

I have argued that the contextualist approach, even when it is equality-constrained, seems problematic. Luck egalitarians may have endorsed it; but since they are not compelled to endorse it (neither their commitment to equality nor their commitment to responsibility pushes them in this direction), it is open to them to turn to a different principle of stakes. In recent discussions of responsibility, two main alternative directions have been identified – one is a desert view, the other a consequentialist view – and, although I cannot discuss these at length here, I would like to say something briefly about each of them. ²⁷

The first one is the consequentialist approach to stakes, on which the stakes of people's choices should be just whatever stakes are required in order to promote independently desirable outcomes, such as, for example, a situation in which people's equal opportunity for advantage is *maximised*. ²⁸ A theory of egalitarian justice would, if we adopted this view, be two-tiered or hybrid in the same way in which certain theories of punishment are: in order to answer the

question of who should bear some costs (who should be punished) we should appeal to backward-looking considerations, such as whether an individual made a choice (whether she committed a crime); in order to know just what costs they should bear (what punishment is justified) we appeal to forward-looking ones.²⁹ Like with the contextualist approach, the consequentialist one is vulnerable to the objection that it fails to respect the connection between those who bear responsibility on the one hand, and what they intuitively seem to bear responsibility for. Suppose that a general practice of allowing employers to fire imprudent motorcyclists who have accidents had the arguably desirable consequence of discouraging people from driving imprudently, thereby reducing the pressure on emergency services and allowing everyone to benefit from prompter emergency care for involuntary accidents. Even though these stakes of Bert's imprudent choice would seem justified by the lights of the consequentialist approach, we may think that the stakes are too high, and/or that they are of the wrong, because irrelevant, sort: whether or not something should be at stake when I make a certain choice depends in part on whether it is relevantly related to that choice. Employers' rights to lay off employees should be tied to considerations concerning employees' performance as employees, not to their attitudes to risk while on the road.

In light of these worries, we may be attracted to the view that the consequences of people's choices are those that are "fitting", or deserved, for the choice in question. The adoption of a principle of desert supports this view of stakes, and desert-sensitive egalitarianism has recently been defended as an alternative to luck egalitarianism, partly on account of the former view supporting more plausible judgements about the stakes of choices.³⁰ It is worth noting that the adoption of desert as a way of generating judgments about stakes goes hand in hand with also adopting desert as a principle of attribution (as it does in Arneson's case). Considerations of desert cannot constrain *what* good or treatment we believe people should get independently of considerations about *what bases* are appropriate for deserving what good or treatment. If we say that having one's motorbike be considered as up-for-grabs is not an appropriate stake of the choice of driving imprudently, that is because we think that that treatment is not a fitting response to that particular action, although we may think that imprudent behaviour of that kind does make one deserving of censure by fellow motorists.

The desert approach to stakes has a serious limitation. Desert-based considerations cannot provide a full principle of stakes but only, at best, one element in an account of stakes by identifying a *constraint* on the costs people

may be held responsible for. In particular, acceptance of desert will support a proportionality constraint on the stakes of choices that the contextualist approach to stakes does not respect: certain outcomes – such as, perhaps, Bert's being fired by his employer, or his ending up destitute as a result of having to bear the full market price of his medical care – seem disproportionate and cannot be justified as deserved by Bert on the basis of his choice to drive at high speed, imprudent though that choice might have been. So Arneson seems right that a desert-based egalitarian theory will avoid supporting at least some seemingly unduly harsh judgements about responsibility. But, as even defenders of desert have been willing to grant, in the three-place relation between a person, a desert basis and a deserved good or treatment that desert is supposed to be, deserved treatment is the component that is probably best characterised as having institutional, rather than a pre-institutional, character. That is, *what exactly* a person deserves – whether it is money or a round of applause for having put in a good musical performance, for example – is settled by the institutional context in which desert claims are made, rather than by the notion of desert itself.³¹ It is only against the background of an independent assumption that people are to be offered monetary rewards for the jobs they perform (perhaps because offering them those rewards serves an incentive role) that we can make the non-comparative desert claim that someone deserves to be paid a particular salary, or at least the comparative one that she deserves a higher salary than someone else. So turning to desert as if it could provide a complete criterion of stakes looks like a mistake. We might well be drawn to the proportionality constraint supported by desert; but we will need to rely on considerations other than desert to identify which, of all the potential stakes that respect the proportionality constraint, should be the stakes of various choices. If our motivation for turning to desert is that of finding an answer to the question of stakes, the adoption of desert may seem to deliver too little (the proportionality constraint) for too high a price (having to commit to a particular view about the principle of attribution).

Whether the consequentialist or the desert view of stakes - or indeed some other view of stakes – is defensible, I would like to conclude by challenging the assumption that, were we to adopt any of these views as superior to the contextualist approach, then that would amount to calling for *limiting* the role of responsibility. This assumption seems to be widely held. Luck egalitarians talk as if their commitment to responsibility *as such* supported the particular conclusions they support about stakes (which, I have said, result from their endorsing a contextualist approach). And critics of luck egalitarians show that they hold that assumption when they move from their observation that the implications of luck

egalitarianism are implausible to the conclusion that we should limit the role of responsibility.³²

This assumption is mistaken: judgements of responsibility are, as I have suggested, indeterminate; they are indeterminate even when responsibility is adopted as a principle that constrains equality. We need a principle of stakes to make those judgements determinate, rather than to justify placing limits on responsibility. So, when we say that individuals who have chosen in ways that may ground responsibility should not bear certain costs because those costs should not be at stake when people make certain choices, the thought is not that these are costs which a responsible person is *prima facie* responsible for, and that further considerations enter into determining whether that person should, all things considered, be made to internalise those costs. This balancing of responsibility against other considerations is something we may also have to do. But the question of stakes is a question about what *responsibility itself* requires: when we defend a particular principle of stakes as superior to alternative ones, we are fleshing out, not constraining, the demands of responsibility. To suggest otherwise one must either believe that judgements of attribution suffice to yield determinate judgements about responsibility, or treat one's own favoured account of stakes as uniquely entailed by a commitment to responsibility.

A corollary of this point that has emerged from my discussion of the question of stakes is that, unlike what we think at first, the notion of responsibility a theory of justice employs is necessarily moralised, in that it must presuppose a view of what individuals owe to one another in order to determine the legitimate consequences of choices. The contextualist view is premised on the view that people should have as large as possible an area of negative freedom, compatibly with eliminating the inequalities that are traceable to differential brute luck. It is open to luck egalitarians to defend a different view while still taking responsibility seriously.

Notes

* For comments on previous drafts of this paper, I would like to thank Paul Bou-Habib, Marc Fleurbaey, Martin O'Neill, Peter Vallentyne, Andrea Sangiovanni, and audiences at the European University Institute, at the London School of Economics and at the University of York.

1 G.A. Cohen, "On the Currency of Egalitarian Justice", *Ethics* 99 (1989): 906-44, p. 933.

2 The term is Elizabeth Anderson's. See E. Anderson, "What is the Point of Equality?", *Ethics* 109 (1999): 287-337. Like Anderson, I refer here to the views defended by R. Dworkin, R. Arneson, E. Rakowski, G.A. Cohen and P. Vallentyne among others; although there are substantial differences between these views, they should not matter for most of the points I will raise, and I will signal where they do matter.

3 The distinction between brute luck and option luck is Dworkin's. Brute luck refers to events whose occurrence could not be foreseen and avoided by the agent whom they affect; option luck, by contrast, is "a matter of how deliberate and calculated gambles turn out". See R. Dworkin, *Sovereign Virtue* (Cambridge, Mass.: Harvard University Press, 2000), p. 73. Throughout, I will talk of persons *being* responsible for certain features or actions or choices (in the sense that these can be attributed to them as grounds of liability), and of *holding* people responsible for certain outcomes or

consequences of their features, actions, or choices (in the sense that they are legitimately required to internalise the costs or consequences of those actions or choices). When I talk of responsibility *simpliciter*, I have in mind the latter sense of responsibility, which people refer to as “consequential responsibility” (Dworkin), “substantive responsibility” (T. Scanlon) and “accountability” (J. Roemer) or “moral accountability” (P. Vallentyne). Although luck egalitarians think that people can be held responsible for both the positive and the negative consequences of their choices, I here focus on the latter only.

4 For a helpful selection, see the list of publications on the website of “The Equality Exchange” (<http://mora.rente.nhh.no/projects/EqualityExchange/>).

5 See Anderson, “What is the Point of Equality?” and S. Scheffler, “What is Egalitarianism?”, *Philosophy and Public Affairs* 31 (2003): 5-39.

6 Cohen, “On the Currency”, p. 931, emphasis mine.

7 J. Roemer, “Equality and Responsibility”, *The Boston Review* 20 (1995): 3-16, emphasis mine.

8 S. Scheffler, ‘Choice, Circumstance, and the Value of Equality’, *Politics, Philosophy and Economics* 41 (2005): 5-28, p. 9, emphasis mine.

9 B. Barry, 1989, p. 142.

10 Anderson, “What is the Point of Equality”, p. 291.

11 For these discussions, see Cohen, “On the Currency”, Dworkin, “Sovereign Virtue”, ch. 2, G.A. Cohen, “Expensive Taste Rides Again”, in J. Burley (ed.), *Ronald Dworkin and his Critics* (Oxford: Blackwell, 2007).

12 By “principle” of stakes I mean any view or account or theory of what the consequences of choice should be. I do not intend to imply that there is a single set of considerations bearing on this issue.

13 Recent contributors have started raising the issue of stakes. Anderson has pointed to the fact that the stakes assumed by egalitarianism are problematic (although she seems to me to wrongly imply that this is entailed by a commitment to responsibility itself); and recently Leslie Jacobs introduces the idea of “stakes fairness” as part of his own ideal of equality of opportunity, although Jacobs does not discuss the idea at length and does not raise any general questions about the need for it. Recent contributions by Marc Fleurbaey, Peter Vallentyne, Zofia Stemplowska and Teun Dekker talk about luck egalitarianism and what they call the structure of payoffs or the principle of rewards. I refer to some of these discussions below. See M. Fleurbaey, “Equal Opportunity or Equal Social Outcome?”, *Economics and Philosophy* 11 (1995): 25-55 and *Fairness, Responsibility and Welfare* (Oxford: Oxford University Press, 2008); P. Vallentyne, “Brute Luck, Option Luck, and Equality of Initial Opportunities”, *Ethics* 112 (2002): 529-557; “Making Justice Sensitive to Responsibility”, forthcoming in *Political Studies*; T. Dekker. *Desertarianism. Reconciling Justice as Equality and Justice as Desert*, D.Phil. dissertation, Oxford 2006. I would also understand some of the issues raised by Arthur Ripstein as pertaining to the question of stakes, although he does not identify the latter question as a distinct one that needs answering by a theory of responsibility. I think that, as a result of this, Ripstein is led to draw a misleading contrast between his own view of responsibility, which explicitly moral principles to settle judgements of responsibility, and the view that responsibility requires choice. My claim in this paper is that *all* theories of responsibility *must* presuppose independent moral principles to yield determinate conclusions about what the stakes of actions should be. I also hold that we can retain the emphasis on choice alongside the independent moral considerations that answer the question of stakes. See A. Ripstein, ‘Equality, Luck, and Responsibility’, *Philosophy and Public Affairs*, 23 (1994); ‘Justice and Responsibility’, *Canadian Journal of Law and Jurisprudence*, 17 (2004); A. Ripstein, *Equality, Responsibility, and the Law* (Cambridge: Cambridge University Press, 1999).

14 Matthias Hild and Alex Voorhoeve claim that equality of opportunity principles are distinguishable from, but *need not be accompanied by*, other principles such as that of responsibility. Equality of opportunity only requires that people who are equal in their possession of characteristics that are deemed relevant to having the opportunity fare equally well. So perhaps luck egalitarians don’t need a principle of stakes, because they do not need a principle of responsibility. See M. Hild and A. Voorhoeve, “Equality of Opportunity and Opportunity Dominance”, *Economics and Philosophy*, 20 (2004): 117–145. I don’t think Hild’s and Voorhoeve’s thesis is a challenge to my view, for three reasons. First, my claim is primarily about a principle of stakes being needed for yielding complete judgments of responsibility; that claim stands independently of whether luck egalitarians (or defenders of equality of opportunity views, if we distinguish between the two) must endorse responsibility. Second, however, I think that Hild and Voorhoeve ambiguate between the claim that equality of opportunity views do not need to endorse any one particular principle (such as responsibility or desert), which seems right, and the claim that they do not need any such principle at all, which seems unjustified: specific interpretations of equality of opportunity do need some such principle to yield determinate judgments about when their favoured interpretation of equality of opportunity is satisfied, although it may be true that that interpretation will yield those judgments not in virtue of a commitment to equality of opportunity alone, but also to other moral principles.

15 For the example involving Bert the motorcyclist, see M. Fleurbaey, “Equal Opportunity and Equal Social Outcome?”, *Economics and Philosophy* 11 (1995).

16 I assume that the view would posit a publicity requirement to avoid obvious objections.

17 Note that what I have in mind here are the egalitarian commitments as in fact expressed by various luck egalitarian views, where I admit that those views may bring into play considerations other than just a belief in equality of opportunity or the importance of eliminating the effects of unequal brute luck on people's advantage, broadly conceived. It seems to me that it has been convincingly shown that the belief in eliminating the effects of unequal brute luck does not *by itself* have any implications for whether people should be held responsible at all, let alone for which specific costs they should be held responsible for. See Vallentyne, "Brute Luck", Fleurbaey, *Fairness, Responsibility and Welfare*, Hild and Voorhoeve, "Equality of Opportunity", who all make this point. See also A. Williams, "Liberty, Equality, and Property", in J. Dryzek, B. Honig, and A. Phillips (eds.), *The Oxford Handbook of Political Theory* (Oxford: Oxford University Press, 2006).

18 See R. Arneson, "Equality and Equal Opportunity for Welfare", *Philosophical Studies* 56 (1989): 77-93. On this score, Dworkin's version of egalitarianism clearly differs, as Dworkin holds that people should internalise the costs of their preferences. But we could think of an example that would play a comparable role in the framework of Dworkin's theory: we may think that Bert's share is less than equal, as he envies someone else's combination of preferences and ability to satisfy those.

19 R. Arneson, "Luck and Equality", *The Aristotelian Society Supplementary Volume* 75 (2003): 73-90, emphasis mine. Arneson goes on to say that he believes that this is an "ineliminable and implausible implication of the ideal". However, as I suggest below, a different version of the ideal could require that people bear different costs for different things. Moreover, what we can say is that the commitment to holding people responsible can be incorporated into an ideal of equality in a different way, so as not to have these implications.

20 Dworkin, *Sovereign Virtue*, ch. 2.

21 B. Barry, *Theories of Justice* (Berkeley: University of California Press, 1989), p. 224n.

22 I say "typically" because it is conceivable that a case be made that the appropriation is justified as compensation for costs incurred by those who rescue him.

23 Anderson, "What is the Point of Equality?", p. 292.

24 Fleurbaey and Vallentyne address the question of stakes under the heading of "the reward principle" which they think is needed to complement the principle of compensation (i.e. the egalitarian commitment to eliminating the effect of unequal brute luck on advantage). They claim that luck egalitarians have typically endorsed a what they call "Natural Rewards" and "natural policy". According to Vallentyne, Natural Rewards holds that "agents have a preinstitutional entitlement to reap their "natural rewards", where these are understood as *the rewards that would follow if no coercive redistribution were implemented between agents who are identical with respect to the factors that must be equalized (...)*" (Vallentyne, "Brute Luck", p. 552, emphasis mine). Fleurbaey says that the natural policy "equalizes across all individuals [*i.e. those who make choices for which they may be held responsible but also those who don't make such choices*] the determining factor of their well-being for which they are not responsible (...)" (Fleurbaey, *Fairness, Responsibility and Welfare*, p. 21). I take the "natural policy" to be a policy justified by the Natural Rewards principle of stakes, and will from now on refer to the latter. The contextualist view I am ascribing to luck egalitarians seems different from Natural Rewards, in two ways. First, Natural Rewards concerns only redistributive stakes but, as I said above, there are questions of stakes beyond the redistributive ones. Second, Natural Rewards straddles two relevantly different approaches to stakes: the contextualist one (which the italicised part of passages quoted above seem to describe), and the importantly different view that the stakes of people's choices should be what people have pre-institutional entitlements to and/or deserve on a pre-institutional notion of desert. This second understanding of Natural Rewards seems supported by the examples discussed by Fleurbaey and Vallentyne, which involve cases where the consequences of people's choices include reaping the benefits of high dedication (Fleurbaey) or keeping the fruits of one's labour (Vallentyne); it is also at some points supported explicitly by Vallentyne's characterisation of it as relying on pre-institutional entitlement and/or desert (p. 555). The judgements supported by Natural Rewards thus understood may but need not overlap with those supported by the contextualist approach, for on the latter view, whether or not the consequences of one's choice will include consequences that respect people's pre-institutional deserts or their pre-institutional entitlements is a wholly contingent matter that depends on what structure of stakes emerges from people's voluntary transactions.

25 Arneson has abandoned the ideal of equality of opportunity for welfare and now endorses a desert-catering prioritarian view, partly because he believes that it is unjust to ask people to internalise the costs of their altruistic behaviour. I am suggesting that *this* particular claim can be accommodated by a revised equality of opportunity view. I read Nir Eyal's argument for a revised form of luck egalitarianism to support something like this revised equality of opportunity view, rather than a desert-catering egalitarianism. See Nir Eyal, "Egalitarian Justice and Innocent Choice", *Journal of Ethics & Social Philosophy* 2 (2007): 1-18.

26 Of the Natural Rewards view, which as I said above could be interpreted as either a pre-institutional entitlement or desert view on the one hand, or a contextualist view on the other, Vallentyne says that "There is no reason to treat the pre-coercive-redistribution – or "natural" – payoff structure as privileged" (Vallentyne, "Brute Luck", p. 550). But on either construal of Natural Rewards, there *are* such reasons, namely the importance of protecting as large an area of freedom as possible, or that of respecting pre-institutional claims. Perhaps Vallentyne means, however, that there is no *good* reason to respect Natural Rewards. In his remarks, Fleurbaey suggests, by contrast, that Natural

Rewards is supported by neutrality considerations, in that it limits itself to neutralising brute luck inequalities and “does not perform any further redistribution” (Fleurbaey, *Fairness, Responsibility, and Welfare*, p. 21). By contrast, other principles of stakes require further redistribution for other purposes – one principle may be on that allows or requires rewarding well people who accept socially useful hazardous occupations. These remarks do not tell in favour of Natural Rewards. It seems misleading to say that the neutrality in question - neutrality as non-intervention – is or should be a desirable constraint on policies. If the policy of rewarding people who accept socially useful hazardous occupations is not justified on the basis of contestable ideals but is instead pursued so as to maximally benefit everyone, we should have no more of an objection to ensuring that the stakes of choosing such occupations are favourable than we do to intervention to equalise brute luck. Moreover, if Natural Rewards is understood as presupposing people’s pre-institutional claims, Fleurbaey’s neutrality-based defence seems unconvincing, for it is misleading to characterise as non-interventionist a policy which actually presupposes a commitment to protect pre-institutional entitlements, such as people’s entitlements to the fruits of their high levels of dedication.

27 I do not intend to suggest that the list of principles of stakes I mention is exhaustive, nor that the principles in question are mutually exclusive.

28 I understand Vallentyne’s own position to be a version of this view, although he states endorsement of a more general approach to stakes – what he calls “Institutional Rewards” - that comprises both the consequentialist view and the contextualist view. Fleurbaey discusses economists’ adoption of a utilitarian principle of rewards.

29 For a critical discussion of mixed theories of punishment, see A.H. Goldman, “The Paradox of Punishment”, *Philosophy and Public Affairs* 9 (1979): 42-58.

30 See Arneson, “Luck and Equality”. To see how desert-based views would support conclusions about stakes, it is helpful to think of the case of a lottery, where someone’s win, or loss, seems to be a matter of option luck but not something that she deserves. See B. Goodin, “Negating Positive Desert Claims”, *Political Theory* 13 (1985): 575-598. Vallentyne also claims that luck egalitarians can avoid or at least defuse criticisms like Anderson’s harshness objection by relying on a different principle of rewards – but, unlike Arneson, he thinks that *abandoning* rather than adopting desert will help defuse the harshness objection! I take this is because, depending on the context of choice, the judgments supported by the contextualist view could but need not necessarily be harsher than those supported by desert, so in fact we have reasons to qualify Arneson’s claim. For how adoption of different views of payoffs affects our assessment of luck egalitarianism in light of the harshness objection, see also Stemplowska, “Making Justice Sensitive to Responsibility”, and Dekker, *Desertarianism*.

31 Thomas Nagel discusses that income cannot be construed as a “natural reward”: “The concept of a natural reward should be restricted to those advantages that are strictly inseparable from the recognition and appreciation of a quality by others, and I doubt that this is ever true of money. People’s willingness to pay for something is a direct manifestation of their valuing it. But it needn’t take the form of payment to the producer”. T. Nagel, *Equality and Partiality* (Oxford University Press), p. 113, fn. 35. See also D. Miller, “Comparative and NonComparative Desert” in S. Olsaretti, *Desert and Justice* (Oxford: Oxford University Press, 2003) and S. Olsaretti, “Introduction: Debating Desert and Justice”, in Olsaretti, *Desert and Justice*.

32 Even the recent discussions I have mentioned which raise the question of payoffs or stakes seem to me to imply that considerations of these kind amount to putting limits on, or constraining the role of, responsibility. See, for example, Stemplowska, “Making Justice Sensitive to Responsibility” and Vallentyne, “Brute Luck”.