Luck Egalitarianism and Political Solidarity

Daniel Markovits[*]

Luck egalitarianism — the theory that makes individual responsibility central to distributive justice, so that bad luck underwrites a more compelling case for redistribution than do the bad choices of the disadvantaged — has recently come under a sustained attack from critics who are deeply committed to the broader struggle for equality. These egalitarian critics object, first, that luck egalitarianism's policy recommendations are often unappealing. Second, they add that luck egalitarianism neglects the deep political connection between equality and non-subordination, in favor of a shallowly distributive regime.

This Article argues that both objections to luck egalitarianism have been exaggerated. Insofar as the criticisms are accurate, they apply only to a particular, maximalist strand of luck egalitarianism, whose distributive principle does not merely adjust allocations in light of responsibility but instead proposes that allocations should precisely track responsibility. However, this responsibility-tracking view does not represent the best or truest development of the basic luck egalitarian ideal.

Moreover, the pathologies of the responsibility-tracking view help to cast the appeal of more judicious luck egalitarianism into sharp relief. The redistributive policies that more moderate developments of luck egalitarianism recommend are less objectionable than critics have supposed. And, more importantly, such modest luck egalitarianism is not a purely distributive ideal but instead contains, at its core, a vision of political solidarity among free and equal citizens.

INTRODUCTION

The distinction between chance and choice is intuitively important for distributive justice, because disadvantages resulting from bad luck present more compelling cases for redistribution than disadvantages caused by the bad decisions of the disadvantaged. The theory of distributive justice that seeks to elaborate this intuition is called *luck egalitarianism*.[1]

The intuition behind luck egalitarianism is an old one. It is reflected, for example, in Mill's observation that "[t]he proportioning of remuneration to work done is really just only in so far as the more or less of the work is a matter of *choice*: when it depends on *natural* difference of strength or capacity, this principle of remuneration is itself an injustice."[2] Moreover, over the past thirty years, this intuition has been developed into a systematic approach to distributive justice. Thus Ronald Dworkin proposes that "[i]n principle . . . individuals should be relieved of consequential responsibility for those unfortunate features of their situation that are brute bad luck, but not for those that should be seen as flowing from their choices."[3] Accordingly, Dworkin argues, an egalitarian distribution of resources should be insensitive to endowments but sensitive to ambitions, tracking the distinction between people's circumstances and their persons.[4] Moreover, others, influenced by Dworkin, have also aggressively pursued luck egalitarian ideals. G.A. Cohen has argued that egalitarianism's "purpose" is specifically "to eliminate involuntary disadvantage," by which he means "disadvantage for which the sufferer cannot be held responsible" because it does not "appropriately reflect" his choices.[5] Similarly, John Roemer maintains that "society should indemnify

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1   The name was introduced by Elizabeth Anderson. *See* Elizabeth Anderson, *What is the Point of Equality?*, 109 ETHICS 287 (1999).

2   JOHN STUART MILL, PRINCIPLES OF POLITICAL ECONOMY 211-12 (W.J. Ashley ed., Longmans, Green & Co. 1923) (1848) (emphasis added).

3   RONALD DWORKIN, SOVEREIGN VIRTUE 287 (2000).

4   *Id.* at 311.
      The interpretation of Dworkin's views on these issues is in itself a complicated matter. Certainly Dworkin has expressly denied that his theory of equality is a version of luck egalitarianism. *See* Ronald Dworkin, *Equality, Luck and Hierarchy*, 31 PHIL. & PUB. AFF. 190, 190 (2003). Nevertheless, a strong case can be made that the most sympathetic reconstruction of Dworkin's writing on distributive justice, and in particular of the distinction that Dworkin draws between circumstance and personhood (especially as illuminated by his discussion of brute luck) does indeed develop luck egalitarian principles. *See, e.g.*, Samuel Scheffler, *Equality as the Virtue of Sovereigns: A Reply to Ronald Dworkin*, 31 PHIL. & PUB. AFF. 199 (2003).

5   G.A. Cohen, *On the Currency of Egalitarian Justice*, 99 ETHICS 906, 916 (1989)

people against poor outcomes that are the consequences of causes that are beyond their control, but not against outcomes that are the consequences of causes that are within their control, and for which they are personally responsible."[6] Roemer's work attempts rigorously to formalize the ideal of treating "all those who exercised a comparable degree of responsibility [equally], regardless of their circumstances."[7]

These and other[8] philosophers are engaged in the systematic endeavor of elaborating the luck-egalitarian intuition into a mature theory of distributive justice. Their efforts have generated a lively intramural debate about how this task might best be accomplished — that is, precisely what should count as advantage and exactly how the distinction between chance and choice should be given distributive effect. For some time, this internal debate dominated the philosophical discussion of distributive justice, at least in the liberal, Anglo-American tradition that takes its inspiration (loosely) from Rawls.[9]

In spite of its intuitive appeal, however, luck egalitarianism has recently come under a sustained attack from critics writing within the broader

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Cohen even accepts that this approach will leave distributive justice entangled in the metaphysics of choice and responsibility, or as he says, that "we may be up to our necks in the free will problem." *Id.* at 934. I will return to this connection at the end of my argument, to suggest that distributive justice may attend to the luck egalitarian intuition in a thoroughly moralized way, without becoming entangled in the metaphysics of freedom.

6 John E. Roemer, *A Pragmatic Theory of Responsibility for the Egalitarian Planner*, 22 PHIL. & PUB. AFF. 146, 147 (1993).

7 *Id.* at 149.

8 *See, e.g.*, Richard J. Arneson, *Debate: Equality of Opportunity for Welfare Defended and Recanted*, 7 J. POL. PHIL. 488 (1999); Richard J. Arneson, *Equality and Equal Opportunity for Welfare*, 56 PHIL. STUD. 77, 79 (1989); Richard Arneson, *Luck Egalitarianism and Prioritarianism*, 110 ETHICS 339, 339 (2000); Kasper Lippert-Rasmussen, *Egalitarianism, Option Luck, and Responsibility*, 111 ETHICS 548, 548 (2001) [hereinafter Lippert-Rasmussen, *Egalitarianism, Option Luck, and Responsibility*]; Kasper Lippert-Rasmussen, *Debate: Arneson on Equality of Opportunity for Welfare*, 7 J. POL. PHIL. 478, 479 (1999). Of course, further examples exist as well.

9 The connection between luck egalitarianism and Rawls's views is a complicated one. On the one hand, many luck egalitarians consider themselves to be giving Rawls's basic intuitions concerning justice as fairness a more thoroughgoing elaboration than Rawls himself ever did. On the other hand, Rawls's views concerning distributive justice contain many elements — for example, a principle of responsibility for personal ambitions that makes no direct reference to whether or not these are chosen — that may stand in tension to the luck egalitarian ideal, especially in its maximalist elaboration. For an excellent treatment, see Samuel Scheffler, *What Is Egalitarianism?*, 31 PHIL. & PUB. AFF. 5, 5-11 (2003).

egalitarian tradition. First, these critics argue that luck egalitarianism's policy recommendations are often unappealing. Second, and perhaps more importantly, they argue that luck egalitarianism neglects the deeper political structure of equality, and in particular the central idea of non-subordination, in favor of a shallowly distributive regime.

I devote these pages to defending luck egalitarianism against its egalitarian critics.[10] To begin with, I argue that both objections have been exaggerated. The redistributive policies that luck egalitarianism proposes are less objectionable than critics have supposed. Furthermore, and more importantly, I argue that luck egalitarianism is not a purely distributive ideal but instead contains at its core a vision of political *solidarity* among free and equal citizens.[11]

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10 More specifically, I defend a version of what Elizabeth Anderson calls *responsibility-catering* luck egalitarianism. *See* Elizabeth Anderson, *How Should Egalitarians Cope with Market Risks?*, 9 THEORETICAL INQUIRIES L. 239, 244 (2008).

11 I do not seek directly to answer luck egalitarianism's non-egalitarian critics, who reject outright the ideal of a political society of equal citizens and therefore also reject every effort (luck egalitarianism included) to elaborate this ideal into workable principles of distributive justice. The non-egalitarian position is represented in this volume by Richard Epstein, who "fear[s]" that my conception of political solidarity "envisions . . . a large state in which all persons 'cooperate' with each other," and therefore rests on the premise, which Epstein variously calls "disingenuous" and "naïve," that "countless people can be coaxed or coerced into developing close affective relationships with total strangers." Richard A. Epstein, *Decentralized Responses to Good Fortune and Bad Luck*, 9 THEORETICAL INQUIRIES L. 309, 311 (2008). This is not the place systematically to answer Epstein's diffuse charges, but three brief rejoinders are in order.

First, although Epstein insists that government power should be reserved "for keeping individuals apart . . . so as to allow those who so choose to come together on voluntary terms for whatever . . . purposes they see fit," *id.* at 311, any such reservation is quite impossible. Epstein's insistence that the state's enforcing property and contract rights does not "'authorize' (even 'to sustain')" the distributions of wealth that the exercise of these rights engenders is entirely implausible, and indeed is belied by his own support for the use of collective force to secure private property (further emphasized by his styling himself a classical liberal rather than a strict libertarian). Insofar as this collective force purports to be authoritative — so that citizens are bound not just to conform to the state's commands but to comply with them — there is simply no question of avoiding mass-scale political solidarity entirely, the only live question being whether this solidarity will arise on equal or subordinating terms. Egalitarianism generally is committed to political solidarity without subordination, and I have tried to show how luck egalitarianism in particular might present the most appealing working out of this commitment.

Second, Epstein's concern that luck egalitarianism will undermine markets and thus abandon the enormous gains in efficiency and aggregate satisfaction that markets

Indeed, I argue that insofar as the criticisms of luck egalitarianism are accurate, they pick out a peculiar, maximalist strand of luck egalitarianism. This approach to luck egalitarianism responds to the distinction between choice and chance with a distributive principle that does not merely adjust allocations in light of responsibility, but goes even further to propose that allocations should precisely *track* responsibility. According to the *responsibility-tracking* view,[12] the distribution of advantage should be perfectly insensitive to differences in people's luck but perfectly sensitive to

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generate badly misunderstands the nature of the egalitarian project, the nature of markets, or both. One of the core ambitions of contemporary liberal egalitarianism, luck egalitarianism included, is to render distributive justice consistent with economic organization based on market relations, albeit regulated ones. And although it is straightforward that replacing markets with collective ownership of the means of production, organized according to bureaucratic command and control, has catastrophic consequences for efficiency, the effects of regulation (including even moderately aggressive regulation) in economic systems that honor a baseline of private ownership and market exchange are subtle and contestable. Certainly it is far from clear that aggregate well-being is lower in more heavily regulated market societies than in societies that more nearly embrace laissez-faire. Epstein's essay nevertheless rejects luck egalitarianism's regulatory ambitions based not on systematic empirical study but rather on anecdote and intuition. (And some of the anecdotes that Epstein reports receive highly dubious interpretations in his hands. Is the lesson of Hurricane Katrina really that governments can be overwhelmed as easily as private institutions, as Epstein suggests, *id.* at 317, or is it rather that terrible consequences follow when governments abandon their obligations, including their distributive obligations, to the mercies of markets and private charity?) Although Epstein claims that "[t]he greatest mistake of the entire egalitarian enterprise is that it looks at just distributions first and production of wealth last," *id.* at 341, this characterization seems, to this egalitarian at least, completely mistaken.

Finally, luck egalitarianism — like every egalitarian theory — undoubtedly does raise the specter (which lies behind much of what Epstein writes) that egalitarian redistribution offends against the freedom and dignity of the advantaged, who are required to pay for it. This is a legitimate concern, and it deserves to be taken seriously. Very briefly, the conception of solidarity at the heart of luck egalitarianism is specifically designed to answer this objection, by holding the persons of the advantaged (the pre-requisites of their moral personalities) inviolate, even as it takes from them some of their advantages. The discussions of accommodation and of talent slavery below illustrate redistribution that respects the inviolability of persons in particular distributive contexts, and the idea of political solidarity among equal agents that these discussions generate suggests a theoretical generalization of the examples. I have elaborated this suggestion at greater length, although still too briefly, elsewhere. *See* Daniel Markovits, *How Much Redistribution Should There Be?*, 112 YALE L.J. 2291, 2325 (2003).

12 I introduce this term in Markovits, *supra* note 11, at 2294.

differences in people's choices — so that egalitarian *re*distribution should *eliminate* the differential effects of luck on the distribution of advantage but provide no compensation for the differential effects of choice.

That critics of luck egalitarianism should focus on this extreme position is understandable. The responsibility-tracking view, which has come in the minds of many luck egalitarians to stand in metonymically for luck egalitarianism quite generally, does indeed exhibit the pathologies that critics have attributed to luck egalitarianism more broadly. But close attention to the difficulties faced by the responsibility-tracking view reveals that they arise because responsibility-tracking redistribution betrays rather than expresses the basic values that underwrite the broader luck egalitarian project. Indeed, the pathologies of the responsibility-tracking view help to cast the appeal of more modest luck egalitarianism into sharp relief, thereby contributing (although in a roundabout way) to the general case in favor of luck egalitarianism.

I. Some Arguments Against Luck Egalitarianism

The attack against the luck egalitarian approach to distributive justice does not just take aim at one or another elaboration of the luck egalitarian ideal, and certainly does not expressly limit itself to the responsibility-tracking tendencies in luck egalitarian thought, but rather proposes to reject this ideal, *tout court*.

This attack proceeds on two quite different fronts. The first prong of the objection is primarily intuition-driven and seeks to cast the specific patterns of luck egalitarian redistribution in an unflattering light. The objection's second prong raises broader, more structural questions, proposing that the luck egalitarian emphasis on individual entitlements to good fortune is inadequate to realizing the basic egalitarian aspiration to political solidarity in a society of equals.

A. Harsh Policies

Thus critics — pursuing the first line of argument — have identified a series of respects in which luck egalitarian redistribution seems to generate wrong and even intolerable outcomes.

On the one hand, critics claim that luck egalitarianism can be uncompromisingly and even harshly insensitive to certain compelling cases of need. Elizabeth Anderson, for example, observes that luck egalitarianism's resistance to redistribution to eliminate the effects of bad choices implies

that people who fail to insure themselves against commonplace accidents should receive no aid if the accidents befall them. Anderson — imagining a luck-egalitarian ambulance service that turns away from a crash-scene on learning that a dying driver is uninsured — observes that luck egalitarians must be prepared to tell such people that, "having chosen to run their risks, they deserve their misfortune, so society need not secure them against destitution and exploitation."[13] Yet, as Samuel Scheffler points out in developing a related criticism, "the fact that a person's urgent medical needs can be traced to his own negligence or foolishness or high-risk behavior is not normally seen as making it legitimate to deny him the care he needs."[14]

On the other hand, critics argue that even where luck egalitarianism *does* redistribute to meet the needs of the disadvantaged, it does so in insulting and even degrading ways. For example, Anderson argues, when luck egalitarianism calls the working poor (those whose labor commands only low wages) involuntarily *untalented* it "disparages the internally disadvantaged."[15] Similarly, when it accepts unjust prejudice as a ground for compensating prejudice's victims, luck egalitarianism "raises private disdain to the status of officially recognized truth."[16] In each case, the luck egalitarian ideal makes the "basis" for such redistribution as it does recommend "the fact that some [citizens] are inferior to others in the worth of their lives, talents, and personal qualities." In this way, luck egalitarianism "express[es] contemptuous pity for those that the state stamps as sadly inferior and uphold[s] envy as a basis for distributing goods from the lucky to the unfortunate."[17] Indeed, insofar as the disadvantaged participate in luck egalitarian redistribution by asserting the disadvantages on which their redistributive entitlements depend, they will be required to engage in what Jonathan Wolff has called "shameful" self-assessment and self-revelation.[18] The working poor, to return to the earlier example, will be "required to

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13 Anderson, *supra* note 1, at 295-96.

14 Scheffler, *supra* note 9, at 18-19.

15 Anderson, *supra* note 1, at 306.

16 *Id.* at 306.

17 *Id.* at 289. Anderson goes on, discussing the account of disadvantage that luck egalitarian Philippe Van Parijs calls "undominated diversity," to argue that this account "asks the abled to take the horror they feel upon imagining that they had a disability as their reason for compensating the disabled. To regard the condition of the disabled as intrinsically horrible is insulting to the disabled people who lead their lives with dignity." *Id.* at 333.

18 Jonathan Wolff, *Fairness, Respect, and the Egalitarian Ethos*, 27 Phil. & Pub. Aff. 97 (1998).

formulate the thought and then claim that [they are] talentless,"[19] that is "failur[es], unable to gain employment even when there is no difficulty for others,"[20] a self-understanding that is "demeaning and also undermining of self-respect."[21]

Moreover, this degradation is not merely psychological, in the sense of depending on the contingent, subjective attitudes of the demeaned, but ethical as well. Thus, Anderson observes that the distinction between chance and choice on which luck egalitarian redistribution depends requires people "to obey other people's judgments of what uses they should have made of their opportunities, rather than following their own judgments,"[22] and, furthermore, that actually administering this distinction requires the state to become "entangl[ed]"[23] in "grossly intrusive, moralizing judgments of individuals' choices."[24] Accordingly, "in attempting to ensure that people take responsibility for their choices," luck egalitarianism "makes demeaning and intrusive judgments of people's capacities to exercise responsibility and effectively dictates to them the appropriate uses of their freedom."[25]

B. Theoretical Failings

Such objections need not stand pat as isolated intuitions. Instead, they are deployed, collectively, in support of a second line of attack that confronts luck egalitarianism with a more general, systematic, and theoretically unified indictment.

Thus, critics observe that luck egalitarianism's insistent focus on the presence or absence of individual responsibility divorces this conception of distributive justice from the rest of equality. In particular, luck egalitarianism is divorced from the opposition to "inequalities of race, gender, class, and caste" and the empathy for the "victims of nationalist genocide, slavery, and ethnic subordination" that traditionally characterize egalitarian engagements.[26] Indeed, by making "cosmic injustice"[27] rather than "relations between superior and inferior persons" ranked according to "intrinsic worth"[28]

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19 *Id.* at 115.
20 *Id.* at 114.
21 *Id.* at 115.
22 Anderson, *supra* note 1, at 310.
23 *Id.* at 328.
24 *Id.* at 310.
25 *Id.* at 289.
26 Both quotations are from *id.* at 288.
27 *Id.* at 288.
28 Both quotations are from *id.* at 312. Prominent historical examples of such

into the paradigm case of inequality, luck egalitarianism loses sight of the distinctively political character of equality, which is "opposed not to luck but to oppression."[29] In this way, luck egalitarianism neglects that "the primary subject of justice," which unifies the many fronts on which egalitarianism opposes oppression, is "the institutional arrangements that generate people's opportunities over time."[30]

Moreover, egalitarianism's proper concern for political institutions is not merely negative — in the sense of opposing oppression — but also positive. Egalitarianism properly understood should announce a vision of collective life suitable for free and equal citizens. And, critics argue, luck egalitarianism falls short in this respect as well. Thus, Anderson claims, the luck egalitarian view focuses egalitarian impulses on attitudes that separate persons — condescending pity among the fortunate and covetous envy among the unfortunate — rather than on attitudes through which all persons might come to live in equality together.[31] And accordingly, even when it succeeds, luck egalitarianism supplies no "principles for collective willing — that is, for what citizens should will together."[32] Instead, luck egalitarianism identifies and emphasizes choices and chances that separate citizens, whose entitlements depend only on what each wills individually.[33]

Luck egalitarianism, critics therefore argue, takes a merely distributive view, whereas true equality is relational.[34] Scheffler makes this criticism most forcefully: he insists that luck egalitarian redistribution that attempts to "compensate for misfortune" necessarily "focus[es] attention on the differing contingencies of each person's traits, abilities, and other circumstances;" whereas true equality "abstracts from the undeniable differences among people" and elaborates the idea "that human relations must be conducted on the basis of an assumption that everyone's life is equally important, and that all members of a society have equal standing."[35] Luck egalitarianism fails,

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hierarchical social relations — whose rejection is central to egalitarianism's past and present popular appeal — include "heritable hierarchies of social status, . . . ideas of caste, . . . class privilege and the rigid stratification of classes, and . . . the undemocratic distribution of power." Scheffler, *supra* note 9, at 22.

29 Scheffler, *supra* note 9, at 22. As Anderson also says, "in focusing on correcting a supposed cosmic injustice, recent egalitarian writing has lost sight of the distinctively political aims of egalitarianism." Anderson, *supra* note 1, at 288.

30 Anderson, *supra* note 1, at 309.

31 *Id.* at 307-08.

32 *Id.* at 309-10.

33 *Id.* at 309-10.

34 *Id.* at 313.

35 Scheffler, *supra* note 9, at 21–22.

these critics maintain, because it contains no "conception of society as a fair system of cooperation among equals."[36] It fails because it is not "anchored" in any "social and political ideal of equality."[37]

In sum, then, these objections attack luck egalitarianism, in its critical mode, for being unconnected to any compelling political account of subordination. Moreover, they attack luck egalitarianism, in its positive mode, for understanding equality in terms of a mechanical relationship among persons who are separated by their choices and jealous of their fortunes rather than as a distinctive form of political solidarity.

II. The Luck Egalitarian Response

These objections to luck egalitarianism, at least as presently framed, are less persuasive than those who raise them suppose.

To begin with, at least some of the narrower objections that luck egalitarianism recommends intolerable outcomes seem simply mistaken. In some of these cases, luck egalitarianism does not actually require the outcomes that critics saddle it with, and in others, these outcomes are not so unappealing as the critics imagine. Furthermore, the broader objection that luck egalitarianism lacks an anchor in social and political ideals of equality is overstated, although it raises considerably more complex issues. On the one hand, luck egalitarianism's central idea does express a vision of political solidarity under conditions of equality. On the other hand, the unduly rigoristic responsibility-tracking approach to redistribution that luck egalitarians often adopt is not consistent with that vision. This suggests, ultimately, that although critics take themselves to argue against the luck egalitarian enterprise *tout court* and in favor of a fundamentally different conception of equality, the greatest value of their arguments may lie in revising and moderating the luck egalitarian enterprise to render its policy prescriptions more consonant with its core commitments. Working out this suggestion will require reconstructing some of the criticisms just rehearsed along lines that more sympathetically engage the broader luck egalitarian project, in the service not of rejection but rather of reform.

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36 *Id.* at 24.
37 *Id.* at 23.

A. A Kinder, Gentler View

Many (although not all) of the narrow objections that luck egalitarianism generates wrong or intolerable outcomes seem to reflect more rhetoric than substance, or at least to be overdrawn.

One example is the claim (described earlier) that luck egalitarianism requires poor choosers to bear the burdens of their choices, no matter how terrible these burdens become. Certainly this would be an unpalatable outcome, but luck egalitarianism does not require it. Distributive justice, after all, reflects only one facet of a wider scheme of obligations that persons owe to one another, and others of these obligations may speak up where distributive justice is silent, or indeed outweigh distributive justice in appropriate circumstances. In the case at issue, humanitarian considerations — which are triggered by absolute need and are therefore invariant with respect to questions of responsibility — require aiding even the most foolhardy, once their state becomes sufficiently bad. And although the luck egalitarian must acknowledge that such humanitarian aid involves some inequality (because the neediest among poor choosers evade responsibility where other people do not), she can comfortably accept that in some circumstances compassion underwrites such small and unsystematic departures from strict equality as humanitarianism requires. Moreover, this seems an intuitively plausible assessment. Even the profligate are entitled to a decent minimum, on the grounds simply of the absolute badness of great need. But the profligate are not entitled to the fully equal share of advantage that they would have enjoyed had they chosen responsibly, and they are certainly not entitled to indulge their profligacy even as they retain an infinitely replenishable equal share.

Similarly, the suggestion that luck egalitarianism imposes insulting and demeaning characterizations of the disadvantaged also seems oversold, or at least more rhetorical than substantive (even if this rhetoric is in part invited by the clumsy terms in which luck egalitarianism sometimes states its conclusions). Certainly the characterization of disadvantage that critics most prominently call insulting[38] — the suggestion that those who cannot find high-paying work or cannot find work at all are *talentless* — reflects an unfortunate choice of words rather than any substantive judgment of comparative achievement or worth.

Talent, as luck egalitarians use the term, refers not to any naturalized level of *skill*, or even to the inherent *value* of a person's skills, but rather to the *fee*

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38   *See, e.g.*, *supra* notes 15-21.

that others are prepared to pay for these skills to be employed. This formal account of talent undermines the otherwise natural suggestion that a person might reasonably take pride in her talents, or find talentlessness shameful. After all, talent may be nothing more than the skill of satisfying the baser instincts of others, and talentlessness may be caused by the failure of others to value skills that are truly good. (A ready example of the former case is the talent for making a spectacle of oneself, especially in a mass-media society;[39] a ready example of the latter case is the brilliant but unappreciated artist.[40])

Nor are such cases — in which the talent-level associated with a skill diverges from the skill's true value — mere gimmicks, or indeed even unusual. Instead, they will be systematic fixtures in any economic order. Indeed, many of the skills that translate into the greatest talent-levels today — for example, the skills of the private money-manager — are talents only insofar as there exist other very rich people to demand them, and therefore only insofar as the distribution of wealth is highly unequal. (More generally, many of the people who are enormously talented under modern capitalism would not be nearly so talented, and might not be talented at all, in a more egalitarian economic order.)

Luck egalitarianism therefore provides two buffers against the suggestion that talentlessness, in the technical sense at issue, is demeaning: it emphasizes not just the moral arbitrariness of the distribution of (unchosen) skills but also the moral arbitrariness of the prices that skills can command. The unfortunate choice of the word *talented* to describe the state of being highly paid carries connotations that ironically ignore this second luck egalitarian lesson. Nevertheless, this lesson is extremely important. Whatever one thinks about the reasonableness of taking pride or shame in one's undeserved attributes, is hard to see why someone committed to equality should feel demeaned by the recognition that she lives in a world in which her skills are not valued by others, when this state of affairs is itself at best morally arbitrary and may even depend on an antecedent violation of the very ideal of equality that she espouses.[41]

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39 Think of the geek in a carnival, or Paris Hilton today.

40 Sometimes entire classes of artists face this fate — think of poets today.

41 This suggests an answer to Jonathan Wolff's suggestion that the shame associated with being untalented is not just a feature of our world but will endure even in an ideal world. Wolff argues that "the social product depends on work, and those less able to contribute productively contribute less to the social product," so that "there is a natural reason why a capacity to work well is valued, and thus a reason why it may be hard to overcome prejudice against those of low talent." Both quotations are from Wolff, *supra* note 18, at 115. But in an ideal world, in which equality has

These arguments of course take up only two specific instances, among many, in which critics charge that luck egalitarianism produces unpalatable outcomes. It is no part of my project to answer them all, and I certainly do not wish to defend all of the particular policies that have been proposed under the luck-egalitarian flag. Thus, Anderson seems to me to be right when she argues that (at least some) luck egalitarians have been too ready to assimilate certain choices that there is a social interest in encouraging to purely gratuitous, self-regarding gambles and to approve of market-mechanisms that impose the costs of such choices on those who make them, even when these mechanisms do not appropriately credit the choices' social benefits.[42] She is certainly right to deploy this line of argument against luck egalitarians who would leave care-givers (and especially mothers and daughters) to bear the full burdens of working at unpaid tasks,[43] for the fact that caregiving is underpaid relative to both its personal burdens and its social product is surely not the responsibility of caregivers, who should not suffer on this account.[44] Indeed, this line of thought suggests that luck egalitarianism, properly developed, might be deployed critically to explain why the poor pay afforded caregivers constitutes an injustice, so that Anderson's remarks, in this connection, represent a friendly addition to the luck egalitarian project rather than the fundamental critique of that project's basic commitments that she develops elsewhere.[45]

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been achieved, the variation in the prices that different people's skills command will plausibly be much lower than it is in our unequal world — so low, in fact, that virtually no one will be talentless. Although Wolff recognizes that "what counts as a productive talent may vary from society to society," *id.* at 115, he neglects the possibility that the dispersion in the productivity of people's skills will vary from society to society, and that it will become less as societies become more egalitarian.

42 *See* Anderson, *supra* note 10, at 254-58.

43 *See id.*

  I am less persuaded by the second example that Anderson deploys to make this general point — which involves potentially productive but ultra-risky market activities, such as building in flood-plains. *See id.* Here it is essential to ask the empirical question whether the risk-adjusted returns to these activities reflect their true social product. Insofar as they do, luck egalitarians who would leave marginal participants in these activities to bear their full losses in case the risks at issue eventuate do not commit the error that Anderson describes, although they may display the lack of compassion that Anderson has elsewhere criticized.

44 An excellent treatment of these questions is Noah Zatz, *What Welfare Requires from Work*, 54 UCLA L. REV. 373 (2006).

45 Anderson would not accept this characterization of her argument. She instead proposes that examples such as these illustrate that the luck egalitarian ambition to hold people responsible for the risks that they choose is untenable, because they reveal that there is no sharp distinction between deliberately chosen gambles and

Moreover, I do not wish even to assert that luck egalitarianism properly understood never has unappealing implications (to the contrary, I shall in a moment return to other examples of such criticisms that I believe are well-taken). Indeed, it would be extraordinary if luck egalitarian principles in no instance recommended outcomes that offended more intuitive judgments concerning justice. These intuitions are too complex to be perfectly explained by any moral conception as spare and precise as luck egalitarianism aspires to be.

Nevertheless, it is useful to see that some of the most prominent efforts to thrust counterintuitive implications on the luck egalitarian project can be naturally parried from within that project. At the very least, this weakens the impulse, powerfully felt by luck egalitarianism's critics, to treat its counterintuitive implications as grounds for abandoning the luck egalitarian enterprise entirely.

B. Luck Egalitarianism's Theoretical Core

The broader objection that critics raise against luck egalitarianism — that luck egalitarianism abandons the fundamental egalitarian ideal of social and political equality (of equality as a form of reciprocal respect among persons who are jointly engaged in social and political relations) in favor of a purely distributive ideal that focuses narrowly on the outcomes of a natural lottery — is similarly overdrawn.

Certainly it is inaccurate to suggest, as Anderson does, that luck egalitarianism has abandoned the traditional egalitarian concern for subordination in favor of "focusing on correcting a supposed cosmic injustice"[46] or to suggest, as Scheffler does, that luck egalitarianism takes a purely distributive view of equality and is unconcerned for the character of the relations among the persons across whom advantage is distributed.[47] Instead, luck egalitarianism emphasizes that the state, by enforcing and purporting

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brute luck. *See* Anderson, *supra* note 10, at 257. But luck egalitarianism does not, it seems to me, require any such sharp distinction, and certainly not one of the sort Anderson seeks to saddle it with, namely based in the metaphysics of choice. Anderson is of course right to say that (at least in the current context) the distinction between deliberate gambles and brute luck depends on whether a risk is *reasonably* unavoidable, and (although Anderson never quite says so) that reasonable must here be an already moralized notion. But luck egalitarianism can accommodate these insights, as the argument developed below is devoted to demonstrating.

46   Anderson, *supra* note 1, at 288.
47   Scheffler, *supra* note 9, at 22-23.

to legitimate whatever distribution of advantage it settles upon, converts questions concerning the natural distribution into questions that involve the character of social and political relations. More specifically, when a state enforces a distribution of advantage without adequate moral grounds — when a state approves of disadvantage in a morally arbitrary way — this offends against the political solidarity of its citizens. Such a state effectively abandons the enterprise of finding justifications for its exercise of power that can be shared among all its citizens. Instead, it confronts the disadvantaged in the mode of brute imposition, thereby placing the advantaged (on whose behalf the imposition arises) out of community with the disadvantaged.[48] Finally, this breach of community has a clear anti-egalitarian flavor. A state that asserts the authority to sustain distributions that advantage some citizens and disadvantage others in morally arbitrary ways — that purports to obligate both the advantaged and the disadvantaged to support such distributions — implicitly treats the advantaged as more worthy than the disadvantaged, even though there are no morally respectable grounds for making this judgment. Put the other way around (and slightly awkwardly), a state can support equal political relations among only those of its citizens whom it does not disadvantage on morally arbitrary grounds. Those who are disadvantaged on such grounds are politically *subordinated*.[49]

When a state approves disadvantage in a morally arbitrary way, then it acts inconsistently with the idea of a fair sharing of the benefits and burdens of social cooperation and instead imposes a pattern of privilege and subordination. Accordingly, the core intuition behind luck egalitarianism is not that equality is about purely natural differences in advantage or that equality is a purely distributive ideal, but rather that when a state prefers some over others in a morally arbitrary way, then the state's claims to authority undermine equal relations among its citizens. Thus, criticisms to the contrary notwithstanding, luck egalitarianism is in fact grounded in a compelling ideal of moral and political equality — a conception of society

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48 I borrow the phrase "out of community" from G.A. Cohen, *Incentives, Inequality and Community*, *in* EQUAL FREEDOM: SELECTED TANNER LECTURES ON HUMAN VALUES 331, 347-55 (Stephen Darwall ed., 1995).

49 This argument applies regardless of whether the state brings the morally arbitrary disadvantage into being or merely authorizes a morally arbitrary disadvantage that has arisen independently. As David Enoch rightly observes in his contribution to this volume, the distinction between doing and allowing cannot afford the state any cover in such matters. *See* David Enoch, *Luck Between Morality, Law, and Justice*, 9 THEORETICAL INQUIRIES L. 23 (2008). The state's claim to authority implicates it even in distributions of advantage that it merely allows.

as a form of cooperation among free and equal persons, or, alternatively, an ideal of political solidarity and non-subordination.[50]

Moreover, the distinction between chance and choice that luck egalitarianism makes so central to implementing distributive justice seems to be at least relevant to the more general account of fair social cooperation and political non-subordination through which I have suggested luck egalitarianism might find a foundation in moral and political ideas about equality. On the one hand, disadvantages that are the result of (brute) bad luck are unquestionably morally arbitrary. This makes it natural to suppose, at least presumptively, that a state that authorizes such disadvantages discriminates among its citizens in a morally arbitrary way and hence subordinates the unlucky to the lucky. On the other hand, disadvantages that are due to the choices of the disadvantaged are not morally arbitrary, so

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50   Both Anderson and Scheffler acknowledge this possibility, at least in passing. Thus, Anderson admits at one point that "[a]lthough the distribution of natural assets is not a matter of justice, what people do in response to this distribution is." Anderson, *supra* note 1, at 331. And Scheffler acknowledges that "questions of distribution are important, for people who are committed to the social and political value of equality, . . . because certain kinds of distributive arrangements are incongruous with that social and political value." Scheffler, *supra* note 9, at 23. Indeed, Scheffler adds that "[l]uck egalitarians often present their view as expressing the intuitive idea that it is unfair if some people are worse off than others owing to factors beyond their control . . . [and] that this idea in turn is rooted in a conception of people as having equal moral worth, so that luck egalitarianism does flow from a broader conception of equality as a moral value." *Id.* at 32.

However, neither Anderson nor Scheffler credits the distinctive way in which the involvement of the *state*, through its claims to legitimate the final distribution of advantage, converts otherwise distributive questions into questions that invoke ideals of equal political status and non-subordination. This is clearest in Scheffler's work, for example in his express insistence that "the most basic question [for egalitarianism] is not the question of what it is for a government to treat people with equal concern, but rather the question of what it is for people to relate to one another as equals." Scheffler, *supra* note 4, at 204. This view works itself into Scheffler's analysis of the connection between inequality and subordination, in the form of an implicit rejection of the luck egalitarian sensitivity to state-sanctioned inequality. Thus, Scheffler fleshes out the connection between distribution and the political ideal of equality by proposing that the central question raised by this connection is what "degree of material inequality . . . is compatible with a conception of society as a fair system of cooperation among equals." Scheffler, *supra* note 9, at 24. The luck egalitarian answer is that it is not the degree of inequality that matters, but the fact that inequality is enforced by a purportedly legitimate state. The "conception of society as a fair system of cooperation among equals" requires that the state not lend its legitimacy to supporting *any* inequality in a morally arbitrary way.

that a state may, again at least presumptively, authorize such disadvantages without subordinating anyone. Indeed, redistribution to compensate for the differential quality of people's choices — which requires the state to take from good choosers and give to bad ones in morally arbitrary ways — drafts the former into the service of the latter and in this way threatens itself to break solidarity and engender subordination.[51]

Concerns for political solidarity, and in particular for non-subordination, therefore permeate luck egalitarianism — from its deepest foundations to the

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51 Another case in which redistribution can engender subordination, although now in a more complex way, arises when persons take deliberate gambles and some win while others lose.

To be sure, as Kasper Lippert-Rasmussen has pointed out, winning and losing gamblers enjoy different levels of advantage in spite of having made the same choices. *See* Lippert-Rasmussen, *Egalitarianism, Option Luck, and Responsibility*, *supra* note 8, at 572-73. But these differences should not trouble egalitarians, at least not as insistently as differences in brute luck do. Although the differences in advantage that arise in such cases are not related to *differences* in the gamblers' choices, they are *expressions* of the choices. That is because the prospect of different outcomes is accepted, and indeed intended, as part of the initial choice to gamble. Allowing such different outcomes to stand therefore does not place winning gamblers out of community with losers but is instead an expression of solidarity among gamblers — an affirmation of the terms on which gamblers choose to relate to one another. (This form of solidarity is, moreover, recognizable in gambling culture, as in the familiar gambler's motto: "When I win, I laugh; when I lose, I cry; but the money always changes hands.")

Indeed, and to the contrary, redistribution from winning to losing gamblers would itself engender subordination. It would subordinate wining to losing gamblers, by allowing the losers some of the benefits of the winners' bets. Moreover, such enforced risk-pooling would discriminate against those with a taste for risk by making (at least some) gambles practically impossible, thus reducing the range of choices available to risk-seekers. And the redistribution would, in this way, subordinate gamblers quite generally to their more risk-averse counterparts.

This may seem a concession that puts the basic luck egalitarian project at risk, at least in respect of its critical capacities to confront and reject existing inequalities. Thus Alon Harel has rightly remarked that a state might run a lottery among its citizens — which produces winners and losers and hence a distribution of advantage quite as dispersed as exists in the world as it is — without thereby subordinating anyone. *See* Alon Harel, Comment on Daniel Markovits, *Luck Egalitarianism and Political Solidarity* (Jan. 4, 2007) (unpublished comment, on file with *Theoretical Inquiries in Law*). But it would be essential, in such a case, for the lottery to be chosen by all citizens from a starting point of initial equality, so that all citizens were really equally situated gamblers. Both the natural and social lotteries (which distribute talents and birth-rights, respectively) are of course not like this at all. And in these thoughts, luck egalitarianism's critical bite is revived.

more practical distinctions that dominate its implementation. To be sure, the luck egalitarian ideal of non-subordination makes distribution the measure of equality in implementation. But this is not in any way to abandon the political or solidaristic elements of equality — the idea that the purpose of equality is to guarantee reciprocity and respect in political society. Rather, the luck egalitarian emphasis on distribution reflects the demandingness of the luck egalitarian conception of political solidarity, which sets itself firmly against the human inclination to accept and even authorize what is. Luck egalitarianism insists that a true society of equals cannot entrench the vagaries of individual fate but instead arises only when persons share in one another's fortune, save only insofar as morally respectable considerations separate them.[52]

My purpose here is not to put objections to luck egalitarianism like those that Anderson and Scheffler pursue to rest, and certainly not to assess the alternative conceptions of distributive justice that Anderson and Scheffler prefer. But these observations, suitably deepened and refined, reveal that the objections raised against luck egalitarianism are unsympathetic to the luck egalitarian project. They exaggerate the rigidity of luck egalitarian

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52 Note that luck egalitarianism applies this principle directly over every part of the distribution of advantage. It is concerned with regulating not just morally arbitrary disadvantage at the bottom of the distribution and morally arbitrary hyper-advantage at the top, but also morally arbitrary differences of advantage that arise in the middle of the scale, among persons who are all, from a broader perspective, moderately advantaged. For the luck egalitarian, it is a breach of political solidarity if the child of tradespeople is funneled, by circumstance, into the comfortable lower-middle-class, while the child of professionals is funneled into the wealthier, but still not opulent, upper-middle-class. For the upper-middle-class child to insist on retaining her relative advantage is to assert an entitlement to brute preference that is incompatible with maintaining solidarity with her lower-middle-class compatriot. Casual observation of the class-resentments of the lower-middle-class, which are directed not just at the ultra-rich but also (in substantial measure) at the entitled upper-middle-class, confirms this breach of solidarity.

In this respect, luck egalitarianism is quite different from the democratic egalitarianism that Anderson proposes in its place. Although Anderson does elaborate egalitarian principles for the middle range (as she calls it), these have only indirect connections to her basic egalitarian ideal. (They dilute the stigma that more narrowly focused redistribution would impose on the bottom range, and they prevent the "hollowing out" of the middle range that single-mindedly bottom oriented redistribution would allow and the class warfare that would ensue. *See* Anderson, *supra* note 10, at 267.) Dispersion in the middle of the distribution of advantage cannot be *in itself* inegalitarian for Anderson, as it can be for the luck egalitarian and also, I have suggested, in ordinary political experience.

policy in the face of disadvantage and underestimate the connection between luck egalitarianism's founding ideals and the broader values of progressive politics. This result should not be surprising, given the long and broad appeal that luck egalitarian principles have had for thinkers who are deeply committed to the progressive campaign against political subordination. Indeed, given this context, the true surprise would be if luck egalitarianism were indeed as out of step with the progressive tradition as recent critics have claimed — if luck egalitarianism were actually so inadequate that, as Anderson says, the results could not be "any more embarrassing for egalitarians" if work in this tradition "had been secretly penned by conservatives."[53]

III. Luck Egalitarianism Redux

While these arguments demonstrate that Anderson's and Scheffler's criticisms of luck egalitarianism are in some respects overdrawn, they do not quite vanquish these criticisms. Both the narrower and broader arguments that Anderson and Scheffler have developed retain some of their sting, especially when directed against luck egalitarianism's responsibility-tracking variant. Thus, it does seem that luck egalitarianism can have unpalatable implications — including in respect of the gap that may plausibly exist between the humanitarian sympathy that the luck egalitarian can comfortably accord bad choosers and the more demanding concern that is intuitively associated with realizing a true society of equals.[54] It also seems that luck egalitarianism, in its calculus of responsibility, can take an unappealingly actuarial and mechanical — as Scheffler says, a "fetishistic"[55] — approach to political solidarity, indeed, that the intrusive micromanagement of individual lives needed to implement the responsibility-tracking ideal, as Anderson says, "effectively dictates [to people] the appropriate uses of their freedom."[56]

And so the argument is left at an impasse. A set of objections identifies certain weaknesses in a powerful approach to equality, but it does so in a fashion that obscures rather than acknowledging the view's underlying appeal. The objections therefore never quite manage to engage their target.

This diagnosis suggests that a more modest reconstruction of the

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53   Anderson, *supra* note 1, at 287.
54   Anderson makes this point in her contribution to this volume. *See* Anderson, *supra* note 10, at 258-59.
55   Scheffler, *supra* note 9, at 23.
56   Anderson, *supra* note 1, at 289.

Anderson-Scheffler line of criticism — one that acknowledges the discomfort out of which this criticism grows but also the appeal of the luck egalitarian project — may better advance the overall cause of understanding equality. This approach redirects Anderson's and Scheffler's criticisms, not at luck egalitarianism generally but rather at the maximalist, responsibility-tracking elaboration of luck egalitarianism that I introduced earlier and that (as I said) many contemporary luck egalitarians seem to prefer. Such an approach accepts that a state's imposing distinctions among citizens' entitlements in morally arbitrary ways is inconsistent with the egalitarian conception of political solidarity. It therefore acknowledges, at least provisionally, that a state that advantages some citizens over others in morally arbitrary ways, including by legitimating morally arbitrary natural differences in advantage without adequate justification, thereby subordinates those whom it disadvantages. The approach questions, however, whether the narrower and more extreme principle of responsibility-tracking redistribution that remains popular among luck egalitarians is the right way to implement this basic luck egalitarian ideal. Thus, it is one thing for an initial disadvantage to be morally arbitrary, but quite another for a state's decision to treat the disadvantage as legitimate to be morally arbitrary. The responsibility-tracking elaboration of luck egalitarianism elides these two, when in fact there may exist morally non-arbitrary reasons for a state to allow and even to enforce patterns of advantage and disadvantage that are themselves morally arbitrary. Indeed, the responsibility-tracking view's failure to recognize these reasons for affirming morally arbitrary disadvantage may account for the intrusive and mechanical approach to distributive justice that critics have — plausibly — charged luck egalitarianism with displaying. The responsibility-tracking focus on eliminating morally arbitrary disadvantage to the exclusion of all other disadvantage neglects that people are active, self-directed creatures and reduces them, in their distributive claims, into passive vessels of fortune — it treats people not as agents, one might say, but merely as patients — and therefore undermines certain features of moral personality that make solidarity appealing and subordination wrong to begin with, including for the luck egalitarian. The problem with responsibility-tracking egalitarianism, therefore, is not that it is insufficiently solidaristic in any straightforward sense. Rather, responsibility-tracking egalitarianism is too solidaristic in one way, treating all citizens as equal shareholders in the fortunes of each, and not solidaristic enough in another, treating all citizens as sole owners of their choices.

Moreover, understanding these shortcomings of the responsibility-tracking view may help to reveal the appeal of more modest reconstructions of the luck egalitarian project. It will be helpful, in developing and clarifying

this suggestion, to return to two of the (related) ways in which Anderson argues that luck egalitarianism produces unpalatable results — first, that eliminating the differential effects of luck requires intrusive judgments of responsibility whose effect is to render people unfree,[57] and, second, that denying any compensation for the differential effects of choice unduly burdens the upright, who are left to bear the full costs of their principles.[58] I shall refocus each of these criticisms narrowly on responsibility-tracking egalitarianism, to investigate exactly how responsibility-tracking redistribution produces each of these unappealing results. The answer, in each case, will bring the argument back around to the conception of political solidarity that I have said lies at the root of luck egalitarianism, showing that the responsibility-tracking principle does not implement this conception in the best or most appealing way. Together, these examples will guide the argument towards an elaboration of a luck egalitarian conception of non-subordination that is less mechanical than the responsibility-tracking version that luck egalitarians have too often pursued.

A. Talent Slavery

It is said that implementing the first element of the responsibility-tracking principle — eliminating the differential effects of luck on the distribution of advantage — requires intrusive interventions in people's lives that render them unappealingly unfree. Nowhere is this implication clearer than in connection with responsibility-tracking redistribution in the face of unchosen differences in people's talents. Indeed, this difficulty has long been familiar even to proponents of luck egalitarianism, who have famously sought to limit redistribution in favor of the involuntarily untalented in order to avoid enslaving the talented. The threat of talent slavery is, however, greater than luck egalitarians have generally credited, because it arises in the shadow of substantially more modest redistribution than luck egalitarians have

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57 *Id.* at 289.

58 *Id.* at 297-98, 300. Anderson focuses on people who are left to bear the full consequences of their decisions to care for others, but I am not sure that this is the best example: at least insofar as those who need care were victims of bad luck, they would be entitled to egalitarian redistribution, which might go to compensate their carers. In any event, I shall focus on a slightly different class of cases, in which people form ethical commitments — to religions or other forms of life — that impose costs on others and the question arises whether they should be made to bear the full extent of these costs.

acknowledged. Indeed, the threat of talent slavery reveals that responsibility-tracking redistribution in the face of involuntary talentlessness cannot possibility be rendered appealing, so that luck egalitarianism should abandon the ambition to track responsibility, at least in this respect. The way in which this result obtains, moreover, has important implications for the broader luck egalitarian conception of political solidarity.

A person's talent-level, in the technical sense at issue, is determined by the greatest wage that she can command in exchange for her labor. Accordingly, being talented is a form of advantage and being untalented a form of disadvantage. Moreover, although a person's choices influence her talents — insofar as she strives to develop her capacities or to find others who will pay her to employ them — luck also plays a substantial role in fixing a person's talents. Most immediately, the natural genetic lottery determines how a person's capacities will respond to whatever efforts to develop them she embarks on. And even a person whose genetic endowments are not unusually unlucky may, through no choice or fault of her own, lack opportunities for developing her capacities through education or training. These considerations make differences in talents a natural and indeed prominent site for luck egalitarian distributive concern.

Luck egalitarians seek, in this case, to shift resources from people who are involuntarily talented to people who are involuntarily untalented — specifically by taxing the involuntarily talented and redistributing the revenues raised by this tax to the involuntarily untalented. The luck egalitarian conception of talent entails that both sides of this redistributive scheme — both the taxes that are levied and the distributions that are made — must depend on people's earnings *potential* (the maximum wages that would be available to them if they developed and deployed their talents in maximally remunerative ways) rather than on the *actual* wages that, as it happens, they earn. (The scheme allocates to each person what tax lawyers call an imputed wage, set at the difference between the most that she might earn and whatever amount that she actually does earn.) This reflects the fact — which is essential for luck egalitarians — that insofar as people choose not to develop their talents or, having developed their talents, choose to earn less than their maximum potential wages, their lower actual wages neither excuse them from the egalitarian obligation to pay taxes nor entitle them to egalitarian distributions.

Responsibility-tracking luck egalitarians seek to shift sufficient resources so that only chosen differences remain in the advantages that people enjoy in respect of their talents. The question precisely what tax and distribution schedules will best implement such a responsibility-tracking redistributive scheme has received some attention, and even generated some confusion,

among luck egalitarians.[59] Dworkin, for example, has found it necessary to argue against redistribution that guaranties everyone the income associated with the highest talent-level,[60] and he has suggested that redistribution might secure for everyone the income associated with the sixtieth percentile of the talent distribution, which, at least if talents are normally distributed, lies above the mean.[61] In fact, however, such redistribution is actuarially impossible — redistribution, after all, only shifts rather than creates resources, and it therefore cannot raise the average level of advantage or (what would be equivalent) make everyone more advantaged than average.[62]

Instead, in order to achieve the responsibility-tracking goal of eliminating the disadvantage of being involuntarily untalented, redistribution need be more modest only, securing for each untalented person the wage associated with the mean level of natural talent (more precisely, with the talent level that each untalented person would have achieved had she applied her choices to the mean level of natural talent). In order to fund these payouts to the untalented, egalitarian taxes would need to garnish the entire difference between the maximum wage that each talented person can command and the wage associated with the mean talent level (more precisely, with the talent level that this person would have achieved had she applied her choices to the mean level of natural talent).[63] This pattern of spending and taxing would leave all persons, whatever their talent levels, finally in possession of wages associated with the mean talent level and thus smooth out all involuntary differences in people's talents, as responsibility-tracking egalitarianism requires.

But eliminating the disadvantage of being involuntarily untalented in this way comes at a cost to the talented. In order to pay the taxes that the scheme envisions (at least without becoming disadvantaged herself), each talented person would have to develop her natural talents along maximally remunerative lines and, moreover, always deploy these talents towards

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59 I have taken up the question before myself, *see* Markovits, *supra* note 11, at 2305-13, and the remarks that follow borrow substantially from that earlier discussion.

60 Dworkin, *supra* note 3, at 319-20.

61 *Id.* at 323.

62 If redistribution could create wealth in this way, then the distributive element of equality (at least) would become uninteresting, because the conditions of scarcity that make distribution important would no longer exist.

63 Any lower level of tax would leave the talented with above mean wages even as redistribution secured mean wages for the untalented, and that would require creating rather than merely shifting wealth, which (of course) redistribution cannot possibly do.

whatever form of work paid her the most. She would be forced to do this even if she preferred to develop her talents in some other direction or to do some other job, indeed, even if these preferences reflected values and ambitions that were important to her. She would therefore, in Dworkin's words, become a slave to her talents.[64] And this, clearly, is unacceptable.

Relief from the threat of talent slavery requires making a significant departure from the rigors of the responsibility-tracking ideal. This is because talent slavery will arise even in redistributive schemes that are satisfied substantially to approximate tracking responsibility and guarantee only near-mean talent level wages to all. As talent distributions become more dispersed, and in particular as they develop long tails at their high ends (so that the median and mode talent levels fall substantially below the mean), the taxes needed to support distributions that secure wages below the mean but above the median and mode talents approach those needed to secure wages associated with the mean talent level.[65] And accordingly, egalitarian redistribution can avoid talent slavery in such distributions only by guaranteeing incomes that fall substantially below those associated with the mean talent-level — only, that is, by leaving substantial involuntary disadvantage uncorrected. A simple example illustrates this point. Imagine a society of ten thousand people, each of whom has the natural talent to do a wide variety of jobs that all command a wage of $200, and one of whom has a further natural talent that enables her to do one additional, highly specialized job that commands a wage of $1,000,200. The median talent level in this society, $200, falls well below the mean, which is $300, and the economic order involves substantial involuntary disadvantage. But redistribution is possible at all only by forcing the lone talented person to work at the only job whose wages can support a redistributive scheme, and whose highly specialized character may be unappealing to her. In this society,

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64 Dworkin, *supra* note 3, at 320. Note that Dworkin employs the idea of talent slavery for purposes very different from mine, specifically, to explain why egalitarianism should not "guarantee[] the very highest wage levels." *See id.* at 319-23. This conclusion may be established much more simply, as I have argued, from the actuarial structure of redistribution.

65 This is because a low percentage of total wages is earned, in such distributions, by persons whose talents lie above the median and mode but below the mean. Accordingly, the redistribution associated with guaranteeing the median or mode wage is similar to that associated with guaranteeing the mean wage, and the tax base out of which this redistributions might be funded is similar to the tax base for raising funds to secure the mean wage.

every step towards tracking responsibility, no matter how modest, enslaves the talented person.

Finally, although the example just described of course represents an extreme case, actual talent distributions exhibit the general pattern of dispersion, with long tails at the high end that shift medians and modes well below means, that causes even modest steps toward responsibility-tracking redistribution to impose talent slavery. The standard deviation of the wage distribution in a recent year in the United States, for example, was roughly $60,000, and the median and mean wages were roughly $23,000 and $38,000, respectively.[66] Insofar as this wage distribution mimicked the talent distribution,[67] even redistribution that guarantied all citizens only three-quarters of the wage associated with the mean talent-level would have required people whose talents enabled them to earn $1 million in that year to pay roughly $500,000 in wage taxes. Most senior elite servants of business in the American economy did earn more than $1 million,[68] but fewer than one in

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66 I base these figures on Internal Revenue Service reports of wage taxation for the year 1999. *See* David Campbell & Michael Parisi, *Individual Income Tax Returns, 1999*, STAT. INC. BULL., Fall 2001, at 34, http://www.irs.gov/pub/irs-soi/99indtr.pdf. I report only rough numbers because the IRS data do not report individual wages but only the number of people whose wages fell within certain ranges and therefore cannot support more precise calculations. This entails, incidentally, that the standard deviation that I report represents a lower bound on the true standard deviation, because it does not take into account the dispersion of wages within these ranges.

67 It is worth noting that although luck egalitarian taxation is based on potential wages, the data that I am reporting of course reflect actual wages. This does not undermine my argument, because the distribution of potential wages is almost certainly more dispersed and more skewed than the distribution of actual wages. Because of the diminishing marginal utility of money, the poor are more likely to work at the highest paying jobs available to them than are the rich.

I am also treating the distribution of wages as reflecting involuntary rather than voluntary differences in talents. Again, this does not undermine my argument. Although scholars cannot agree on whether differences in wages are principally caused by the genetic lottery that fixes natural talents or the social lottery that fixes opportunities to develop talents, there is broad agreement that some combination of these two factors, which are both involuntary, explain a substantial portion of wage inequality. *See, e.g.*, CHRISTOPHER JENCKS, WHO GETS AHEAD? 50-84 (1979); and Gary Solon, *Intergenerational Mobility in the Labor Market*, *in* 3 HANDBOOK OF LABOR ECONOMICS 1773 (Orley Ashenfelter & David Card eds., 1999). Nor are these the only involuntary sources of wage inequality — the tastes of others, which determine the market demand for a person's talents, present another example.

68 The mean salary of partners in New York's fifteen most profitable law firms exceeded $1 million, as did the mean salary of New York investment bankers of comparable rank. For the lawyers, see *A Smaller Millionaires' Club*, AM. LAW., July 2002, at 151. For the bankers, see *Wall Streeters Get Richer*, BUS. WK. ONLINE,

two hundred jobs in the American economy paid over $500,000. Accordingly, even if a person capable of finding work as a senior Wall Street lawyer or banker were also capable of doing all the jobs earning over $500,000 (which is far from certain), the redistribution would leave her significantly enslaved by her talents. She could not, for example, work as a doctor, a university professor, or an engineer, or indeed at virtually any other middle class job.[69] Moreover, such effects will be still more dramatic in developing economies, in which wages are still more dispersed, with a still thinner tail at the high end.

These reflections reveal that talent slavery is a consequence not just of an absolutist or unduly rigorous pursuit of responsibility-tracking redistribution, but also of even more moderate efforts to implement the responsibility-tracking ideal. Avoiding talent slavery requires renouncing responsibility-tracking and restricting egalitarian redistribution in ways that allow substantial involuntary disadvantages concerning talents to remain uncorrected.

The analysis of talent slavery fleshes out, for one particular class of disadvantage, the general criticism that responsibility-tracking egalitarianism intrudes pervasively into people's lives and renders them unacceptably unfree. It is intuitively clear that no reasonable person would accept talent slavery, and that no reasonable conception of distributive justice can impose it. Moreover, the argument does more than just establish a context to support a purely intuitive, and ad hoc, objection to the responsibility-tracking ideal. Instead, the treatment of talent slavery reconnects the intuitive sense that responsibility-tracking egalitarianism is unappealing to the more theoretically articulate conception of political solidarity (the ideal of non-subordination) that lies at the heart of the luck egalitarian view more generally. It therefore demonstrates that responsibility-tracking redistribution is not the best elaboration of luck egalitarianism.

To be sure, the luck egalitarian conception of non-subordination insists that a state may not prefer some citizens over others for morally arbitrary

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Nov. 20, 2000, http://www.businessweek.com/2000/00_47/b3708175.htm (reporting wages of vice presidents, directors, research directors, and managing directors of New York's investment banks). *Business Week* also reported that four thousand such New York investment bankers earned at least $1 million in 2000. *See* Emily Thornton & Heather Timmons, *The Street's Punishing Pay Stubs*, BUS. WK. ONLINE, Nov. 20, 2000, http://www.businessweek.com/common_frames/ca.htm?/2000/00_47/b3708174.htm.

69 This calculation assumes a modestly progressive tax structure within the class of persons paying the taxes — that is, a modest effort to reduce involuntary differences in advantage even among the talented.

reasons. And because involuntary disadvantages are morally arbitrary, a state that enforces them presumptively subordinates the disadvantaged. But this presumption is rebuttable, because it remains possible that there exist morally non-arbitrary reasons for accepting morally arbitrary disadvantage. And avoiding talent slavery is just such a reason. The luck egalitarian case for eliminating involuntary disadvantage employs a conception of moral personality that emphasizes the free development and exercise of all people's agency. Political solidarity, for the luck egalitarian, requires that all citizens be treated equally as agents — that they all enjoy equal freedom. This requires that citizens' opportunities for choice are not unequally limited by chance, which accounts for the presumption that fortune (both good and bad) belongs to the collective and not to the individual citizens on whom it happens, in the first instance, to fall. But although unequal fortune poses a threat to equal freedom, it does not pose the only threat. And the luck egalitarian commitment to collectivizing luck in the name of equal freedom is limited by other just as powerful ways in which equal freedom might be undermined. The threat of talent slavery identifies one way in which the project of eliminating differences in luck in order to secure equal agency is self-limiting. Talent slavery identifies the point at which redistribution collectivizes not just the value of citizens' capacities — that is, their talents (in the technical sense of the word) — but rather the citizens' persons themselves. And the talented citizens whose persons are made into the property of the collective in this way (even as the persons of their less talented fellow citizens are not collectivized) are thereby subordinated in precisely the manner that luck egalitarianism rejects.

A careful development of the problem of talent slavery therefore illustrates one respect in which the effort to eliminate the differential effects of luck that is characteristic of responsibility-tracking redistribution involves not just unappealing outcomes but also an overly mechanical development of the luck-egalitarian conception of political solidarity. Luck egalitarianism, sympathetically reconstructed, does not entail and indeed rejects eliminating all involuntary disadvantage. And luck egalitarianism, so reconstructed, is not merely a distributive view but instead states an appealing conception of a political community of equal agents — a conception, moreover, that has measurable implications for luck egalitarian redistributive policy.

B. Accommodation

This discussion of talents has emphasized that responsibility-tracking egalitarianism's ambition to eliminate the differential effects of luck on the distribution of advantage is inconsistent with the conception of political

solidarity that lies behind the luck egalitarian enterprise more generally. But the problem of talent slavery also illustrates that the other face of the responsibility-tracking ideal — the rule forbidding redistribution to correct for the differential effects of choice, so that people must bear the entire costs of their choices — must be rejected as well, and for related reasons. The argument against talent slavery entails that persons, in this case the talented, ought not always to bear the full external costs of their choices concerning what jobs to do (measured in terms of the value that others ascribe to their production in the jobs that they decline), at least when fully bearing this cost would in effect leave them with no meaningful choice of job at all. Talent slavery of course presents an extreme case, in which responsibility-tracking internalization of the costs of choices eliminates meaningful freedom entirely. But the core objection to responsibility-tracking egalitarianism's insistence that people bear the full costs of their choices may be extended, at least for certain classes of choices, to cases in which the effects of cost-internalization on freedom are less dramatic. Pursuing this generalization will help further to develop the basic conception of political solidarity that lies behind the broader luck egalitarian project.

To be sure, the responsibility-tracking rule that people must internalize the full costs of their choices remains appealing in many cases. Quintessentially, people should bear the full costs of their everyday choices about what to consume, or even about whether to consume or to save. Departures from this rule, in such ordinary circumstances, require some people to bear burdens that are literally of others' choosing, and are therefore morally arbitrary for them. And when a state lends its power and legitimacy to such a morally arbitrary distribution of advantage, at least without sufficiently good reason, then it subordinates those citizens whom it requires to bear the burdens of other citizens' choices.

But sometimes the rule that people must bear the entire costs of their choices produces unappealing results. Here recall, for example, Anderson's objection that the responsibility-tracking principle is inconsistent with our intuitive sense that the state should assist people who fall into need because, responding what they consider important moral principles, they choose to care for their loved ones.[70] Such cases may be generalized, moreover, including to choices for which, in contrast to care-giving, there is no reason to believe that the personal costs of the choices reflect the market's failure to

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70   Anderson, *supra* note 1, at 297-98, 300.

account for their true social benefits.[71] We have strong intuitions in favor of accommodating not just family commitments but also religious and linguistic practices, among others. We think that participants in minority religions should be permitted to observe their holy days without adverse employment consequences, and we think that businesses and especially government should make themselves accessible in minority languages. And we do not think, in either case but especially in the first, that the fact that a person chooses not to convert to the majority religion or to adopt the majority language deprives her of the right to accommodation. In all these cases, accommodation requires insulating the people who are accommodated from the full costs of their choices, and imposing some of these costs on others, in ways that the responsibility-tracking ideal would forbid.

The tension between this broad commitment to accommodation and the responsibility-tracking ideal has been noticed before, by Seana Shiffrin,[72] and the justification for accommodation that Shiffrin offers bears revisiting, because it once again reveals the gap between tracking responsibility and the more basic luck egalitarian conception of political solidarity. Shiffrin develops several arguments against full cost-internalization of choices along responsibility-tracking lines, including most importantly that, at least with respect to certain choices, full cost-internalization intrudes on and distorts in inappropriate ways the deliberations of the people considering the choices.[73]

This is easiest to see with respect to choices concerning religious observance. People should make these choices in a way that concentrates on the true nature of divine grace (or whichever alternative formulation of the religious impulse they prefer), without the distractions of considerations such as whether a particular form of sabbatarianism will cost them their jobs. Certainly this is true from the perspective of the religious believer, who takes the divine at face value. But it is also (and equally) true from the perspective of the skeptic, for whom religious commitments merely stand in for the broader class of commitments that concern the ultimate purpose and value of life, commitments that people should (again) study and develop without being subject to the complete range of (often aggressively banal) pressures imposed by full cost-internalization. At least in these areas, exposure to such

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71 For more on this question, see text accompanying *supra* notes 42-43 and the material cited in the notes.

72 *See* Seana Shiffrin, *Egalitarianism, Choice-Sensitivity, and Accommodation*, *in* REASON AND VALUE: THEMES FROM THE MORAL PHILOSOPHY OF JOSEPH RAZ 270 (R. Jay Wallace et al. eds., 2004).

73 *See id.* at 289-95.

pressures does not discipline choice but instead threatens to cause people to make, as Shiffrin puts it "inauthentic" choices.[74]

Moreover, this recognition suggests that even choices concerning less profound matters may nevertheless (given the values that they involve) be most appropriately made from a perspective that enjoys some shielding from cost-internalization.[75] Indeed, the earlier discussion of talent slavery may be interpreted as identifying, in the selection of jobs, just such a choice. Of course, the value of deliberative autonomy will always confront countervailing considerations (including considerations that involve substantive judgments about the ends that persons' deliberations settle on), which constrain its influence and reduce both the scope and extent of the shielding from full cost-internalization that persons should enjoy. These countervailing considerations may be effective even in core areas of moral deliberation such as religion — a vivid illustration is T.M. Scanlon's well-known observation that it may be proper for a state to insist specifically on satisfying its citizens' material needs, even for citizens who prefer to deploy the required resources in some other way, say to build a monument to their god[76] — and they will be only more influential in more peripheral areas.[77] It is always necessary to strike an appropriate balance between deliberative autonomy and other values.

In any event, and however the details are worked out, Shiffrin is

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74 *See id.* at 291.

75 Note that considerations of deliberative autonomy can cut in the opposite direction also, to require people in some circumstances to internalize the costs of not just choices but also chance. It is sometimes thought (for example, by Samuel Scheffler, who also attributes the view to Rawls) that this is the situation with respect to people's ordinary tastes, for example for some types of consumption but not others. *See, e.g.*, Scheffler, *supra* note 9, at 9-12, 24-31. Often such tastes are unchosen — a product of the accidents of personal history and experience. Responsibility-tracking egalitarianism would therefore treat expensive tastes (insofar as they arise on this model) as bad luck, and offer full compensation for them. *See, e.g.*, Cohen, *supra* note 5, at 922. But a better approach is to say that, at least with respect to tastes simply for consumption, people have an affirmative duty to take hold of their tastes, and to develop them with an eye to what their satisfaction will cost others. (This is Scheffler's view. *See* Scheffler, *supra* note 9, at 9-12, 24-31.) This treatment fits better with the luck egalitarian conception of political solidarity — part of what it means to engage one's fellow citizens as equals in collective government is to acknowledge an affirmative duty not to burden them gratuitously, which includes an obligation to avoid developing expensive tastes when these are just brute tastes, unsupported by any deeper values.

76 *See* T.M. Scanlon, *Preference and Urgency*, 72 J. PHIL. 655 (1975).

77 I would like to thank Jeremy Waldron for bringing this complication to my attention.

surely right that the relaxation of strict cost-internalization associated with accommodation "permits people some aspects of their lives in which they do not have to police themselves . . . so hard or so comprehensively," and that "this makes room for the expression and development of certain values, feelings, and relations."[78] More specifically, "there is an important value to sometimes relaxing norms of choice-sensitivity to facilitate . . . one important sort of freedom — the freedom to engage with and react directly to discrete reasons and values."[79]

Once again, these considerations demonstrate that responsibility-tracking redistribution can disserve the core luck egalitarian ideals of solidarity and non-subordination. Although it is generally true that allowing some people to pass on the costs of their choices subordinates those who are made to bear the burdens of other people's choices — "although lapses in choice-sensitivity," as Shiffrin says, "threaten to put one person to work for another . . . generat[ing] hierarchy"[80] — this presumption is rebutted insofar as insulating people from the costs of certain of their choices is necessary for the preservation or development of their own moral personalities. As a choice comes substantively closer to addressing the core questions of human self-realization — as it more significantly concerns the development of the chooser's moral personality — so the effects of responsibility-tracking cost-internalization on that choice, and on the development of its chooser's moral personality, must be scrutinized more closely. And when these effects become too distorting — either because, as in the case of talent slavery, they constrain freedom too dramatically or because, as in the case of religious or moral commitments, self-realization requires unusually unfettered choice — then requiring the chooser to bear the full costs of her choice undermines her moral personality.

Once again, although the pattern of burdens that departures from responsibility-tracking cost-internalization allow to be imposed on those who must bear the costs of choices that others make is morally arbitrary, there is a morally non-arbitrary reason for allowing this pattern to arise. This reason invokes the deliberative circumstances of the people who are relieved of the full costs of their choices, and the fact that for some choices, some measure of relief from cost-internalization is necessary for people to choose responsibly and authentically.

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78   *See* Shiffrin, *supra* note 72, at 293.
79   *See id.* at 294.
80   *See id.* at 302.

C. Luck Egalitarianism and Political Solidarity

The argument has therefore returned, finally, to the basic luck egalitarian conception of political solidarity and non-subordination. This conception regards politics as a cooperative venture among free and equal agents, and it therefore continues (even as it retreats from the responsibility-tracking ideal) nevertheless to make the distinction between chance and choice a relevant, and in fact important, guide for redistribution in the name of non-subordination. Differences in luck are detached from the moral agency of the persons whom they befall, whereas differences in choices express moral agency. And a state that enforces and purports to legitimate the differential luck of its citizens therefore advantages the lucky over the unlucky in ways that are difficult to explain save by reference to a brute preference for the lucky, which threatens to create hierarchy and subordination. Moreover, a state that allows some citizens to pass the burdens of their choices off onto others similarly threatens to adopt an absolute preference in favor of the citizens whom it relieves of responsibility and against the citizens on whom it imposes undeserved burdens, and so once again to impose hierarchy and subordination.

But although the distinction between chance and choice establishes presumptions of subordination, these presumptions are not always dispositive. It is possible for a decision to authorize a disadvantage to be morally non-arbitrary even though the disadvantage is arbitrary. This happens when there exist good moral reasons for accepting the arbitrariness. And although chance is morally arbitrary and choice is not, a government may thus nevertheless allow luck to stand or accommodate choices for morally non-arbitrary reasons, including most notably reasons having to do with respecting and sustaining the features of moral personality that make choice distinct from chance to begin with. And indeed, for the reasons that I have elaborated, accepting some measure of moral arbitrariness in the distribution of advantage is a condition of freedom and self-realization among persons living in community as equal citizens. One might say, by way of summary, that although the luck egalitarian conception of political solidarity generally approves of the full sharing of chance and the full cost-internalization of choices that responsibility-tracking redistribution promotes, exceptions arise insofar as leaving some luck to lie where it falls and accommodating certain choices is necessary in order for some people to develop their moral personalities in authentic and self-directed ways, and hence to participate in politics as free and equal citizens.

Of course, these general remarks do not yet say just how much of which kinds of luck must be allowed to stand uncorrected and just how far which

choices must be accommodated in order to sustain the luck egalitarian conception of political solidarity. Anderson notes that the ideal of political solidarity that I have proposed here stands in need of further development,[81] and I agree. Both the intensive and the extensive properties of luck egalitarian political solidarity remain obscure. Intensively, more must be said to frame the limits of the demands associated with preserving individual moral personality and to say how far these encroach on luck egalitarianism's responsibility-tracking tendencies. Extensively, more needs to be said about what features of a person's life are covered, as it were, by solidaristic considerations — about the old "equality of what" debate, that is, although now set in a new frame. And although the case studies, and in particular the one concerning talent slavery, suggest how one might go about answering such questions, and what the answers might look like for particular types of luck and choice, they turn on highly circumstance-specific judgments and therefore cannot be generalized mechanically even to adjacent sites of redistribution, much less to those farther afield.

Nevertheless, the argument pursued here does suggest natural avenues for further thought. In particular, the luck egalitarian conception of political solidarity emphasizes that this is a solidarity among persons who are equally agents (that is deliberative, self-directed creatures) rather than just patients (that is, passive bearers of fortune). And accordingly, a more complete development of luck egalitarianism should pursue a model of equal agency. Perhaps this is why there is a historical affinity between the luck egalitarian and contractarian traditions, because the social contract method promises to model equal agency, by imagining choices in which fate has not yet intervened to give people unequal opportunities.

CONCLUSION

These arguments concerning talent slavery and accommodation, and the lessons that they teach, show that the objections that have recently been raised against luck egalitarianism in fact apply only, or at least principally, to its most mechanical and rigoristic responsibility-tracking variant. (This is perhaps no criticism of those who press the objections, given that the responsibility-tracking approach has been so prominent in luck egalitarian writing in recent years.)

To begin with, many (although perhaps not all) of luck egalitarianism's

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81   *See* Anderson, *supra* note 10, at 259-60.

unpalatable consequences may be avoided by relaxing the responsibility-tracking principle. Certainly luck egalitarianism requires neither the intrusive and coercive regulation of citizens' lives associated with talent slavery and its equivalents, nor a rigid and callous refusal to accommodate people's most basic and even generous moral commitments. In addition, and more importantly, a luck egalitarianism that retains a central role for the distinction between chance and choice — and a basic preference for distributive claims based on bad luck over claims based on bad choices — but abandons the responsibility-tracking principle's undue rigorism does not present a mechanical or merely distributive view of justice but instead emphasizes justice's essentially relational character, elaborating an appealing ideal of non-subordination and political solidarity. In sum: Luck egalitarianism may be developed in flexible ways, to produce appealing results that establish not just equal distributions but equal relations among citizens.

Moreover, this approach remains true to the basic luck egalitarian vision, and certainly retains the distinctively demanding conception of political solidarity that sets the luck egalitarian tradition apart from alternative conceptions of equality, including for example Anderson's democratic equality.

This is easy to see at the level of practical policy. Luck egalitarianism, as I have understood it, continues to insist that it is a mistake for a theory of equality to find, as Anderson's does, its paradigms for distributive injustice in the forms of intentional, malevolent subordination associated with racism, sexism, classism, nationalism, and other caste systems, and the harms (most immediately, genocide, slavery, and ethnic oppression) that these forms of subordination impose.[82] Instead, luck egalitarianism adds to this list another free-standing and quite distinctive form of subordination, which arises when the state entrenches and purports to legitimate the vagaries of unintended fortune, both natural and social. Luck egalitarianism, as I have said, resists the human inclination to approve of what is, insisting instead that a truly equal politics must allow only morally respectable (and not merely naturalized) disadvantages — so that every unequal outcome must be affirmed from a point of view of equality before it may be allowed to stand.

Furthermore, the modified approach to distributive justice that I have proposed also retains luck egalitarianism's distinctive theoretical structure, although this is perhaps a little harder to see.[83] To be sure, it might appear that the retreat that I have proposed from the responsibility-tracking view

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82   I take this list loosely from Anderson, *supra* note 1, at 288.
83   The discussion that follows owes much to comments made by Arthur Ripstein.

can be organized only by reference to a stipulative division of responsibility between the individual and the collective, so that this stipulation, and not the distinction between choice and chance, becomes the view's central regulative ideal, in which case the distinctive core of luck egalitarianism will have been abandoned.[84] But this appearance is deceptive, as may be revealed by once again contrasting luck egalitarianism with Anderson's democratic equality, specifically with respect to the conceptions of political solidarity that lie at the hearts of each view.

The conception of political solidarity at the heart of Anderson's democratic equality is purely forward-looking. The core purpose of distributive justice, for Anderson, is to "ensure that everyone in society has enough to stand in relations of equality to others,"[85] and the spirit of this suggestion is that the relations of equality must endure, at every moment, *from now on*. This is why Anderson is so concerned with the questions how much wealth is necessary to secure the personal independence of adults and how much income is necessary to secure dignity in appearance.[86] The answers to these questions turn on a combination of moral principle and sociological fact about the current state of society. (Anderson mentions, for example, the importance to a person's dignity of not falling too far below her society's general level of consumption.[87]) And it is up to society to provide its members with whatever level of advantage these answers call for; a level that the individual is totally relieved from securing or maintaining for herself. Critically, the line that such an account of solidarity draws between social and individual responsibility is independent of the individual's past exercise of responsibility. This explains why Anderson can say that it is no breach of solidarity for it to be publicly acknowledged that the better off are *merely* lucky (and even that this is better for solidarity than if the rich are thought to deserve their good fortune).[88] It also explains why Anderson's concern for the worse off remains undiminished in the face of the thought that their disadvantage is the result of their own poor choices.[89] This indifference to the interventions of individual agents is why I have called the division of responsibility at the heart of Anderson's view stipulative.

Luck egalitarianism, by contrast, insists that political solidarity has

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84   Alon Harel suggested something similar in commenting on an earlier version of this Article.
85   *See* Anderson, *supra* note 10, at 263.
86   *See id.* at 265-66.
87   *See id.*
88   *See id.* at 254.
89   *See id.* at 257-59.

an ineliminable backward-looking component. For the luck egalitarian, political solidarity arises necessarily among *agents*, who are distinguished by adopting a certain deliberative stance towards their lives, which includes the idea that they are authors of some (although not of course all) of what occurs in their lives. To evaluate political solidarity always from now on is therefore inconsistent with the deliberative attitudes of the persons among whom such solidarity arises, because (in addition to subordinating good choosers by drafting them into the service of poor ones) it insults those whose authorship of their lives it denies. To be sure, persons' deliberative circumstances, and the conception of authorship that they engender, cannot be understood without making reference to the fact that each person shares a society with others. But these ideas equally cannot be understood without making reference to the internal conditions of deliberative autonomy and moral self-ownership.

Anderson surely has a point when she observes (although not in these words) that bad choices can produce disadvantages so great that insisting on a backward-looking conception of solidarity can render (democratic) solidarity impossible going forward.[90] But the luck egalitarian insists that this observation does not support abandoning the backward-looking element of political solidarity altogether (as Anderson's preferred alternative seems to do). Instead, this case resembles substantive unconscionability in contract law. Although the results of certain contracts can be so unpalatable as to render them unenforceable even if freely made, this does not undermine the general principle of freedom of contract or supplant the associated idea of personal responsibility with some non-voluntarist alternative. Similarly, the fact that forward-looking concerns for solidarity may intervene to insulate persons from the effects of some of their choices does not justify abandoning the backward-backward element of political solidarity generally. In each case, forward-looking concerns lie on the periphery rather than at the core of the moral practice. And accordingly, even the modest variety of luck egalitarianism that I have proposed properly remains distinctive (and certainly marks a structural departure from Anderson's democratic equality and any cognate views) for insisting that distributive justice must attend to the conditions of political solidarity among deliberatively autonomous agents, and in a manner that recurs to the distinction between choice and chance.

Finally, these reflections suggest that the model of equal agency at the

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90   *See id.* at 258-59. Anderson is also right to observe that these conditions of solidarity
       may impose distributive demands in excess of those associated with the humanitarian
       alleviation of absolute need.

heart of luck egalitarianism may be successfully completed, or at least that another prominent objection against responsibility-tracking egalitarianism does not rule out that the broader luck egalitarian project may be brought to a satisfactory conclusion. Responsibility-tracking egalitarians often write as if the distributive principles that they prefer turn on a naturalized conception of moral responsibility, based on a naturalized distinction between choice and chance. Thus, G.A. Cohen simply accepts that implementing the version of responsibility-tracking redistribution that he prefers leaves us "up to our necks in the free will problem."[91] This would be unfortunate for egalitarianism. For one thing, it would close one philosophical question only by opening another, deeper one. (And even if a satisfactory account of the free will could be given in general, it seems unlikely that this account would enable convincing resolutions of particular cases of the sort that responsibility-tracking egalitarianism requires.) Moreover, and perhaps still more importantly, it seems implausible that any naturalistic account of freedom of the will could adequately serve the purposes of distributive justice. Distributive justice requires allocating the costs and benefits of social cooperation across the people who participate in this cooperation. And so it immediately raises the question, made familiar from the study of torts, "what is a cost (or benefit) of what?" As Arthur Ripstein has pointed out, this question is antecedent, in the theory of distributive justice, to naturalized questions of responsibility.[92] It is also ineliminably moral — it depends on substantive judgments of moral entitlements — so that no naturalized account of the freedom of the will, no matter how solid its metaphysical foundations, could possibly answer it.

The conception of political solidarity and non-subordination that I have placed at the heart of luck egalitarianism, by contrast, might be up to the task. It is unabashedly moral in its foundations and employs the distinction between choice and chance in the service of a normative rather than naturalized ideal of moral personality. On this view of luck egalitarianism, the distinction between choice and chance is fixed by the allocation of responsibility that people would adopt from a truly equal position, knowing that they needed to cooperate and to share as patients in the benefits and burdens of cooperation, but always insisting that they also remain agents and indeed free citizens, who retain responsibility for their choices and hence

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91 Cohen, *supra* note 5, at 934.

92 *See* Arthur Ripstein, *Equality, Luck, and Responsibility*, 23 PHIL. & PUB. AFF. 3 (1994). It is perhaps no coincidence that Ripstein is also a torts scholar. Scheffler makes similar points. *See* Scheffler, *supra* note 9, at 18.

authorship of their own lives. This way of putting the point drives home, more clearly than anything else that I have said, that luck egalitarianism, properly understood, is not a purely mechanical or distributive ideal but rather the opposite — and precisely what critics such as Anderson and Scheffler are calling for — namely an ideal of equal political solidarity, root and branch.