

**Staying the Hand of Fortune:  
A Pluralist Approach to the Regulatory Strategies  
of Luck Egalitarian Distributive Justice**

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## Abstract

How can we pursue egalitarian distributive justice? Starting from the assumption that an egalitarian distribution of advantage is one in which no one is worse off than anyone else as a matter of luck, this thesis examines how such a distribution might be brought about. It begins with an investigation of how the luck egalitarian ideal should be interpreted, advancing a critique of the ‘attributivist’ approach to conceptualizing luck developed by Andrew Mason and a (limited) defence of the ‘metaphysical’ approach favoured by G. A. Cohen and others. It then turns to the question of what can be done about the inequalitarian influence of luck on people’s levels of advantage, proposing a pluralist approach to the regulatory strategies of luck egalitarian distributive justice. It argues that, in addition to ‘redistributive compensation’, strategies of ‘levelling’ and ‘direct structural regulation’ should be included in the luck egalitarian armoury. The thesis then applies these arguments to a case study of contemporary internships in the UK. While internships have become a crucial route into employment within many professional sectors, they have yet to receive any sustained critical attention from egalitarian political philosophers. The thesis demonstrates how the distribution of internships contributes to distributive injustice and then examines the various regulatory actions luck egalitarians might endorse in response to that injustice. The ways in which contemporary injustice is produced are many and varied: the pluralist approach to luck egalitarian regulatory strategies provides a useful and clear framework within which to identify and evaluate the many and varied ways in which we might respond.

## **Declaration of Originality**

I certify that the work contained in the thesis submitted by me for the degree of Doctor of Philosophy is my original work except where due reference is made to other authors, and has not been previously submitted by me for a degree at this or any other university.

## **Table of Contents**

<b>Acknowledgments .....</b>	<b>8</b>
<b>Introduction.....</b>	<b>10</b>
Research Questions .....	12
Theoretical Preliminaries .....	13
Thesis Outline.....	22

### **PART I**

#### **LUCK EGALITARIAN THEORY**

<b>1. Luck, Choice, and Responsibility:</b>	<b>Attributivist</b>
and Metaphysical Approaches.....	29
Introduction .....	29
1.1 Luck, Choice, and Responsibility.....	31
1.1.1 The Distinction between Luck and Choice .....	31
1.1.2 The Principle of Consequential Responsibility .....	34
1.1.3 Luck Egalitarian Asymmetry .....	37
1.1.4 The Status of Children in Luck Egalitarian Theory .....	43
1.2 The Attributivist Approach .....	45
1.2.1 Masonian Distributive Justice.....	45
1.2.2 Consequential Responsibility and Attributive Responsibility .....	49
1.2.3 A Summary of the Attributivist Approach .....	62

1.2.4 A Critique of the Attributivist Approach.....	63
1.3 The Metaphysical Approach.....	95
1.3.1 Metaphysical Luck Egalitarianism.....	95
1.3.2 Consequential Responsibility and Metaphysical Responsibility.....	97
1.3.3 A Summary of the Metaphysical Approach.....	124
1.3.4 A Defence of the Metaphysical Approach .....	124
Conclusion.....	138
<b>2. Luck Egalitarian Regulatory Strategies: Compensation, Levelling, and Direct Structural Regulation.....</b>	<b>140</b>
Introduction .....	140
2.1 Redistributive Compensation .....	142
2.1.1 The Paradigmatic Status of Redistributive Compensation .....	142
2.1.2 The Nature of Redistributive Compensation .....	144
2.1.3 Beyond <i>Ex Post</i> Redress of Unjust Outcomes .....	147
2.2 A Pluralist Approach to Luck Egalitarian Regulatory Strategies .....	151
2.2.1 Wolff's Tripartite Model of Opportunities.....	151
2.2.2 An Outline of the Pluralist Approach .....	157
2.2.3 Levelling .....	160
2.2.4 Direct Structural Regulation .....	167
2.2.5 Exhaustive But Not Mutually Exclusive .....	176
2.2.6 More Ideal and Less Ideal Theory .....	181
2.3 The Implications of the Pluralist Approach.....	183
2.3.1 The Feasibility of Neutralization.....	185

2.3.2 The Prevention of Injustice .....	189
2.3.3 Access to Important Goods .....	193
2.3.4 The Social Construction of ‘Good’ and ‘Bad’ Luck .....	199
2.3.5 Distributive and Relational Equality.....	206
Conclusion.....	222

## PART II

### LUCK EGALITARIANISM AND INTERNSHIPS

#### **Internships: A Luck Egalitarian Analysis ..... 225**

Introduction .....	225
3.1 An Exposition of Contemporary UK Internships .....	226
3.1.1 UK Internships.....	226
3.1.2 Remuneration .....	229
3.1.3 Distributive Mechanisms .....	229
3.1.4 Types of UK Internship .....	239
3.2 A Luck Egalitarian Analysis of Contemporary UK Internships.....	242
3.2.1 Internship Luck .....	242
3.2.2 A Comparison of Access to Different Types of Internship .....	270
3.2.3 Internships and Expensive Tastes .....	276
Conclusion.....	282

#### **Internships: Luck Egalitarian Regulatory Proposals ..... 284**

Introduction .....	284
4.1 Internship Regulation in a More Ideal Society.....	288

4.1.1 Job Equality.....	289
4.1.2 Internships Given Job Equality.....	295
4.1.3 The Distribution of Internships Given Job Equality .....	299
4.2 Internship Regulation in a Less Ideal Society .....	302
4.2.1 The Compensatory Approach.....	307
4.2.2 Levelling Approaches .....	310
4.2.3 Direct Structural Regulatory Approaches.....	320
4.3 An Analysis of the Approaches.....	326
4.3.1 The Desirability of Compensation.....	327
4.3.2 The Desirability of Levelling and Direct Structural Regulation.....	335
4.3.3 The Desirability of Regulatory Responses to Ability-Based Inequality	343
4.3.4 Toward a Regulatory Regime .....	350
4.4 Internship Regulation in a Non-Ideal Society.....	354
Conclusion.....	360
<b>Conclusion.....</b>	<b>362</b>
Thesis Summary.....	362
Further Philosophical Research on Internships .....	370
Internships and Exploitation.....	370
Internships in the Charity Sector.....	373
<b>Bibliography .....</b>	<b>377</b>

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## Introduction

How can we pursue egalitarian distributive justice? Although egalitarians disagree over what it means to live in a society of equals, there is little divergence from the consensus that the distribution of benefits and burdens in contemporary society does not accord with any plausible ideal of equality. Inequalities of outcome have reached astonishing levels and, to many minds, the bases on which those inequalities are produced and maintained are manifestly objectionable. Extreme and inherited wealth persists in the face of dire poverty. Fortunes are spent to secure the most advantageous schooling for some children while others are denied a proper chance to fulfil their developmental potential. Sexist, racist, ableist, heteronormative and cisnormative social norms work to prevent many from living the lives they would choose. The material environments in which we live range from the sublime, secure and uplifting to the depressingly barren, dangerous and inaccessible. The road to well-paid and fulfilling work has long been paved with barriers only the 'lucky few' can surmount and recent trends have introduced further obstacles: while internships are becoming an increasingly important route into the professions, they are monopolized by the wealthy and well-connected. If we know we cannot accept things as they are, what are we to do? In short, we must identify goals that are worth pursuing and work out how best to pursue them. For the egalitarians to whom this thesis is addressed, that enterprise involves determining, first, what kind of egalitarian justice is morally valuable and, second, how we might bring it about. The work I present here is the outcome of my attempts to make a contribution to our understanding of these complex issues.

My ambitions are limited in the sense that I do not seek to persuade those who reject the value of egalitarian justice that *some* kind of equality is morally valuable. I also assume, without attempting to provide thoroughgoing justification of my assumption, that luck egalitarian distributive justice constitutes an important part of the egalitarian ideal. The claim that luck egalitarian distributive justice is partially constitutive of the ideal of equality is a normative claim about the principle to which the distribution of benefits and burdens – or, advantage – should conform. In brief, luck egalitarians hold that all should enjoy equal opportunity for advantage: the distribution of advantage should be insensitive to matters of luck, but (in some way) sensitive to the choices people make.<sup>1</sup> The underlying intuition that motivates this position is expressed by Larry Temkin as follows: ‘it is morally bad – because unjust and unfair – if someone is made worse-off than others through no choice of their own’ (Temkin 1993: 13). In practical terms, this means that people should be relieved of responsibility for unchosen costs and benefits that accrue to them as a matter of luck, but may be held responsible for the just distributive consequences of their choices. I seek to defend luck egalitarianism against some objections raised by egalitarians who doubt that egalitarian justice is a property of distributions, but the majority of my work is intended to appeal to those who share the basic luck egalitarian intuition. My central aim is to present an attractive interpretation of the luck egalitarian ideal and persuade luck egalitarians against less attractive

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<sup>1</sup> I examine two very different luck egalitarian approaches to the issue of choice-sensitivity in section 1.1.3.

interpretations, and to enhance analytical clarity regarding the variety of regulatory strategies through which we might strive to implement that ideal in our social arrangements. I defend a pluralist approach to the regulatory strategies of luck egalitarian distributive justice and, in order to illustrate some of the concrete implications and demonstrate the usefulness of that approach, I also offer an in-depth case study of internships in the UK. I present a luck egalitarian analysis of internship-related injustice and discuss the range of regulatory actions that might be adopted in response to that injustice.

## **Research Questions**

The four key research questions that motivate my discussions can be summarized as follows:

- (1) What version of the distinction between luck and choice should luck egalitarians favour?
- (2) What regulatory strategies can be employed in pursuit of luck egalitarian distributive justice?
- (3) How do internships and their distribution currently contribute to distributive injustice in the UK?
- (4) What regulation might luck egalitarians endorse in response to the distributive injustice produced by internship distribution?

## **Theoretical Preliminaries**

Before describing in more detail the central topics and structure of this thesis, it will be useful to first outline some of the central methodological assumptions and limitations of my work.

First, the questions I have just outlined are, as I approach them, questions of domestic justice. The majority of the luck egalitarian literature presents luck egalitarianism as a theory of domestic justice and this thesis is no exception. My discussion therefore sets to one side the important but complex debates regarding the scope of distributive justice and, in particular, questions regarding the nature and regulatory requirements of global justice.<sup>2</sup>

I also share with other luck egalitarians the assumption that individuals are the basic concern of distributive justice.<sup>3</sup> My outlook is specifically humanist in the sense that the individuals with whom I suppose distributive justice is concerned are human individuals: non-human animals and the habitats we share with them are treated as valuable only inasmuch as they have instrumental value to humans. Of course, this is not to say that

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<sup>2</sup> For a defence and a critique of luck egalitarianism as an ideal of global distributive justice, see, for example, Kok-Chor Tan (2011) and Christian Schemmel (2007), respectively.

<sup>3</sup> See, for example, John Roemer (1996: 148), G. A. Cohen (1997: 12) and Carl Knight (2009a: 5) for similar statements.

non-human animals and the natural environment have no intrinsic value but, rather, that the question of their intrinsic value is not a question of distributive justice.

Next, I assume that luck equality is but one important value among others. As Temkin observes:

any reasonable egalitarian will be a pluralist. Equality is not the only thing that matters to the egalitarian (Temkin 2003: 63)

As a value-pluralist, I endorse what has been termed *moderate* luck egalitarianism.<sup>4</sup> Luck equality is important, but it is not the only value worth pursuing in our social arrangements. Accordingly, whatever its demands consist in, they must be balanced against the demands of other important values. Thus, my claims regarding what luck egalitarian distributive justice demands are defeasible or, in Cohen's terms, 'weak' and 'subject to whatever limitations need to be imposed in deference to other values' (Cohen 1989: 908). I do not seek to determine how competing demands should be balanced against each other, but I do hope to show that the pluralist approach to luck egalitarian regulatory strategies that I advocate provides luck egalitarians with the best hope of minimizing value conflict. Luck egalitarian ends may only be pursued as far as is permitted in light of the properly balanced demands of all relevant values but, given that

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<sup>4</sup> See, for example, Richard Arneson (2004: 15), Alexander Brown (2005b: 297) and Knight (2005: 55).

restriction, some regulatory strategies enable us to pursue those ends more successfully than others.

One of the central foci of luck egalitarian debates concerns what Cohen (1989) terms the ‘currency’ of egalitarian distributive justice. As luck egalitarianism holds that people should have equal opportunity for advantage, it requires a meaningful conception of advantage. In order to determine what people should have equal opportunities for – what aspect of their outcomes should be luck-insensitive and (in some way) choice-sensitive – we need to determine what it is about people’s lives that makes them go well in the sense that matters to distributive justice. Luck egalitarian theorists tend to favour one of three conceptions: resources, welfare or advantage broadly conceived.

Ronald Dworkin and Eric Rakowski both favour a conception of advantage as resources. This includes a person’s ‘personal resources’ including ‘physical and mental health and ability’, as well as ‘impersonal resources’ including wealth and property, which (unlike personal resources) ‘can be reassigned from one person to another’ (Dworkin 2000: 322-323). Alternative approaches conceive advantage in terms of welfare, and the concept of welfare has itself been understood in different ways by different theorists. Cohen (1989) notes a distinction between hedonic and preference-satisfaction views of welfare. Arneson’s earlier work, and particularly his influential article of 1989, is often cited as exemplifying the preference-satisfaction view. When welfare is conceived in terms of preference satisfaction, the ‘more an individuals’ preferences are satisfied, as weighted by their importance to that very individual, the higher her welfare’ (Arneson 1989: 82). While this may seem at first glance and has sometimes been interpreted to indicate a subjectivist understanding of preference satisfaction, Arneson specifies that the

preferences with which he is concerned are not necessarily those the individual recognizes herself as having. Rather, he is concerned with the satisfaction of ‘rational’ or ‘ideally considered’ preferences, which are those the individual would have were she to engage in calm, clear and informed deliberation (Arneson 1989: 83). In his later work, Arneson (1997) further clarifies that he favours an objectivist conception of welfare according to which there are certain goods that are objectively constitutive of the good life. A person’s welfare follows from her possession of those goods, rather than from her subjective feelings and judgements regarding the extent to which her preferences are satisfied. Nicholas Barry (2006) favours a similar objectivist version of the welfarist account of advantage. On Knight’s alternative account of welfare, what matters about a person’s outcome is how happy she is in her ‘present mood’: according to this account, the measure of a person’s welfare is how she is currently feeling, or, her current ‘affective state’ (Knight 2009a: 71). Finally, Cohen presents a view of advantage broadly conceived. For Cohen, advantage is reducible to neither resources nor welfare but, rather, references both. A person’s level of resources matters to distributive justice quite apart from its impact on her welfare and her welfare matters quite apart from its impact on her resources. In addition, his concept of advantage references (though differs in several key respects from) Amartya Sen’s (1980) work on capabilities: it *also* matters to distributive justice what a person is able to do, which is not reducible to the level of resources she has or to her level of welfare. Similarly, John Roemer (1995a) favours a broad conception of advantage on which several aspects of a person’s outcome (including, for example, her income, life satisfaction and educational achievements) are all relevant to distributive justice.

The central arguments of this thesis are neutral with regard to the currency of egalitarian distributive justice. That is, the arguments I make concerning the distinction between luck and choice and the pluralist approach to luck egalitarian regulatory strategies generally hold regardless of which currency is favoured and I therefore take no stand here as to which *should* be favoured. There are, however, points at which I address how the pluralist approach plays out and, at those points, where adopting alternative currencies has different implications I explicitly address those differences.

My approach to normative theorizing about principles of justice borrows heavily from Cohen's foundationalist approach. In particular, I follow Cohen in drawing a distinction between fact-insensitive fundamental principles that *express* values and regulatory principles that *serve* values (Cohen 2003: 240). Thus, the fundamental principle of luck egalitarianism expresses the luck egalitarian ideal and can be formulated as follows: a just distribution of advantage is one in which each individual's level of advantage is insensitive to her luck but (in some way) sensitive to her choices. To clarify, the claim that fundamental normative principles are fact-insensitive does not imply that we can or should develop belief in those principles without reference to our experience of the world. Rather, it means that we must believe that the fundamental principles we endorse hold regardless of our personal experiences. In Cohen's terms, fundamental principles express 'a value-judgment that remains the same, for the judge, under any and all assumptions about the facts' (Cohen, 2003: 214). With regard to the genesis of ideals, my view reflects that of Iris Marion Young. She writes that 'Normative reflection must begin from historically specific circumstances because there is nothing but what is, the given, the situated interest in injustice, from which to start' (Young 1990: 5). Our ideals

arise from our experience of and reflection on the world around us. Cohen echoes this sentiment when he writes, in reaction to misunderstanding and misrepresentation of his view, that people ‘are misled by the truth that it is (*of course*) in the wake of our experience of life that we adopt the principles that we do into denying my claim that we are committed to some fact-insensitive principle whenever we adopt a principle in light of, and, therefore, sensitively to, the facts’ (Cohen 2003: 232-233, original emphasis). But how does experience yield ideals and principles? I share Young’s view that:

ideals arise from the yearning that is an expression of freedom: it does not have to be this way, it could be otherwise. Imagination is the faculty of transforming the experience of what is into a projection of what could be, the faculty that frees thought to form ideals and norms’ (Young 1990: 6)

It is through experience of and reflection on the gap between what is and what is hoped for that I have come to endorse the ideals and principles I favour. Put differently, the ‘genesis of ideals [results] from an experience of the possibilities desired but unrealized in the given’ (Young 1990: 6). On my view, then, as the fundamental principle of luck egalitarian distributive justice expresses (part of) what justice is, it corresponds to convictions about the character of a just, hoped-for, future state of social life. Although Cohen is a moral objectivist (of the sort Young condemns), he emphasizes that the foundationalist method he espouses and which I employ is ‘neutral on that central question of meta-ethics, which concerns the objectivity or subjectivity of normative principles’ (2003: 234). If my project were concerned with justifying the fundamental luck egalitarian principle, my arguments would doubtless have to endorse either moral

objectivism or moral subjectivism. That is not, however, the purpose of my research. As I seek to defend an interpretation of the content and regulatory implications of the luck egalitarian ideal, I remain neutral on the question of its meta-ethical status.

Cohen (2003) uses the technical terms ‘principles of regulation’ and ‘rules of regulation’ to describe statements about the kind of regulation that we should actually adopt in our social arrangements on the balance of reasons and in light of all relevant facts, including feasibility constraints. However, I think additional clarity is achieved by distinguishing between what principles, actions and strategies our fundamental values require at the regulatory level absent various considerations, and what regulatory principles, actions and strategies are justified all things considered. The regulatory principle that serves the value of luck equality considered in isolation from other values can be formulated as follows: people should be relieved of responsibility for the inegalitarian consequences of luck, but may be held responsible for the just consequences of their choices. I term this principle the luck egalitarian principle of consequential responsibility. (The principle might also be formulated in terms of the neutralization of luck: the inegalitarian influence of luck on outcomes should be neutralized, while the just inegalitarian influence of choice may be permitted.) However, given value-pluralism, we may find that the properly balanced demands of other values constrain the extent to which it is desirable on the balance of reasons to relieve responsibility for luck and impose responsibility for choice. Moreover, it may not be practically feasible to fully neutralize luck. Thus, the principle we actually adopt to govern our social arrangements all things considered might merely extenuate the inegalitarian influence of luck on outcomes to some extent, rather than fully neutralizing it: people should, as far as possible and desirable on the balance

of reasons, be relieved of responsibility for the *inegalitarian* consequences of luck and held responsible for the *just* consequences of their choices. I also draw distinctions between regulatory principles, actions and strategies. Regulatory actions comprise the concrete laws, policies and procedures that a regulatory agency might implement. The regulatory strategies of luck egalitarian distributive justice are the subject of chapter 2. I argue there that all luck egalitarian regulatory action can be taxonomized into three categories of regulatory strategy, depending on its strategic rationale and target. Again, my discussions distinguish between the regulatory actions and strategies that luck egalitarians might recommend, absent various considerations (including feasibility constraints and values other than luck equality), and the actions and strategies that it is desirable to implement on the balance of reasons and in light of all the facts.

Finally, I should explain my position on feasibility. As fundamental principles are insensitive to facts, including facts about what it is feasible to actually achieve, feasibility is not a constraint on fundamental principles. As Cohen writes, 'If justice is, as Justinian said, each person getting her due, then justice is her due irrespective of the constraints that might make it impossible to give it to her' (Cohen 2008: 252-3, see also 2008: 7 and Arneson 1997: 240). However, facts about what is possible do, of course, constrain what we are able to do in practice to promote distributive justice. If the regulatory actions that we seek to implement here and now are not to be futile they must be feasible and what is feasible depends on the facts (Cohen 2008: 253). But not all normative theorizing regarding proposals for regulatory action is limited to 'the here and now': my discussion of proposals for the normative regulation of internships ranges from the more to the less ideal. I employ the account of more and less ideal theory developed by Zofia

Stemplowska (2008) and Alan Hamlin and Zofia Stemplowska (2012), which states that proposals for normative regulation must take account of the relevant facts and circumstances, but that some of these may be idealized. Non-ideal theorizing makes no idealizing assumptions about the facts but, rather, tells us which regulatory options from among the feasible set are desirable to implement here and now. Theorizing about regulation may also be more or less ideal, depending on the extent to which it idealizes pertinent facts: the more facts are idealized, the more ideal the theoretical proposals are.<sup>5</sup> More or less ideal theorizing about regulatory proposals may, then, absent certain feasibility constraints by idealizing certain facts in order to identify ‘reforms that become relevant if feasibility constraints relax’ or, in other words, if the facts change (Hamlin and Stemplowska 2012: 59). I also draw a distinction between deep (or ‘possible worlds’) and sociological (or ‘panglossian’) feasibility (Hamlin and Stemplowska 2012: 60). Implementation of deeply infeasible proposals would require, in terms Stemplowska (2008) borrows from Derek Parfit, ‘a major change in the laws of nature, including the laws of human nature’ (Parfit 1984: 388). Sociological feasibility constraints, on the other hand, concern those contingent and at least potentially changeable constraints on what may be practically achieved, starting from the social, cultural, economic and technological status quo. What is sociologically infeasible today may become practically achievable tomorrow. Thus, where I make reference to feasibility, I refer explicitly to either deep or sociological feasibility.

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<sup>5</sup> See, in particular, Stemplowska (2008: 326-329), and Hamlin and Stemplowska (2012:52-58).

## Thesis Outline

The thesis is divided into two parts, with each part consisting in two chapters. The first chapter of Part I is concerned with interpreting a part of the luck egalitarian ideal, namely, the distinction between luck and choice that gives substance to luck egalitarian principles. The second chapter proposes and defends an analytical framework for understanding the regulatory strategies of luck egalitarian distributive justice. Part II of the thesis then applies these arguments to the problem of internships in contemporary Britain. Chapter 3 presents a critical analysis of internship-related injustice, while the final chapter of the thesis employs the framework developed in chapter 2 to examine the various regulatory actions that might be implemented in response to that injustice.

Chapter 1 presents my contribution to the debates regarding what kind of equality is morally valuable. Starting from the assumption that the luck egalitarian ideal constitutes part of egalitarian justice, I examine how that ideal should be interpreted. Specifically, I ask what version of the distinction between luck and choice luck egalitarians should favour. What way of drawing that distinction is most appropriate to a theory of distributive justice that condemns the inegalitarian influence of luck on life outcomes, but permits the just inegalitarian influence of choice? First, I interrogate Andrew Mason's (2006) approach to drawing the distinction, which I term the 'attributivist' approach. On Mason's view, people attract responsibility for the consequences of choices for which, in our ordinary moral experience, we judge them attributively responsible. He then claims that T. M. Scanlon's 'responsiveness to reason' conception of attributive responsibility provides the best explanation of our ordinary moral experience of assigning attributive responsibility. I set out a new critical analysis of the

attributivist approach, raising various objections against it that I hope constitute convincing grounds for its rejection. I then outline in some detail the central features of the ‘metaphysical’ approach to the distinction between luck and choice, which I employ throughout the thesis. I briefly consider some convincing reasons to dismiss two criticisms that have been raised against that approach, but do not provide a thoroughgoing defense against all potential objections to it. While my view that the metaphysical approach is the most appropriate for luck egalitarians to adopt therefore constitutes an incompletely defended assumption, many of the arguments I propose in subsequent chapters do not depend on the truth of that assumption. Nonetheless, my arguments do, at times, require me to adopt some version of the distinction and the exposition I provide in chapter 1 is therefore intended to clearly set out the contours of the version I adopt.

In chapter 2, I turn from the question of how luck should be conceptualized to the question of what can be done about its inegalitarian influence on levels of advantage, examining the variety of regulatory strategies that luck egalitarians might endorse. I present a critique of the tendency within much of the luck egalitarian literature to conceive of regulation in terms of redistributive compensation and urge luck egalitarians to adopt a pluralist approach to the regulatory strategies of luck egalitarian distributive justice. The new framework I develop draws on Jonathan Wolff’s model of opportunities to demonstrate that, in addition to redistributive compensation, strategies of ‘levelling’ and ‘direct structural regulation’ should also be included in the luck egalitarian armoury. On the approach I propose, regulatory action falling within the category of redistributive compensation *redresses* unjust inequalities of outcome by

adjusting people's levels of advantage to offset any overall luck-based advantage and disadvantage. Levelling and direct structural regulation, on the other hand, function to prevent luck-based inequalities of outcome from arising in the first place by equalizing opportunities for advantage *ex ante* redistributive compensation. In the sense that the purpose and effect of both of these strategies is to prevent the egalitarian influence of luck from playing out, rather than to redress it, they *stay the hand of fortune*. While some defenders and critics of luck egalitarianism appear to assume that compensation, as I have just defined it, is the sole regulatory strategy of luck egalitarianism, others use the term compensation to indicate regulatory action that is best conceived as falling within the categories of levelling or direct structural regulation. I hope to demonstrate in my analysis not only that the strategies of luck egalitarian distributive justice are not exhausted by compensation, but also that adopting the pluralist approach I propose enhances theoretical clarity and brings a number of other very significant benefits.

In Part II, I apply these theoretical arguments to a case study of internships. There is a tradition within the luck egalitarian literature of applying theory to case studies. For example, a number of theorists have closely examined how luck egalitarian principles apply within the sphere of health.<sup>6</sup> Some have also focused on equality of opportunity for work-related advantage.<sup>7</sup> However, while in recent years internships in the UK have

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<sup>6</sup> See, for example, Roemer (1998: chapter 8), Dworkin (2000: chapter 8) and Shlomi Segall (2010).

<sup>7</sup> See, for example, Roemer (1998: chapter 14), Dworkin (2000: chapter 12) and Segall (2012a).

come to play a crucial role in the production and maintenance of contemporary inequalities of opportunity in the sphere of employment, they have yet to receive any sustained critical attention from luck egalitarian theorists. This case study is intended to address that gap in the literature. Moreover, case studies can be used to illustrate in precise terms how a theoretical approach can be applied to a particular problem and to defend that theoretical approach by demonstrating its benefits. The case study of internships I present is intended both to illuminate how the pluralist approach to luck egalitarian regulatory strategies I defend in chapter 2 can be applied to the problem of internship-related injustice and to clearly demonstrate the usefulness of that approach.

In chapter 3, I offer a luck egalitarian critique of contemporary internships in the UK. I examine some of the available data on paid and unpaid internships and, on the basis of that examination, identify five mechanisms through which internships are distributed. I then present an analysis of the various ways in which luck influences access to internships. I argue that contemporary internships in the UK can be categorized into ten types according to their distributive mechanism and whether or not they are remunerated, and that access to each type is delineated on the basis of various forms of luck. (For example, access to all unpaid types of internship is delineated on the basis of luck-based differences in the levels of wealth people have at their disposal.) Luck-based inequalities of access to internships are relevant to distributive justice because internships are a crucial route into employment in many professional sectors: those inequalities are a significant factor in the production and maintenance of inequalities of opportunity for work-related advantage. Those who, as a matter of luck, are unable to undertake an internship may as a consequence face unchosen disadvantage in the sphere of

employment that sets their overall outcome at an unjust disadvantage. The purpose of the critique is, then, to illuminate how the distribution of internships contributes to distributive injustice and to motivate the arguments of chapter 4.

In chapter 4, I discuss the range of regulatory responses to internship-related injustice that luck egalitarians might endorse. Of course, luck egalitarians might respond to unchosen advantage and disadvantage – including that which is a function of luck-based inequalities of access to internships – by recommending the provision of redistributive compensation to offset any unjust inequalities of outcome. But, on the pluralist approach I endorse, they might also recommend levelling or direct structural regulatory action to reduce luck-based inequalities of access to internships. I hope to establish that it would be a mistake to assume that luck egalitarian regulatory strategies are exhausted by redistributive compensation, to illustrate how the pluralist approach can be employed to frame discussion of alternative regulatory options, and to demonstrate the benefits of that approach. The pluralist approach prompts us to consider the various ways in which luck influences outcomes and the variety of possible regulatory responses. Of course, the regulatory action we endorse on the balance of all relevant considerations will neutralize the inegalitarian influence of luck only as far as is possible and permissible in light of the properly balanced demands of other values. But if we acknowledge the range of potential regulatory responses to injustice it becomes clear that, given that constraint, some strategies may be more effective than others at mitigating injustice. For example, where the properly balanced demands of all values other than luck equality tell against the provision of compensation for disadvantage, they might yet permit some forms of levelling or direct structural regulation. The ways in which contemporary injustice is

produced are many and varied: the pluralist approach to the regulatory strategies of luck egalitarian distributive justice provides a useful and clear framework within which to identify and evaluate the many and varied ways in which we might respond.

## **PART I**

### **LUCK EGALITARIAN THEORY**

## Luck, Choice, and Responsibility:

### Attributivist and Metaphysical Approaches

#### Introduction

For luck egalitarians, the distinction between luck and choice could hardly hold greater normative significance. It is the cornerstone of luck egalitarian thought. How, then, is it best conceptualized? What way of drawing the distinction between luck and choice is most appropriate to a theory of distributive justice that condemns the inegalitarian influence of luck on life outcomes, but permits the just inegalitarian influence of choice? This chapter examines two (rival) candidate approaches to drawing the central luck egalitarian distinction: the ‘attributivist’ approach and the ‘metaphysical’ approach. The former has not, as yet, received as much critical attention as the latter, but is sufficiently interesting, *prima facie* plausible and, I think, problematic to warrant some sustained assessment. The metaphysical approach is endorsed by some of the most prominent

luck egalitarians and is the one I favour throughout this thesis, and so is worth outlining here in detail in order to ensure clarity of meaning in subsequent chapters.<sup>8</sup>

Section 1.1 outlines some preliminary thoughts regarding the distinction between luck and choice, and the luck egalitarian principle of consequential responsibility to which it gives substance. Section 1.2 provides a concise exposition of the attributivist approach to drawing the distinction between luck and choice. It then goes on to present a critical analysis of that approach, raising various objections against it that I hope constitute convincing grounds for its rejection. Section 1.3 canvasses, in some detail, the central features of the metaphysical approach I favour. While I do not provide a comprehensive defence of that approach, I do briefly consider some convincing reasons to dismiss two criticisms that have been raised against it.<sup>9</sup>

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<sup>8</sup> I do not attempt to provide an exhaustive account of all distinctions that have received favour from luck egalitarians. Other notable approaches to drawing the distinction include Roemer's political approach and Dworkin's identificationist approach. Although both of these are mentioned where relevant, neither receives any thoroughgoing exposition or analysis. I do, however, make clear some of my reasons for rejecting each in my critique of the attributivist approach: some of the objections I raise against that view apply also to the views of Roemer and Dworkin.

<sup>9</sup> Although the lack of a full defence of my view that the metaphysical approach is the best one for luck egalitarians to adopt renders that view an incompletely defended assumption of this thesis, many of the arguments I propose in later chapters are neutral with regard to the

## **1.1 Luck, Choice, and Responsibility**

### **1.1.1 The Distinction between Luck and Choice**

Luck egalitarianism is a theory of distributive justice expressing the fundamental conviction that the inegalitarian influence of luck on individual's life outcomes is unjust, where luck is understood in terms of unchosen circumstance. As Samuel Scheffler (a critic) comments, the 'core idea is that [...] inequalities deriving from unchosen features of people's circumstances are unjust' (Scheffler 2003a: 5 and 2003b: 199). On the luck egalitarian view, justice demands that people's relative outcomes are insensitive to the vagaries of chance or, put differently, that they are luck-neutral. For luck egalitarians, some conception of 'luck' is therefore necessarily partially constitutive of distributive justice in the sense that it specifies the sorts of inegalitarian influence on outcomes that justice condemns, such that justice itself cannot be specified without reference to a particular conception of luck. Luck egalitarians contrast luck with choice, insisting that everything that influences a person's outcome is either a matter of luck or of choice, or a mix of both. That is, luck-based and choice-based influences on outcomes are taken

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distinction employed. Thus, regardless of which distinction between luck and choice is favoured, key arguments presented for a pluralist approach to luck egalitarian regulatory strategies that includes 'direct structural regulation' and 'levelling' as well as redistributive compensation, much of the critique of internships, and many of the proposals for internship regulation hold.

to be exhaustive of all possible influences on outcomes. Roemer, for example, claims that a person's actions and outcomes 'are determined by two kinds of cause: circumstances beyond her control, and autonomous choices within her control' (Roemer 1995b: 4). Cohen makes a similar claim: 'the relevant opposite of an unlucky fate is a fate traceable to its victim's control' (that is, to her choices) (Cohen 1989: 922). And, more recently: 'Since luck egalitarianism accounts it an unfairness when some are better off than others through no fault or choice of their own, the relevant contrast with "luck" is "choice", complexly understood' (Cohen 2006: 442). While luck egalitarian distributive justice condemns the inegalitarian influence on outcomes of the former, it permits the just inegalitarian influence of the latter. This means that people may be required to bear (certain) costs and permitted to retain (certain) benefits that accrue to them as a consequence of the choices they make, and the resulting inequalities of outcome are just inasmuch as they are a function of those choices.<sup>10</sup> Accordingly, the central luck egalitarian conviction can also be expressed in terms of a commitment to equality of opportunity for advantage: people enjoy equality of opportunity for advantage when their level of advantage is a function of their choices and is unaffected

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<sup>10</sup> I say that people may be required to bear *certain* costs and permitted to retain *certain* benefits because, as we will see in section 1.1.3 below, while some luck egalitarians hold that *whatever* the costs and benefits of choice amount to, the fact of their being chosen entails that it is just to impose them on the chooser, others hold that additional considerations bear on the justice of permitting or requiring people to bear the consequences of their choices, including, for example, considerations regarding the magnitude of the consequences.

by ‘lucky’ or ‘unlucky’ circumstance. Rebutting Susan Hurley’s contention that luck does not ‘contribute to identifying and specifying what egalitarianism is’ (Hurley 2003: 147), Cohen writes that luck egalitarians:

object to all and only those inequalities that do not appropriately reflect choice. They object to inequalities that are caused by (brute) luck not merely because they are inequalities (since they accept inequalities that reflect choice), nor merely because they are effects of luck (since they would accept some equalities – and, as it were, all non-inequalities – that are caused by luck). So – it bears repeating – they object to the inequalities to which they object because they are inequalities caused by luck: that it is caused by luck specifies the inequality to which they object (Cohen 2006: 439)

Crucial to how plausible luck egalitarianism is as a theory of distributive justice, then, is whether the distinction between luck and choice it adopts accurately reflects what, for reasons of justice, should and should not unequally influence people’s relative outcomes.

Hillel Steiner provides a further refinement of the twofold distinction between luck and choice, adding a third element that is implicit within the original formulation. He writes that it is ‘indisputable [...] that the causal factors contributing to a person’s incurring adverse (or benign) consequences can be exhaustively consigned to a threefold classification: (1) her own doings; (2) the doings of others; and (3) the doings of nature’ (Steiner 1998: 102-103). While the distinction between our own doings and the doings of others and of nature does not map precisely onto the distinction between choice and

luck (because our own doings may not be fully chosen and because our choices may affect the doings of others and our own exposure to the doings of nature), Steiner's inclusion of 'the doings of others' among the factors that influence outcomes is important because it illuminates a potential paradox in luck egalitarian theory. Namely, a person's outcome may be influenced by the choices of others, which influence is unchosen by and thus a matter of luck from the perspective of the affected person. The claim that luck and choice exhaust the factors that influence people's outcomes can sometimes obscure the fact that one person's choice may be another's (good or bad) luck, where it has a positive or negative influence on the other's outcome that the other did not choose. I return to this issue of 'other-affecting choice' or, more precisely, choice that creates luck-based inequality for others in later chapters but, for now, set it to one side. Thus, where I refer to 'unchosen' or 'luck-based' costs and benefits, I mean those costs and benefits that are unchosen by the person on which they fall, whether or not they follow from others' choices.

### **1.1.2 The Principle of Consequential Responsibility**

The regulatory principle of luck egalitarianism can be expressed in terms of a principle of consequential responsibility: on the luck egalitarian approach to distributive justice, individuals' responsibility for the costs and benefits that accrue to them as a matter of luck should be alleviated, while (full or partial) responsibility for the costly or beneficial

consequences of their choices should be imposed.<sup>11</sup> The notion of consequential responsibility is captured by Dworkin as follows:

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<sup>11</sup> Of course, feasibility constraints and the demands of values other than luck equality may restrict the extent to which it is possible or desirable on the balance of reasons to regulate our social arrangements in accordance with the luck egalitarian principle of consequential responsibility. However, as the discussion in this chapter is concerned with interpreting the content of the luck egalitarian ideal, in what follows I set aside considerations that are external to luck egalitarian distributive justice. In chapters 2 and 4, much of the discussion centres around luck egalitarian regulation and so I consider the relevance of some feasibility constraints and other values there, but one important issue that does not arise is that, on the balance of reasons, it may be the case that luck egalitarian principles should only be applied above a level of sufficiency. A number of luck egalitarians have proposed that other values set a lower limit on the permissible level of advantage. Any disadvantage below that level is impermissible in light of the demands of those values, even if it is just. Cohen (1989: 920, 940) argues that the value of charity or benevolence compels us not to permit people to fall below a threshold of advantage. Barry takes a social contractarian view according to which ‘each person is equally guaranteed the capabilities needed to participate fully in a democratic society, in return for the freedom that they have lost in the state of nature’ (Barry 2006: 100). And Segall (2010: 63) claims that, below a threshold of advantage, people may be incapable of autonomous, responsible choice. If so, luck egalitarianism would not hold them responsible for the costs of any of their actions and, Segall suggests, meeting the ongoing costs of alleviating their unchosen disadvantage would be far less efficient than ensuring that no one fell below the threshold of

When and how far is it right that individuals bear the disadvantages or misfortunes of their own situations themselves, and when is it right, on the contrary, that others – other members of the community in which they live, for example – relieve them from or mitigate the consequences of these disadvantages?

(Dworkin 2000: 287)

Similarly, Mason writes that consequential responsibility concerns when ‘people can legitimately be required to bear the costs of their behaviour or aspects of their condition’ (Mason 2006: 168).<sup>12</sup> Neither of these formulations, however, express that while the issue of responsibility for costs and disadvantages is central to luck egalitarian theory, the issue of responsibility for benefits and advantages is equally relevant. The injunction to alleviate or impose responsibility for consequences according to whether they are a

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advantage that is required for responsible choice. Thus, on his view, luck egalitarians have a reason of efficiency to set a lower limit on the absolute level of advantage that is permitted.

<sup>12</sup> Mason terms this ‘substantive’ responsibility, claiming that he follows Scanlon’s definition thereof. However, I would clarify that consequential responsibility as it is defined above is not continuous with but, rather, fits into a broader category of Scanlonian substantive responsibility. The latter is defined by Scanlon as concerning ‘what people are required (or [...] not required) to do for each other’ (Scanlon 1998: 248). Providing for the alleviation of responsibility constitutes only one of the things we may be required to do for each other, albeit a very important one.

matter of luck or chosen is neutral with regard to whether the consequences are costly or beneficial. As Stemplowska writes, to be consequentially ‘responsible for X [means ...] that the burdens (*or benefits*) that come with or constitute X are justly one’s to bear (*or to enjoy*)’ (Stemplowska 2009: 239, my emphasis). Thus, to relieve a person of consequential responsibility for luck is to ensure she accrues *neither* its costs *nor* its benefits. To impose consequential responsibility for choice is to require that *both* the costs *and* the benefits of a choice be borne by the chooser.

### **1.1.3 Luck Egalitarian Asymmetry**

The luck egalitarian principle of consequential responsibility is, then, dualistic in the sense that it alleviates responsibility for luck on the one hand and imposes responsibility for choice on the other. I would suggest, however, that the two seemingly complimentary injunctions may be asymmetrical in two senses. The forms of asymmetry I identify here should be distinguished from the asymmetry Jonathon Wolff and Avner de-Shalit (2011) claim is present with regard to responsibility for choice. They argue that the question of whether or not to hold people consequentially responsible for choice is sensitive to whether the consequences of choice are positive or negative. There are more and better reasons, they argue, to hold people responsible for choice when the consequences are good than when the consequences are bad. My concern here, however, is with the asymmetry between the first luck egalitarian demand to alleviate responsibility for luck and the second luck egalitarian demand to impose responsibility for choice.

Firstly, the two demands may be asymmetrical in the sense of being unequally weighty. In other words, it may be possible that, from the point of view of distributive justice, it

is more important to relieve responsibility for the costs and benefits of luck than to impose responsibility for the costs and benefits of choice. This amounts to a general claim that egalitarian distributive justice counts just equalities as better (and more important to uphold) than just inequalities, and unjust inequalities as worse (and more important to expunge) than unjust equalities. Given the *egalitarianism* of this approach to distributive justice, such a claim would not seem entirely without basis or intuitive appeal. Cohen notes that luck egalitarianism (and – less successfully, he thinks – Dworkin’s theory of equality of resources) incorporates ‘the most powerful idea in the arsenal of the *anti-egalitarian right*: the idea of choice and responsibility’ (Cohen 1989: 933, my emphasis). Knight also notes that ‘Part of the attraction of luck egalitarianism may be the way it apparently combines a left-wing concern with equality with a right-wing respect for individual choice’ (Knight 2012: 553). This underscores the possibility that a *left-wing luck egalitarian* may be more strongly committed to ensuring equality than to respecting choice. Accordingly, left-wing luck egalitarians might well be expected to judge the first (traditionally left-wing) demand as *pro tanto* weightier than the second (traditionally right-wing) demand.<sup>13</sup>

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<sup>13</sup> Knight’s position on gambles suggests that he would support this view of the asymmetry of the luck egalitarian principle of consequential responsibility. He notes that gambles can involve both genuine choice (the choice to gamble) and luck (the luck of how the gamble plays out). Imposing responsibility for the consequences of genuinely chosen gambles – that is, allowing the results of gambles to stand – therefore amounts to imposing responsibility for luck as well as choice. Conversely, alleviating responsibility for the consequences amounts to alleviating

Regardless of whether or not that claim is convincing, however, there is another, different sense in which the two sides of the luck egalitarian principle of consequential responsibility may be considered asymmetrical. It is possible to hold that the *inegalitarian* influence of luck on outcomes is always unjust, without implying that the influence of choice on outcomes is always just *regardless of what the influence of the latter amounts to*. That implication is certainly entailed by statements that an outcome is unjust *if and only if* it is a function of luck. Consider once again Cohen's statement, above, that luck egalitarians object to 'all *and only* those inequalities that do not appropriately reflect choice' (Cohen 2006: 439, my emphasis). Luck egalitarians might omit this '*and only*' clause, instead leaving room for arguments that the *inegalitarian* influence of choice may, sometimes, also be unjust. It is possible, without incoherence, for luck egalitarians to judge some of the *inegalitarian* distributive implications of some choices as unjust. An accurate expression of the dual demands of luck egalitarian distributive justice might,

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responsibility for choice as well as luck. Knight's view is that although, in these cases, a 'position that refused to allow the results of individuals' choices to stand might seem to have given up too much ground to the old left', if prohibiting gambles or waiving responsibility for their consequences were the only way to achieve equality, egalitarians should take such a position, 'even if it did make their position less attractive to those with weaker commitments to equality' (Knight 2012: 553). That, given the conflict between the two luck egalitarian demands, Knight would rather waive than impose responsibility for both luck and choice suggests that he views the demand to waive responsibility for luck as weightier than the demand to impose responsibility for choice. I return to this aspect of Knight's thought in section 1.3.2.

then, emphasize that the demand to hold people responsible for their choices is – in contrast to the demand to neutralize the inegalitarian influence of luck on outcomes – provisory in a particular sense. The second part of the dualistic luck egalitarian principle of consequential responsibility is provisory because it may require to be further specified and qualified in a way that the first does not. The first part says, whatever the costs and benefits of luck amount to, it is unjust to require or permit people to bear or accrue them. That is, regardless of *how* costly or beneficial luck is in terms of its influence on outcomes, justice requires the inegalitarian influence of luck to be expunged. The second part may also seem to imply that whatever the costs and benefits of choice – however elevating or disastrous they may be – the fact of their being chosen entails that it is just to impose them on the chooser. But it is implausible that egalitarian distributive justice is silent on *what* costs and benefits consequent on choice it is fair for people to accrue.

In support of this view, Peter Vallentyne writes:

For brute luck egalitarians, [...] there should be no equalization that is not required for brute luck equalization. This principle, however, is implausible. There is no reason to treat the pre-coercive-redistribution – or “natural” – payoff structure as privileged’ (Vallentyne 2002: 550)

This important insight has formed the basis of Serena Olsaretti’s work on just stakes. Olsaretti observes that ‘when we endorse the principle of responsibility, it is not enough to hold that a person who is responsible for her actions should bear the consequences of her actions: we need to ask what those consequences justifiably include, and why’ (Olsaretti 2009: 76). If this is correct, luck egalitarianism is in need of a complementary

theory that determines what costs and benefits consequent on choice responsibility may be imposed for.<sup>14</sup> While, absent considerations from without distributive justice, the

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<sup>14</sup> Clarifying this additional theoretical requirement, she writes:

A theory of responsibility that can generate determinate judgments of responsibility must include both what I call a principle of attribution and a principle of stakes. A principle of attribution answers a question about the grounds of responsibility: 'What factors determine whether actions or choices are attributable to individuals in a way that justifies making them internalise the costs of their actions or choices?'. A principle of stakes, by contrast, answers a question about the consequences of choice: 'Assuming that individuals are responsible for their actions or conduct in a sense that justifies, other things being equal, making them pick up some costs, just what costs should they bear?'. Now, while virtually all discussions of justice and responsibility focus on formulating and defending an answer to the first question, few raise and explicitly address the question of stakes at all. [...] hardly any defence is ever offered of why, when the conditions for holding people responsible for their actions or choices are met, they should be held responsible for some rather than other consequences that those actions or choices could generate. (Olsaretti 2009: 75-76)

luck egalitarian injunction to relieve responsibility for the costs and benefits of luck holds regardless of what those costs and benefits are, the injunction to impose responsibility for the costs and benefits of choice may thus require further specification of just costs and benefits. This lends further support to the idea that the two luck egalitarian demands for luck neutrality on the one hand and choice sensitivity on the other are asymmetrical in the sense that the first demand is absolute or non-provisory and insensitive to the magnitude of luck-based costs and benefits, while the second demand is provisory and sensitive to the magnitude of choice-based costs and benefits.<sup>15</sup>

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Knight (2013b) also offers a luck egalitarian proposal regarding precisely what consequences of choice it is just to impose on the chooser. On his view, individuals should receive the warranted expected value of their choices, accounting for non-culpable incapacity. He writes:

The core idea is that individuals should receive the outcomes they are warranted in expecting from the choices they make. An assessment of probabilities is warranted if, overall, the evidence available to the individual points towards that assessment. (Knight 2013b: 1067)

Knight also recognizes that different individuals may be more or less capable of evaluating the evidence available to them and argues that, if a person lacks the relevant capacities through no choice of her own, consequential responsibility for choice should be alleviated (see, in particular, Knight 2013b: 1067-1068).

<sup>15</sup> As I am concerned here with what Olsaretti terms the question of the grounds of responsibility, rather than the question of stakes, I bracket the question of what consequences

#### **1.1.4 The Status of Children in Luck Egalitarian Theory**

One issue that cuts across different distinctions between luck and choice concerns the determination of how or at what point people become capable of responsible choice. It is a complex matter whether, and if so when and how, children might be held consequentially responsible for their actions when those actions exhibit (some of) the characteristics standardly (that is, in adults) indicative of responsible choice. Luck egalitarians have tended to follow the well-established theoretical practice of refraining from attempts to resolve or engage in these issues, instead employing a working assumption that children are not at all capable of responsible choice or that, regardless of whether they are so capable, they are not counted among the people who may be held responsible for choice. On this assumption, the luck egalitarian principle of consequential responsibility recommends holding only those who have reached their majority consequentially responsible for their choices.<sup>16</sup> Observing the difficulties of determining the point or age of majority, Steiner writes:

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should be imposed. Where I refer to imposing responsibility for choice, I mean imposing responsibility for the just consequences of choice in accordance with a plausible theory of just stakes but, from now on, omit this caveat.

<sup>16</sup> Relatedly, Olsaretti (2009) questions whether it should be parents or all members of society who bear the costs of raising children: children themselves bear no consequential responsibility for these costs.

Children have always posed a big problem for political philosophy in general and theories of justice in particular. Just *when* – at what age – a person’s minority ends, will presumably remain a perennial subject of legal and political debate. But we can all agree that persons below some age or other are definitely minors. (Steiner 2002: 183, original emphasis)

Fundamentally, of course, the notion that all children reach their majority at a certain age, after which point they may be held responsible for their choices, constitutes a simplifying assumption that may be problematic, particularly if people might reasonably be thought generally to become more capable of responsible choice as they grow up. It is perhaps, however, less problematic as a working assumption employed in determining what regulatory actions justice recommends, for which purpose proxies and cut off points might be justified in terms of expediency or in light of other considerations. As subsequent chapters of this thesis focus primarily on issues of regulation, I refrain from attempting to identify and justify in any fundamental sense a particular point or age of majority and, instead, acknowledge my employment of the simplifying assumption that there is such a point, before which people count as children and should be relieved of all consequential responsibility. More specifically, I assume that children’s outcomes may be conceived as a function of what Steiner terms, in a related discussion of the development of ability, ‘initial genetic endowment and an enormous variety of post-conception inputs’, and that these are factors that children do not choose to be affected by (Steiner 2002: 186). Given the assumption that children do not make responsibility-attracting choices that might justify inequalities between them and that the determinants

of children's outcomes are not chosen by them, luck egalitarianism demands equal outcomes for children.

With these general points regarding the distinction between luck and choice and the principle of consequential responsibility to which it gives substance in mind, we can turn now to the question of which distinction is most appropriate to a luck egalitarian theory of distributive justice that condemns the inegalitarian influence of luck on life outcomes, but permits the inegalitarian influence of choice.

## **1.2 The Attributivist Approach**

### **1.2.1 Masonian Distributive Justice**

Mason proposes an attributivist distinction between luck and choice that forms the basis of his principle of consequential responsibility. He argues that, on that principle, consequential responsibility should be relieved for the consequences of luck and imposed for the consequences of choice, with three qualifications. However, it is important to be clear that Mason does not ultimately recommend the principle of consequential responsibility he defends as the central principle of distributive justice. That is, the status of the principle is not such that distributive justice demands fully luck-neutral and choice-sensitive outcomes. Instead, Mason proposes a more 'complex' and 'messy' approach to determining principles of distributive justice (Mason 2006: 7, 156). He develops a variety of principles that apply not to the overall distribution of advantage but, instead, to the discrete distributions of particular goods (including jobs, university places, leisure, wealth, and so on). His strategy 'is to work from the bottom up: to seek defensible principles to govern specific goods or specific aspects of people's

circumstances, and then to see whether they can be grounded in more abstract principles' (Mason 2006: 134). The principle of responsibility serves as one of the 'more abstract principles' in which some of his goods-governing principles may be grounded. Notably, each of the applied principles is either quasi-egalitarian, sufficientarian, or prioritarian, and taken together they neither fully relieve consequential responsibility for luck, nor hold people consequentially responsible for all of their responsible choices.<sup>17</sup> Mason writes:

The version of the mitigation approach I have defended gives no simple answer to the question: when are the effects of differences in [...] circumstances on access to advantage just and when are they unjust? [...] according to the mitigation approach I favour, justice requires that these differences should not unduly affect access to advantage, then there are various principles governing access to different goods or different aspects of people's

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<sup>17</sup> To Mason's contention that he focuses on 'differences in people's circumstances, exploring in what way justice requires us to counteract the effects of those differences' (Mason 2006: 158), I would therefore add the qualification that he focuses on only *some* of the effects of *some* of those differences. He readily acknowledges this elsewhere: for example, when he writes that 'the principles I have described do not imply [...] we should systematically prevent differences in social circumstances from having an effect on people's chances of occupying advantaged social positions' (Mason 2006: 144).

circumstances which, combined, spell out what it is for that to be the case. The particular version of the mitigation approach I have defended also gives a complex answer to the question: when is it just and when is it unjust to require a person to bear the costs of his behaviour? It maintains that a variety of different factors may affect the justice of requiring people to bear the costs of their choices (Mason 2006: 220)

In short, for Mason, the fact of someone having made a choice in such a way as to render imposition of consequential responsibility for the consequences appropriate (according to his abstract principle of responsibility) does not mean that justice recommends imposing consequential responsibility for those consequences (according to his applied principles of distributive justice). Conversely, if costs and benefits accrue to a person as a matter of luck, such that the responsibility principle deems it inappropriate to impose on the person consequential responsibility for those costs and benefits, justice may yet require her to bear them. The roles luck and choice play in determining people's outcomes constitute only one among a number of considerations that inform the judgement of the justice of those outcomes.<sup>18</sup> In what follows, I set aside consideration

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<sup>18</sup> There might, then, seem to be a tension between Mason's work on the principle of consequential responsibility on the one hand, and his work on goods-governing principles of justice on the other. If the former is convincing, the latter may be untenable to the extent it fails to conform to the former's prescriptions. The plausibility of his eclectic mix of principles of justice would then be undermined to the extent that they permit people to accrue the very

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luck-based costs and benefits condemned by the responsibility principle, and fail to impose on people the consequences of choices for which the responsibility principle imposes consequential responsibility. That is, if Mason's arguments regarding the responsibility principle are successful in establishing that consequential responsibility should be relieved for luck and imposed for choice (as the two concepts are defined by Mason), his other arguments that, depending on the good to be distributed, consequential responsibility should sometimes be imposed for luck and should not always be imposed for choice may be undermotivated at the fundamental level. Likewise, if the various principles he suggests should govern the distribution of particular goods are correct, that undermines his formulation of the responsibility principle in terms of the distinction between luck and choice. In other words, if it is demonstrated that the recommendations of the responsibility principle are at odds with the requirements of justice when it comes to the distribution of various goods, such that responsibility should not, after all, be imposed in the way his responsibility principle recommends, it would seem the principle must be incorrect. It *may*, however, be possible for Mason to avoid the charge of incoherence on this score. The responsibility principle might be understood as one of a number of grounding principles of justice, the imperatives of which may sometimes conflict with one another and should therefore be understood as provisional. If that approach is successful, Mason must then demonstrate for each case (that is, for each distribution of a good to which principles of justice apply) in which the responsibility principle is overruled that the conflicting demands of other grounding principles really are demands of *justice* and that they really do *outweigh* the demands of the responsibility principle.

of Mason's eclectic goods-governing principles of justice in order to examine whether his version of the responsibility principle is a viable candidate for the central luck egalitarian regulatory principle. That is, I ask whether the distinction between luck and choice on which Mason's responsibility principle is based might be an appropriate one for luck egalitarian theory that recommends luck-neutral and choice-sensitive outcomes.

### **1.2.2 Consequential Responsibility and Attributive Responsibility**

#### 1.2.2.1 The Space of Rational Agency

Mason draws the distinction between luck (or, circumstance) and choice as follows:

I suppose that a person's circumstances are what happens to him 'outside the space of his rational agency', whereas a person's choices pertain to what takes place within that space. An aspect of a person's condition lies within the space of his rational agency if and only if it is intelligible, at least in principle, to ask him to justify it or evaluate it in terms of his reasons either because it is something he could have influenced or prevented or because, even though he could not influence it, it falls within the space of his reasons because it is governed by relations of consistency, coherence, and the like. The class, family, or culture into which a person is born, and his race and sex, are clearly part of his circumstances. So too is the potential with which a person is born, that is, his natural endowment. Behaviour – what a person does or fails to do, and the foreseeable consequences of his actions and

omissions – generally falls into the category of choice because it is intelligible to ask a person to give his reasons for behaving as he did, except in extreme cases, for instance, when he is sleepwalking or hypnotized. A person's beliefs also fall into the category of choice. They lie within the space of his reasons for we may sensibly ask a person to give his reasons for holding some particular belief; so too his desires and preferences fall within this space if it makes sense to ask him to give his reasons for why he desires what he does, or why he prefers one thing to another. Indeed, it may be intelligible to ask someone to give his reasons why he has some particular desire or preference even if it is not under his control: even if someone has been brought up in such a way that he cannot help having expensive tastes, we can nevertheless intelligibly ask him to give his reasons why (say) he prefers some particular claret to another, or indeed why he prefers good wine to good beer, and he may be able to give reasons in response that appeal to some aspect or other of its flavour. When a person would rather not have a particular desire, it may also make sense to ask him why he would rather not have it, and thereby invite him to evaluate it. So preferences that are beyond a person's control may nevertheless lie within the space of his rational agency and hence be included as choices according to my stipulated definition. (Mason 2006: 93-94)

To be clear, then, a person's ability to prevent or influence some aspect of her outcome, and that aspect of her outcome being governed by relations of consistency and coherence with her reasons, are each sufficient conditions for that aspect falling within the space of rational agency and therefore counting as a matter of choice. But what actually matters in Mason's distinction is whether a person can intelligibly be asked to evaluate or justify an aspect of an outcome: this is the necessary condition for choice, the presence of which either of the sufficient conditions is supposed to indicate. While the references to agency, influence and prevention might, at first glance, seem to connote some substantive role for metaphysical control in the distinction, this is not the case. Metaphysical agency is not relevant except inasmuch as metaphysical control *indicates* the presence of reasons; lack of control does not in itself tell us anything about whether an aspect of an outcome falls inside or outside the space of rational agency. Mason writes that his egalitarianism maintains 'a person's circumstances are constituted by what lies outside the sphere of his rational agency, that is, what is beyond his control *and* does not lie within the space of his reasons' (Mason 2006: 174, original emphasis). But I would argue that the first 'condition' is in fact implicit in the second. If some aspect of an outcome is inside the space of rational agency, it counts as choice regardless of whether or not it was under the individual's control in the sense of being influenceable or preventable. If some aspect of an outcome is outside the space of rational agency in the sense that it cannot be explained, evaluated or justified in terms of the individual's own reasons, it cannot be under the individual's control because, as stated above, being able to influence or prevent it is a sufficient condition for it to fall inside space of rational agency. Mason uses the terms 'space of rational agency' and 'space of reasons' interchangeably. However, given that agency, in the sense of control, plays no

substantive role in this distinction and, rather, merely indicates the presence of the substantive condition of choice – ability to evaluate or justify – it may be that the latter is a more appropriate term for the necessary condition of Masonian choice than the former.

#### 1.2.2.2 Attributive Responsibility as Responsiveness to Reason

So, the distinction Mason draws between luck and choice (and the principle of responsibility to which it gives substance) is not grounded in metaphysics. Instead, Mason's justification for his view of consequential responsibility appeals to the notion that it reflects and is grounded in 'our ordinary moral practices of praising, blaming, and excusing' (Mason 2006: 174). In one respect, this approach to consequential responsibility is similar to Dworkin's. Dworkin claims that a just principle of consequential responsibility should be continuous with ordinary ethical and moral experience and practice. Explaining the difference between continuous and discontinuous approaches, he writes:

Ethically sensitive (or “continuous”) theories grow out of our internal lives because they base their judgements about the justice or injustice of any distribution of impersonal resources on assignments of responsibility drawn from ethics [...] Ethically insensitive (“discontinuous”) political theories, on the other hand, deploy standards of just distribution that are special to politics and that do not reflect the distinctions and assignments of responsibility we make leading our lives from the inside.  
(Dworkin 2000: 323-324)

Mason's principle of consequential responsibility is, like Dworkin's, continuous because it reflects and is grounded in ordinary moral experience and practice regarding a particular kind of responsibility. The approaches of Mason and Dworkin are, however, substantively different, as each focuses on a different aspect of ordinary experience of responsibility. Dworkin thinks ordinary ethical experience is to identify with features of our personalities (including preferences and ambitions), but not with our circumstances (including native endowments and impersonal resources) (Dworkin 1981: 303; 2000: 289-90, 293). Because we identify with our personalities but not with our circumstances, he argues, we expect to take and to have imposed on us consequential responsibility for our personalities but not our circumstances (Dworkin 2000: 290, 294). Finally, because principles of distributive justice should be continuous with ordinary ethical experience, they should recommend holding people responsible for the consequences of choices that flow from their personalities but not for the advantages and disadvantages that flow from their circumstances (Dworkin 2000: 294-6, 323-4). Thus, Dworkin grounds his principle of consequential responsibility in (what he argues is) our ordinary ethical experience of *taking consequential responsibility*.

Mason, on the other hand, grounds his principle of consequential responsibility in (what he argues is) our ordinary moral experience of *assigning attributive responsibility*. Attributive responsibility concerns when it is appropriate for a person to attract moral praise or blame. On this view, people should be held consequentially responsible for (only) those actions and preferences for which we ordinarily think they may be praised or blamed. Mason then claims that Scanlon's responsiveness to reason account of attributive responsibility makes the best sense and provides the best explanation of our ordinary

moral experience of praising, blaming and excusing (see, in particular, Mason 2006: 162, 164-170, 172).<sup>19</sup> According to Scanlon's account, a person attracts attributive responsibility for an action when it is 'responsive to reason', and it is responsive to reason if it is connected to her judgements and character in the sense that it comes out of a process of self-government. Scanlon writes:

A person governs herself in the sense required if she is sensitive to the force of reasons and to the distinctions and relations

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<sup>19</sup> Mason clarifies that what Scanlon calls attributive responsibility, he terms moral responsibility, and that Scanlon uses the term substantive responsibility to indicate what I have been calling consequential responsibility:

In Scanlon's terms I am using 'moral responsibility' in the sense of responsibility as attributability. The question which motivates the current chapter, viz., 'when is it fair to require a person to bear the costs of their behaviour?', addresses what Scanlon calls 'substantive responsibility' (Mason 2006: 162)

Mason does not, however, make any reference to one of Scanlon's central claims, namely, the claim that attributive responsibility and consequential responsibility have entirely different grounds and should be imposed for entirely different reasons. The two types of responsibility as set forth by Scanlon should not be conflated and the former cannot plausibly serve as grounds for the latter. I return to this issue, which I will argue has problematic implications for Mason's work, in section 1.2.4.

between them and if her response to these reasons generally determines her subsequent attitudes and actions. (Scanlon 1998: 281)

For Scanlon and Mason, then, ‘moral criticism [or appraisal] of a person’s action remains appropriate as long as it is true that the process of self-governance that led to this action was correctly attributable to the agent’ (Scanlon 1998: 287).<sup>20</sup> Hence, on the attributivist approach, a person’s choices pertain to what falls inside the space of her rational agency (or, more accurately, the space of her reasons). To fall inside the space of her rational agency, the choice must be responsive to reason in Scanlon’s sense. A choice being responsive to reason entails that it is appropriate, according to our ordinary moral experience, to assign attributive responsibility for that choice, which in turn justifies the imposition of consequential responsibility for the costs and benefits of the choice.

Mason summarizes his position as follows:

In cases where we blame a person (or hold that it is fair to require him to bear the costs of his behaviour or preferences), we do so because we think his behaviour and preferences are appropriately

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<sup>20</sup> The attributivist approach holds that people should be held consequentially responsible for actions for which they are attributively responsible, but is silent on whether it is moral blame or moral praise that is appropriate: an assignation of attributive responsibility does not entail any particular judgement of blameworthiness or praiseworthiness, but merely indicates that a moral judgement (of either blame or praise) can be made.

connected to his reason and no excusing conditions apply (Mason 2006: 172)

From this quotation, we can see that Mason thinks our ordinary moral experience is to assign (to some third person) *both* attributive responsibility and consequential responsibility for the *same* reasons, namely, that the person's actions were responsive to reason in Scanlon's sense. However, there are some ambiguities here. It remains unclarified in Mason's work whether or not he thinks people ordinarily regard themselves as attributively responsible on the same basis as that on which they regard others as attributively responsible. Two questions therefore arise. First, do people ordinarily think of themselves as appropriately subject to moral appraisal or criticism for a given action when, holding all else equal, they would judge someone else to be appropriately subject to moral appraisal or criticism for the same action? In other words, do they understand themselves to be attributively responsible for all of their actions that are responsive to their own reasons? Second, do they expect to take consequential responsibility for such actions? What matters in Mason's account is the assignment of attributive responsibility to others, and not the recognition, acceptance or affirmation of one's own (attributive or consequential) responsibility. That, of course, allows for the possibility that consequential responsibility may be imposed on a person for some action when that person does not accept that she is attributively responsible for it (such that she does not experience her own behaviour as appropriately subject to moral appraisal by others), and/or when she does not accept that she is consequentially responsible for it (such that she does not expect or think it appropriate to bear its costs or accrue its benefits). If the answer to both of the questions I have just asked is yes, then people

expect to bear consequential responsibility for actions for which they and others hold they are attributively responsible, and consequential responsibility should be imposed on them for those actions. If the answer to the first question is no, the implication is that people may not ordinarily believe themselves to be attributively responsible for actions for which others hold they are attributively (and thus consequentially) responsible, but consequential responsibility should nonetheless be imposed on them for the consequences of such actions. If the answer to the second question is no, the implication is that people may not ordinarily expect to take consequential responsibility for (at least some) actions for which others hold they are attributively (and thus consequentially) responsible, but consequential responsibility should nonetheless be imposed on them.

#### 1.2.2.3 Three Excusing Conditions of Scanlonian Attributive Responsibility

Scanlon suggests that there are three grounds for waiving attributive responsibility, or, three excusing conditions under which assigning attributive responsibility is inappropriate. Mason argues that when any of these conditions hold such that Scanlonian attributive responsibility is lifted, consequential responsibility for the action should not be imposed (Mason 2006: 165-167). First, Scanlon argues, ‘moral appraisal of an agent for an action’ is inappropriate when ‘that action is not, in the proper sense, attributable to the agent’ (Scanlon 1998: 277, see also Mason 2006: 165). Actions undertaken while under hypnosis or while sleepwalking are, in this sense, not properly attributable to the agent, because it is not intelligible to ask her to justify them in terms of her own reasons. Second, certain conditions of an action may alter the character of an action such that moral appraisal is inappropriate. Actions undertaken under conditions of ignorance, mistake of fact, coercion and duress belong in this category. In

these cases, while the action is attributable to the agent, in the sense that it is her own action and she can intelligibly be asked to give her reasons for doing it, ‘the lack of eligible alternatives makes it all right, or at least less blameworthy, to do something that would normally be wrong’ (Scanlon 1998: 280, see also Mason 2006: 166). Third, moral appraisal is inappropriate when ‘a person lacks the general capacities presupposed by moral agency’ (Scanlon 1998: 280, see also Mason 2006: 166). Scanlon cites here cases of mental and cognitive ill-health, when ‘a person is unable to understand and assess reasons or his judgments have no effect on his actions’ (Scanlon 1998: 280).<sup>21</sup>

#### 1.2.2.4 Three Excusing Conditions of (Pluralist) Attributivist Consequential Responsibility

However, this ‘pure’ responsiveness to reason conception of consequential responsibility is ultimately viewed as inadequate by Mason, who rejects it in favour of a ‘pluralist’ conception (Mason 2006: 188). Scanlonian attributive responsibility remains the necessary condition for Masonian consequential responsibility, but Mason introduces three new excusing conditions, which are not grounded in ordinary moral experience and practice of blaming, praising and excusing, and under which, even though a person

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<sup>21</sup> Scanlon asserts that children do not attract attributive responsibility for their actions, for each of these three excusing reasons (Scanlon 1998: 280-281). Accordingly, Mason can argue that children should not be held consequentially responsible for the costs and benefits of their actions.

is attributively responsible for some action, consequential responsibility for its costs and benefits should be relieved. Mason's (pluralist) attributivist principle or consequential responsibility thus runs as follows: people should be relieved of consequential responsibility for costs and benefits they are not attributively responsible for accruing (that is, for luck) and held consequentially responsible for the costs and benefits of actions for which they are attributively responsible (that is, for choice), with three exceptions.

First, Mason writes, 'we might want to say that it would be unfair to require a person to bear these costs if he could not reasonably be expected to behave otherwise, given, for example, the socialization that has shaped his character and dispositions' (Mason 2006: 189). Mason acknowledges that this might already be implied by Scanlon's second excusing condition of attributive responsibility, but urges that it may be more stringent (Mason 2006: 189). There may be cases in which a person had an eligible alternative such that Scanlon's second excusing condition would not apply, but in which it would be unreasonable to expect the person to have taken the alternative, given her upbringing. In such cases, consequential responsibility should not be imposed, even though attributive responsibility may be appropriate.<sup>22</sup> Second, when people accrue large costs

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<sup>22</sup> Mason discusses Scanlon's example of someone who, as a child, is subject to a process of socialization that results in him becoming 'undisciplined and unreliable', and 'unemployable' as an adult (Mason 2006: 189). Scanlon thinks that if he had adequate opportunities to avoid developing the traits that make him unemployable, he attracts attributive responsibility for the disadvantages of being unemployed but that if he did not have those opportunities, attributive

by acting in accordance with an unjust social norm, consequential responsibility may be relieved. He writes: 'When people are subject to a process of socialization which is shaped by an unjust norm which it also imparts, it would be unfair to require them to bear the full costs of acting in accordance with that norm when these costs are large' (Mason 2006: 188).<sup>23</sup> Third, Mason follows Cohen (1989, 2004) in arguing that there are

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responsibility should be waived (Scanlon 1998: 292). (Scanlon thinks consequential responsibility for those disadvantages should be waived either way: he does not think consequential responsibility follows from attributive responsibility. I return to this point in the analysis in section 1.2.4.) On Mason's view, even if he had an eligible alternative to developing those traits (which may be possible, especially given that others subject to similar processes of socialization manage to avoid developing or acting on them), it may be unreasonable to expect him to have taken that alternative, given his upbringing. If that is the case, consequential responsibility should be waived for that reason, even though an eligible alternative existed such that he does attract attributive responsibility.

<sup>23</sup> Mason uses the example of the career-sacrificing mother to illustrate the force of this excusing condition:

Where these [sexist] norms continue to be widely accepted and promulgated, even those women whose preferences have not been shaped by them should not be required to bear the full costs of acting in a way that accords with them. There is something hypocritical, and also unfair, about a society where a norm that mothers should take primary responsibility for childcare influences social expectations but

cases in which consequential responsibility for the costs of satisfying reflectively endorsed tastes that happen to be expensive should not be imposed. He writes: 'it would be unjust to require a person to bear the full costs of his choices when the expensiveness of those choices places a large burden on him and is due in significant part to some feature of his circumstances' (Mason 2006: 188).<sup>24</sup> Alleviating consequential responsibility for such costs is particularly appropriate, Mason argues, whenever it would help to 'prevent the demise of a cultural community when this would make it difficult or even impossible for its members (or some of them) to lead a life they can find meaningful' (Mason 2006: 182). On the attributivist approach, then, people should be held consequentially responsible only for choices for which we would ordinarily hold them attributively responsible (because they are responsive to reason and none of Scanlon's excusing conditions apply), except inasmuch as considerations to do with

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which requires mothers to bear the costs of behaviour that accords with it, and this is true irrespective of whether they are acting from that norm or even whether that norm has causally influenced their preferences.

(Mason 2006: 187-188)

<sup>24</sup> On this score, both Cohen and Mason differ from Dworkin. Dworkin thinks distributive justice requires people to bear the costs of satisfying reflectively endorsed tastes, precisely because their being reflectively endorsed means they are identified with by and form part of the personality of their bearer. As outlined above, Dworkin holds that people should take consequential responsibility for the costs of choices that flow from their personalities, including the costs of satisfying preferences and fulfilling ambitions with which they identify.

socialization, unjust social norms and reflectively endorsed expensive tastes provide reasons for relieving consequential responsibility for choice.

### **1.2.3 A Summary of the Attributivist Approach**

Employing Mason's responsibility principle as the central luck egalitarian principle of consequential responsibility generates an attributivist approach to luck egalitarianism that can be summarized as follows:

There is such a thing as our ordinary moral experience and practice of assigning attributive responsibility (that is, of praising, blaming, and excusing a person for an action).

The principle of consequential responsibility should reflect and be grounded in our ordinary moral experience and practice of assigning attributive responsibility.

Our ordinary moral experience and practice of assigning attributive responsibility is best explained by Scanlon's conception of attributive responsibility: we assign attributive responsibility for an action only when it is appropriately responsive to reason and none of the three excusing conditions apply.

Therefore, Scanlonian attributive responsibility is the necessary condition for consequential responsibility.

However, were it to be a sufficient condition, that would have unattractive implications in three respects (for reasons to do with socialization, unjust social norms, and reflectively endorsed expensive tastes).

Therefore, three additional excusing conditions for consequential responsibility are necessary (such that Scanlonian attributive responsibility is a necessary but not sufficient condition for consequential responsibility).

#### ***1.2.4 A Critique of the Attributivist Approach***

In what follows, I present a number of objections to the attributivist approach, which I think provide strong grounds for its rejection. In section 1.2.4.1, I argue against Mason's general claim that there is such a thing as ordinary moral experience of assigning attributive responsibility, which can ground and be reflected in a principle of consequential responsibility. I also argue against Mason's more specific claim that Scanlon's theory of when it is appropriate to assign attributive responsibility provides the best explanation of the basis on which we actually assign attributive responsibility in our ordinary, day-to-day lives. I then imagine how supporters of the attributivist approach might reply to those objections. In section 1.2.4.2, I consider whether they might concede the objections, but successfully insist that (even though it does not capture 'our ordinary moral experience') Scanlonian attributive responsibility still constitutes an appropriate basis for consequential responsibility. I then provide reasons to reject that approach. In section 1.2.4.3, I consider an alternative approach, on which supporters of the attributivist approach might concede my objection to the specific claim but reject my objection to the general claim and insist that the correct version of the principle of consequential responsibility should reflect ordinary moral experience (even if it is not Scanlonian). I then provide further reasons to reject that approach.

#### 1.2.4.1 Objection to the claims that ordinary moral experience of attributive responsibility exists and is Scanlonian

As we have seen, Mason argues that his view of consequential responsibility as requiring Scanlonian attributive responsibility is plausible and attractive because it is grounded in and reflects our ordinary moral experience of blaming and praising. This argument relies on two key empirical premises. First, Mason makes a *general* claim that there is such a thing as ‘our ordinary moral experience’ of the conditions of assigning attributive responsibility – some shared basis on which we ordinarily assign blame or praise in our everyday lives. Second, he makes the more *specific* claim that Scanlon’s theory of when it is appropriate to assign attributive responsibility provides the best explanation of the basis on which we actually ordinarily assign attributive responsibility. I reject the general claim that there is such a thing as our ordinary moral experience of blaming, praising and excusing, which is sufficiently homogenous, coherent, and stable to provide suitable grounds for a principle of consequential responsibility. I argue, using evidence from empirical research, that such moral experience is heterogeneous between different people, internally incoherent in single individuals, and potentially unstable. Relatedly, I reject the more specific claim that ordinary moral experience of assigning attributive responsibility is generally best explained by Scanlon’s theory. The evidence suggests that people (sometimes) make judgements of attributive responsibility that are incompatible with Scanlon’s theory.

Many philosophers have made claims about the features of our ordinary moral experience of attributive responsibility. Some have claimed that people have incompatibilist intuitions around attributive responsibility (for example, Kane 1999: 218

and Galen Strawson 1986: 30), while others have claimed people have compatibilist intuitions (for example, Mason 2006: 174 and Susan Wolf 1990: 89). However, as Eddy Nahmias et al. observe,

few philosophers have tried to ascertain what these commonsense intuitions actually are. More often than not, philosophers are content to place their *own intuitions* into the mouths of the folk in a way that supports their own position – neglecting to verify whether their intuitions agree with what the majority of non-philosophers *actually* think. (Nahmias et al. 2005: 562, original emphasis)

Happily, some experimental philosophers have set out to gather evidence on how people assign attributive responsibility. Shaun Nichols and Joshua Knobe's (2007) research is especially relevant here. They set out to ascertain whether people have compatibilist or incompatibilist notions of attributive responsibility (which they term moral responsibility) and to examine the processes by which people assign it. Incompatibilists (for present purposes) maintain that full attributive responsibility is not possible if determinism is true. Mason is not an incompatibilist: he holds and assumes (and premises his approach to consequential responsibility on the assumption) that people ordinarily hold the compatibilist view that attributive responsibility is possible even if determinism is true, because it requires (only) Scanlonian responsiveness to reason,

which is possible even in a determinist world.<sup>25</sup> I want to draw attention to three empirical findings that are especially relevant: first, different people assign attributive responsibility in different ways – moral experience of assigning attributive responsibility is not consistent across individuals; second, the way in which single individuals assign attributive responsibility is not internally coherent; and, finally, much moral experience of assigning attributive responsibility is not Scanlonian. The first two findings undermine Mason's general claim, and the third undermines his specific claim.<sup>26</sup>

Nichols and Knobe instructed respondents to assume determinism and then asked them 'is it possible for a person to be fully morally responsible for their actions?', to which 14% answered yes, while 86% answered no (Nichols and Knobe 2007: 670). First

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<sup>25</sup> Explaining the compatibility of attributive responsibility with determinism, Scanlon writes that the truth of determinism:

would not imply that our thoughts and actions lack the continuity and regularity required of rational creatures. It would not mean that we lack the capacity to respond to and assess reasons, nor would it entail the existence of conditions that always disrupt the connection between this process of assessment and our subsequent actions. (Scanlon 1998: 281)

<sup>26</sup> Of course, it should be noted that, although the aim of the researchers was to uncover what they call 'folk intuitions', the research gathered data under experimental conditions, which may not perfectly capture ordinary, day-to-day experience and practice. Nonetheless, and even with this caveat, I think the data are illuminating.

(against the general claim) the moral judgements elicited here are not homogenous – they are clearly not all predicated on the same basis. While a sizeable majority gave incompatibilist answers, the evidence suggests there is no single intuition, held in common, either that attributive responsibility is compatibilist or that it is incompatibilist. Perhaps Mason would insist that there is a sufficiently large majority to indicate that there is such a thing as an ordinary way of assigning attributive responsibility that is shared in common, on which consequential responsibility can be based. But it seems to me that 14% is too significant a proportion of people to simply discount in the calculus of a purportedly shared ordinary moral experience. Nonetheless, perhaps the minority can be discounted for some non-arbitrary reason and it can be said that the attributive judgement of the sizeable majority represents our ordinary judgement. But the majority view of attributive responsibility expressed here is definitely *not* Scanlonian. If the majority of people judge attributive responsibility to be impossible in a determinist world, that majority clearly do not think that what is required is – merely – Scanlonian responsiveness to reason, as that is possible in a determinist world. The evidence thus far contradicts Mason's specific claim. Moreover, of course, it is not clear from the data whether the minority of compatibilists endorse something like the Scanlonian responsiveness to reason condition of attributive responsibility or whether they have an entirely different sort of compatibilist view.

Perhaps the most interesting and important finding of the research was that single individuals actually hold *both* compatibilist and incompatibilist views of attributive responsibility. Nichols and Knobe report:

Philosophers who have discussed lay intuitions in this area tend to say either that folk intuitions conform to compatibilism or that they conform to incompatibilism. Our actual findings were considerably more complex and perhaps more interesting. It appears that people have *both* compatibilist *and* incompatibilist intuitions. Moreover, it appears that these different kinds of intuitions are generated by different kinds of psychological processes. (Nichols and Knobe 2007: 681)

When asked more abstract questions designed to trigger theoretical cognition (such as the one above), the majority of respondents gave incompatibilist responses (that is, they expressed intuitions that were not Scanlonian and, thus, did not conform to Mason's expectations). However, when emotional and motivational factors were brought into play – when they were asked to respond to vignettes describing concrete examples of actions that were designed to trigger more highly affective responses regarding whether full attributive responsibility for the action was possible – they were much more likely (than in response to abstract questions) to express incompatibilist attributive judgements (Nichols and Knobe 2007: 664, 671). Respondents were instructed to assume determinism and asked:

Bill stabs his wife and children to death so that he can be with his secretary. Is it possible that Bill is fully morally responsible for killing his family? (Nichols and Knobe 2007: 670)

50% answered no, expressing incompatibilist judgements, while 50% answered yes, indicating compatibilist views that might or might not have been Scanlonian. First,

against Mason's specific claim, we can see that half rejected the Scanlonian view of the conditions of attributive responsibility: they judged that full moral responsibility was not at all possible, given determinism, despite it being open-ended whether Bill's actions were responsive to his reason in Scanlon's sense. Second, against Mason's general claim, we can see again that different people formed their judgements on different bases. There was not even a majority view. So we are at a loss as to which view might be considered representative of our ordinary moral experience.

Now, it might be thought that people were readier to assign attributive responsibility in the second scenario because it featured a concrete person doing concrete things. And Mason might respond that he is interested, not in theoretical, abstract responses, but in how people make judgements about concrete people doing concrete things in their everyday lives. Nichols and Knobe ran a further experiment that controlled for the possibility that concreteness had an effect (Nichols and Knobe 2007: 675-676). They compared high and low affect concrete cases, under assumptions of determinism and indeterminism. In the low affect concrete case, they asked people to judge whether or not it is possible that Mark is fully attributively responsible for cheating on his taxes, as he has done many times before. In the high affect concrete case, they asked people to judge whether it is possible that Bill is fully attributively responsible for raping a stranger, as he has done many times before. The table below shows the percentage of respondents who thought full attributive responsibility possible in each case:

Table 1: Judgements of Attributive Responsibility

	Agent in indeterminist universe	Agent in determinist universe
High affect case	95%	64%
Low affect case	89%	23%

First, we can see, again, that people disagreed with each other – there was no consensus – which strongly suggests different people assign attributive responsibility on different bases. Second, we can see that in each case in which determinism was assumed, significantly fewer respondents thought full responsibility was possible than when indeterminism was assumed. For some of the respondents, the truth or falsity of determinism was highly relevant to their (clearly non-Scanlonian) judgements of attributive responsibility. Moreover, we can see that, when high affect is triggered, ‘people may sometimes declare [...] an agent to be morally responsible despite the fact that they embrace a theory of responsibility on which the agent is not responsible’ (Nichols and Knobe 2007: 664). This suggests that the way (many) individuals assign attributive responsibility in different circumstances is inconsistent. If, in order to provide an appropriate basis for a principle of consequential responsibility, ordinary moral experience of the conditions of assigning attributive responsibility must be shared in common and internally coherent (and it is hard to see how it could provide such a basis if not), this evidence suggests it does not exist.

Now, defenders of the attributivist approach might try to respond that emotions are crucial to the proper (or relevant) way of assigning attributive responsibility: the low affect cases might be irrelevant if they do not reflect how we make judgements of blame and praise in our day-to-day lives. Perhaps only the reactions to high affect cases are really true to how people ordinarily make those sorts of responsibility judgements. If, ordinarily, high affect influences the process of attributive judgement, it might be pointed out that, in high affect cases, far more respondents made compatibilist judgements. But I would reply that, even if we agree that only the high affect cases shed light on ordinary practices, responses remained significantly divergent in these cases and a sizable minority (36%) expressed an incompatibilist, non-Scanlonian view. Moreover, of course, we are still unsure from the data whether the compatibilist judgements were reached on a Scanlonian (or some other) basis.

But, in fact, there seems no good reason to claim that only the responses to the high affect cases are indicative of how people ordinarily make attributive judgements. For that claim to be successful, it would have to be the case that ordinary judgements of attributive responsibility are all infused with high affect, such that a judgement being emotional is what qualifies it to be a *bona fide* ‘ordinary’ attributive judgement. But, remember, the high affect vignettes to which more respondents responded with compatibilist answers asked about attributive responsibility for rape and murder. Of course, we do make attributive judgements of rapists and murderers (and some of us have more cause to do so throughout the course of our day-to-day lives than others). But there are many scenarios in day-to-day life in which we might assign attributive responsibility without high affect being triggered. We are not always highly emotional

in our attributive judgements. It seems arbitrary, then, to exclude those lower affect judgements from the realm of ordinary moral experience and practice. Such an approach would amount to selecting and excluding facts to fit theory. (And, of course, although it could then cite a majority view, it would still, I think, have to concede a lack of *consensus*, even in high affect cases.) There is much that might be said regarding whether one or the other type of scenario and judgement captures 'living life from the inside', but it seems most intuitively plausible (at least, to my mind) that both are integral elements of the ordinary moral experiences and practices from which Mason seeks to draw support.

As Nichols and Knobe suggest:

It seems that certain psychological processes tend to generate compatibilist intuitions, while others tend to generate incompatibilist intuitions. Thus, each of the two major views appeals to an element of our psychological makeup. (Nichols and Knobe 2007: 677-678)

Thus, inconsistency and incoherence may just be a genuine feature of individuals' ordinary morality, which contains both compatibilist and incompatibilist intuitions.<sup>27</sup> If

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<sup>27</sup> Additional support for my claim of inconsistency can be found in other empirical research. For example, David Pizarro et al.'s (2003) research suggests that single individuals can assign attributive responsibility in different ways under different conditions. The research found that, when individuals were asked the same question about whether someone was attributively responsible for some concrete act twice and prompted to express their first, intuitive, gut

we recognize that, we recognize that people's ordinary moral experience – and even the ordinary moral experience of single individuals – is too incoherent to form the basis of, ground, or be reflected in any principle of consequential responsibility.

But perhaps that is too quick. It might be relevant to know which judgement the respondents themselves felt was closest to their ordinary practices. Unfortunately, they were not asked. They were, however, shown the conflict between their compatibilist and incompatibilist answers, and asked to choose one judgement to hold on to and one to abandon. This might be thought to indicate which they 'really' felt, on reflection, was the right one. But, Nichols and Knobe report:

The results showed no clear majority on either side. Approximately half of the subjects chose to hold onto the judgment that the particular agent was morally responsible, while the other half chose to hold onto the judgment that no one can be responsible in a deterministic universe. Apparently, there is no more consensus about these issues among the folk than there is among philosophers. (Nichols and Knobe 2007: 680-681)

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reaction, they made significantly different judgements from those they made when prompted to provide their most rational, thought out response (Pizarro et al. 2003: 5-7). I would urge that moral experience and practice involve both gut reaction and rational deliberation.

On reflection, then, half of the (inconsistent) respondents who had made compatibilist judgements (which may or may not have been Scanlonian) in high affect cases abandoned that view in favour of the incompatibilist judgement. This, I think, raises an interesting, if rather conjectural, possibility. We might tentatively suppose it to be possible that people can change the way they make judgements – that their judgements can be sensitive to reflexive processes of moral deliberation. Even more tentatively, we might further suppose that, were everyone to go through a similar process of reflexive deliberation, a significant proportion might stop making judgements on a compatibilist basis (or, at least, understand such judgements as problematic). Ordinary moral experience may, in this way, be unstable. Moreover, to the extent that people do ordinarily make compatibilist attributive judgements, their doing so may largely be the result of a lack of reflection on morality. I suppose, however, that in reply to that conjecture Mason might point out that even if people have not, on the whole, gone through that kind of deliberative process, he seeks to reflect our ordinary moral experience as it is, not as it might possibly become.

Perhaps most relevant to the issue of whether a defender of the attributivist approach could discount responses to the low affect cases is Nichols and Knobe's attempt to explain the data. They write:

If we find that different intuitions are produced by different psychological mechanisms, we might conclude that some of these intuitions should be given more weight than others. What we need to know now is which intuitions to take seriously and which

to dismiss as products of mechanisms that are only leading us astray. (Nichols and Knobe's 2007: 678)

They consider two rival ways of understanding what is going on. On the performance error model:

strong affective reactions can bias and distort people's judgments.

On this view, people ordinarily make responsibility judgments by relying on a tacit theory, but when they are faced with a truly egregious violation of moral norms (as in our concrete cases), they experience a strong affective reaction which makes them unable to apply the theory correctly. (Nichols and Knobe 2007: 671)

The performance error model draws wide support from social psychology theory and research.<sup>28</sup> On this view, there is no genuine sense in which the majority of respondents hold compatibilist views of attributive responsibility: the tacit theory on which they make attributive judgements is correctly applied in the low affect cases and compatibilist judgements only arise when the process of reaching them has gone awry due to co-present high affect. Conversely, the affective competence model holds that 'people's affective reactions actually lie at the core of the process by which they ordinarily assign responsibility' (Nichols and Knobe 2007: 672). Thus, on this view, 'people's fundamental moral competence is a compatibilist one', but 'some people happen to

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<sup>28</sup> See Ziva Kunda (1990) for an overview of the literature.

subscribe to a theory that contradicts this fundamental competence' (Nichols and Knobe 2007: 673). If it were shown that the affective competence model was the correct one, Mason might have some basis on which to argue that we should discount the low affect cases. But, in fact, Nichols and Knobe conclude that while 'the affective performance error model provides quite a plausible explanation of our results', it is 'much less clear that the affective competence theorist has a good explanation of the results' (Nichols and Knobe 2007: 676, 677).<sup>29</sup>

In sum, the attributivist approach to consequential responsibility relies on two key premises regarding the form and content of ordinary moral experience and practice of assigning attributive responsibility. Namely, that it is sufficiently coherent across and within individuals to provide a basis for a principle of consequential responsibility, and that it is broadly Scanlonian. I hope to have shown that these assumptions are contradicted by the available empirical evidence. The evidence suggests that different people do not assign attributive responsibility on the same basis, single individuals do not always assign attributive responsibility on the same basis, and many attributive

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<sup>29</sup> For further discussion of the reasons leading to this conclusion, see Nichols and Knobe (2007: 675-681). A finding from Jennifer Lerner et al.'s (1998) research may provide further support for the performance error model. They found that people are more likely to hold others responsible (that is, to blame them) for a given action when their negative emotions have been aroused, even when those negative emotions are aroused by an entirely *unrelated* event (Lerner et al. 1998: 566).

judgements are incompatibilist and thus not Scanlonian. I must acknowledge that this evidence is not comprehensive: there may be methodological issues that I have not discussed, the evidence was collected under experimental (rather than ‘ordinary’ day-to-day) conditions, and the research focused on assignments of blame only and so cannot tell us anything concrete about people’s views of when it is appropriate to praise others. But there is certainly scope for further research to shed light on how people assign blame and praise. Until we build up an accurate empirical picture, any assumption that people ordinarily assign attributive responsibility on a compatibilist (or, indeed, incompatibilist) basis and, more specifically, that our ordinary moral experiences and practices are Scanlonian (or, indeed, anything specific), must be recognized as unsubstantiated speculation. In order to claim support from ordinary moral experience, we have, first, to get it right.

How might a supporter of the attributivist approach respond to these objections? If it is conceded that ordinary moral experience of assigning attributive responsibility is not sufficiently coherent to form the basis of a principle of consequential responsibility and/or that it is not Scanlonian, it might yet be thought that Scanlon’s view of attributive responsibility still constitutes an appropriate basis. This approach would accord with Mason’s claims regarding the appropriateness of Scanlon’s view but, obviously, forfeit any claim to draw support from ordinary moral experience. It would have to provide additional argumentation for why consequential responsibility should depend on Scanlonian attributive responsibility. In section 1.2.4.2, I set out reasons to judge this approach inadvisable. Alternatively, supporters might concede that ordinary moral experience is not Scanlonian, but deny (contrary to the available evidence) that it is

insufficiently coherent to ground a principle of consequential responsibility and insist that the right version of that principle should reflect it. This approach would abandon its attachment to Scanlonian attributive responsibility, but continue to claim the support of our ordinary moral experience of blaming and praising, whatever is the basis on which that happens. I have already tried to show that there are empirical reasons to reject such an approach but, even if these are unconvincing, there are further arguments against it, which I raise in section 1.2.4.3.

#### 1.2.4.2 *Objection to the claim that Scanlonian attributive responsibility should ground the principle of consequential responsibility*

If the arguments presented in section 1.2.4.1 are unsuccessful and Mason is correct to claim that there is such a thing as our ordinary moral experience of assigning attributive responsibility, and that ordinary assignations happen on a Scanlonian basis, are there any additional reasons to reject the argument that Scanlonian attributive responsibility should form the basis of the principle of consequential responsibility? Further, if defenders of the attributivist approach *accept* either my objection to the general claim that there is such a thing as our ordinary moral experience of assigning attributive responsibility, or my objection to the specific claim that it is Scanlonian, or both objections, can they, in response, abandon their claim to continuity but retain Scanlonian attributive responsibility as the basis of the principle of consequential responsibility? In what follows, I suggest that Scanlonian attributive responsibility – whether or not it provides the best explanation of (our) ordinary moral experience – is an inappropriate basis for the principle of consequential responsibility.

Perhaps one of the strongest arguments against grounding consequential responsibility in Scanlonian attributive responsibility consists in the reasoning behind Scanlon's own explicit entreaties not to do so. At one point, Mason questions whether his responsibility principle would be acceptable to Scanlon and, at others, he claims that it 'follows' directly from Scanlon's original ideas.<sup>30</sup> But Scanlon's work makes clear he would not endorse any version of the attributivist approach to consequential (his substantive) responsibility. For Scanlon, attributive responsibility and consequential responsibility have different moral roots and should not be conflated or even viewed as conceptually related. Summarizing one of his central arguments, he writes:

In this chapter I have distinguished two different notions of responsibility: responsibility as attributability and substantive responsibility. When we ask whether a person is responsible in the first of these senses for a given action, what we are asking is whether that person is properly subject to praise or blame for

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<sup>30</sup> He writes: 'it is not clear whether he [Scanlon] would endorse the responsiveness to reason conception or prefer what I later call the pluralist conception' (Mason 2006: 164). As we saw, on the responsiveness to reason conception attributive responsibility is the necessary and sufficient condition for consequential responsibility, while on the pluralist conception an additional three excusing conditions are introduced, such that attributive responsibility remains necessary but is no longer sufficient for consequential responsibility.

having acted in that way. To say that someone is responsible in the second sense for a certain outcome is, in the cases I have been concentrating on, to say that that person cannot complain of the burdens or obligations that result. These two notions have different moral roots. To understand the conditions of responsibility in the first sense we need to consider the nature of moral appraisal, praise and blame. Judgments of responsibility in the second sense, by contrast, are substantive conclusions about what we owe to each other. (Scanlon 1998: 290)

This distinction does not figure in Mason's discussion of Scanlon's work. As we have seen, Scanlon provides a responsiveness to reason conception of attributive responsibility, but his conception of consequential responsibility is grounded in what he terms the 'value of choice'. He maintains there are three sorts of ways in which choices can be valuable, consideration of which is relevant to deciding when consequential responsibility for choice is appropriate. In short, for Scanlon, choice can be valuable in the following three ways. First, it can be instrumentally (or, predictively) valuable in the sense that we can choose what is likely to lead to our future satisfaction (Scanlon 1998: 252). Second, choice can be valuable in the sense that it can allow us to represent something about ourselves to others. That is, it can demonstrate our thoughts, feelings, tastes, imagination, or powers of discrimination and analysis (Scanlon 1998: 252-3). Third, choice can have the value of symbolizing the competence and status of the chooser as a chooser (Scanlon 1998: 253). Furthermore, consequential responsibility is part of 'what we owe to each other', which concerns how we should share out benefits

and burdens. Scanlon proposes a contractualist account of what we owe to each other according to which an act is wrong, such that we have reason to refrain from doing it, ‘if and only if any principle that permitted it would be one that could be reasonably rejected’ (Scanlon 1998: 4). The value of choice account of the value of having outcomes depend on a person’s choices informs whether a person can reasonably reject principles that impose liability on her, along with a number of other reasons for reasonable rejection. These other reasons might include, for example, a reason of well-being to reject any principle that says a person should not be rescued from dire straits when she is consequentially responsible for the situation in which she now finds herself (Scanlon 1998: 224). By contrast, attributive responsibility is not part of ‘what we owe to each other’, because no liability necessarily follows from it. Moral criticism and praise are not things we owe to each other but are, rather, to do with how we judge and relate to each other. This is what Scanlon means when he says the two forms of responsibility have different ‘moral roots’.<sup>31</sup>

Commenting on the compatibility of his responsibility principle with determinism, Mason writes:

Following Scanlon, defenders of the responsiveness to reason conception would argue that the truth or otherwise of

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<sup>31</sup> For further critical analysis of Scanlon’s value of choice theory see, for example, Matravers (2002), Alex Voorhoeve (2008: 187-190), Olsaretti (2013), and Stemplowska (2013). For more on how Scanlon’s value of choice theory relates to his contractualism, see Williams (2006).

determinism is irrelevant to whether people can legitimately be required to bear the costs of their behaviour or aspects of their condition. Instead what matters is whether a person's actions or condition are responsive to his reasoning in the right way, so that his behaviour or desires can properly be regarded as the product of his own judgement. (Mason 2006: 168)

But this reading of Scanlon obscures his original work on consequential and attributive responsibility, from which no such argument follows. If, the phrase 'be required to bear the costs' were replaced with 'be subject to moral appraisal', the claim would be accurate. Scanlon does indeed argue that the thesis of determinism (and also the weaker causal thesis) is compatible with attributive responsibility, for the reasons Mason cites. Even if determinism is true, as long as our actions are responsive to our reasons, we may attract moral appraisal for them. Whether an action can properly be regarded as the product of our judgement is 'what matters' to considerations of attributive responsibility. Matt Matravers observes that 'Establishing this compatibilism with respect to attributive responsibility is an important part of Scanlon's overall project' (Matravers 2002: 83).<sup>32</sup> However, as Matravers emphasizes, Scanlon clearly defines and distinguishes attributive responsibility from consequential responsibility, and his arguments for attributive compatibilism do not constitute arguments for substantive compatibilism (Matravers

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<sup>32</sup> Matravers provides a sympathetic analysis of Scanlon's approach to responsibility, judging it generally promising but 'incomplete' (Matravers 2002: 90).

2002: 81-83). Scanlon argues that imposition of consequential responsibility is (also) compatible with determinism, because he grounds it, not in attributive responsibility, but in the value of choice. Scanlon's view is that none of the three kinds of value that choice can have is necessarily undermined if determinism is true and it is the value of choice that can justify making people bear its consequences.<sup>33</sup>

It should be clear from this, therefore, that Scanlon's attributive and consequential responsibility should not be conflated. Scanlon notes that 'It is tempting to say that the answer to the question of when a person is responsible in these two senses is the same', but emphasizes that 'this apparent similarity is misleading and that these two notions of responsibility have quite different moral roots' (Scanlon 1998: 249). He defends a conception of moral appraisal that 'leads to an account of the conditions under which an action is attributable to an agent in the sense required to make moral appraisal appropriate that is quite different from the Value of Choice account, which explains the dependence of substantive responsibility on a person's choices' and insists that 'it is important to distinguish clearly between judgments of responsibility of these two kinds' (Scanlon 1998: 249). In other words, his attributive responsibility was never intended to provide grounds for consequential responsibility. Scanlon also mentions that, to the

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<sup>33</sup> For discussion of Scanlon's substantive compatibilism, see Matravers (2002) and Andrew Williams (2006). Both of these writers believe that Scanlon's substantive compatibilism is less successful than his attributive compatibilism, with Matravers going as far as to claim that 'Scanlon does not provide an account of substantive compatibilism' (Matravers 2002: 88).

extent that people in their ordinary moral experience feel that consequential responsibility should follow from or depend on attributive responsibility, his theory is discontinuous with ordinary moral experience and should be considered a ‘revisionist’ account in that sense (Scanlon 1998: 274-275).

My reading of Scanlon is shared by a number of writers. Knight, for example, observes the distinction between the two types of Scanlonian responsibility:

On his [Scanlon’s] definition, one might be attributively responsible for some good or bad outcome without there being any corresponding substantive responsibility. Here, attributive responsibility might justify blame, but not sanctions. (Knight 2009a: 172)<sup>34</sup>

The importance of the distinction is drawn out further by Matravers. Part of his argument implies that any principle of consequential responsibility based on Scanlonian attributive responsibility (including Mason’s) would not only be wrong-headed, but worrying. He argues that Scanlon’s compatibilist approach to attributive responsibility ‘needs self-governance to be a weak condition, and it is’ (Matravers 2002: 90). In other words, the condition of responsiveness to reason that must be met in order for a person to be considered attributively responsible for an action is not very demanding. (Mason

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<sup>34</sup> See also Dworkin (2000: 489). For further discussion of the distinction between Scanlonian attributive and substantive responsibility, see Williams (2006).

would, I think, agree with this reading of the condition as weak. Its weakness is why, for Mason, behaviour ‘generally falls into the category of choice’ (Mason 2006: 93). On Scanlon’s view, as Matravers notes, ‘attributive judgements do not carry with them substantive judgements so there is not much harm done’ (Matravers 2002: 88). Indeed, Matravers speculates that the distinction between attributive and substantive responsibility may actually be the very reason Scanlon is comfortable with the weakness of that condition. He writes:

My guess is that this [the weakness of the responsiveness to reason condition] does not worry Scanlon because judgements of attributive responsibility do not carry consequences for substantive responsibility. Although that may ease our consciences, it hardly seems an adequate reason to set the bar for achieving attributive responsibility so low. (Matravers 2002: 90)

But Mason’s attributivist approach to consequential responsibility does precisely what both Scanlon and Matravers would condemn: it fails to acknowledge the distinction between the two Scanlonian forms of responsibility and makes attributive responsibility a condition of consequential responsibility. Matravers’ comments express – or, at least, imply – that such an approach should worry our consciences. If Matravers is correct, it is not only a mistake but may even be harmful to base substantive judgements on attributive judgements when the conditions of attributive responsibility are as weak as Scanlon’s. Against Mason’s claims that his approach draws support from Scanlon’s work, I urge that, in fact, it isolates and imports one of Scanlon’s concepts, and employs

it for a purpose to which Scanlon (and much of the literature on his work) would judge it ill-suited.<sup>35</sup>

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<sup>35</sup> Mason recognizes that using Scanlonian attributive responsibility as the basis of his principle of consequential responsibility has several significantly counterintuitive (that is, intuitively unjust) implications. That is why he adds three additional excusing conditions to that principle. It might be thought that, as long as these additional conditions waive consequential responsibility whenever it is inappropriately recommended by the ‘pure’ responsiveness to reason principle, the attributivist approach is vindicated. I do not, here, attempt to show (though I do think) that the addition of the three extra conditions fails to waive consequential responsibility in all instances in which it is inappropriate. However, I will point out that, in addition to the objections I have raised above, the fact that several independent correctives must be added to the original principle because it would otherwise produce faulty conclusions gives us reason to think the original principle is faulty. In short, if Scanlonian (ordinary moral experience of) attributive responsibility has been revealed as an unreliable touchstone for questions of consequential responsibility, why does it continue to figure in the account instead of being abandoned altogether? Furthermore (and separately), if it is not to be abandoned entirely but treated as one relevant consideration among others, what are the grounds for including those other considerations? Explanation of the theoretical premises of the additional excusing conditions and justification of their inclusion is exiguous (particularly in comparison with the discussion of the ‘pure’ responsiveness to reason approach). Consider the importation of Cohen’s expensive tastes clause. Cohen, as we will see in section 1.3, can add his expensive tastes clause to his responsibility principle because he never commits to reflecting ordinary moral experience. For him, non-responsibility for valuational tastes that happen to be expensive

Thus, while Mason seems to assume that Scanlon would endorse either the ‘pure’ responsiveness to reason version or the pluralist version of the attributivist principle of consequential responsibility, it is clear Scanlon would endorse neither. He rejects outright the notion that consequential responsibility should follow from, presuppose or be grounded in attributive responsibility, whether that is understood in terms of the ordinary moral experience and practice of assigning blame and praise, or in terms of theoretically discontinuous necessary conditions of moral criticism and appraisal. While Mason holds, *pace* Scanlon, that Scanlonian attributive responsibility is a necessary condition for consequential responsibility, he provides no plausible argument for this view and his claim that his conception of consequential responsibility is supported by an established theory is undermined by close examination of that theory, which emphasizes

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is a matter of fact-insensitive fundamental principle: it reflects a judgement that holds (for him) under any assumption about the facts. Thus, he follows an entirely different theoretical and methodological approach from any that seeks continuity with ordinary moral experience. Mason’s importation of Cohen’s clause thereby entails that the (pluralist) attributivist approach he recommends is pluralist not merely in the sense that it advocates a number of clauses to the responsibility principle, but also in the sense that it is based on plural and contradictory philosophical methodologies – the continuous and the discontinuous. Mason does not explicitly set out how the methodologically divergent elements of his approach may be reconciled. In this respect, the (pluralist) attributivist principle of consequential responsibility not only relies on faulty and implausible premises but also appears, at the methodological level, internally incoherent.

the different moral roots of the two conceptions of responsibility. Scanlon does not offer a theory of responsibility in which Mason can claim his is grounded. Indeed, Scanlon's arguments are manifestly *incompatible* with Mason's conclusions.

1.2.4.3 Objection to the claim that ordinary moral experience of attributive responsibility should ground the principle of consequential responsibility

In this final part of my critique of the attributivist approach, I argue that (if it exists) ordinary moral experience of assigning attributive responsibility is an inappropriate basis for the principle of consequential responsibility. I ask: if the arguments presented in section 1.2.4.1 are unsuccessful and Mason is correct to claim that there is such a thing as our ordinary moral experience of assigning attributive responsibility and that it is Scanlonian, are there further reasons to reject the argument that ordinary moral experience of assigning attributive responsibility should ground the principle of consequential responsibility? Further, if defenders of the attributivist approach deny the validity or force of my objection to the general claim that there is such a thing as our ordinary moral experience of attributive responsibility, but concede the point that it is not Scanlonian, can they, in response, abandon their attachment to Scanlonian attributive responsibility, but still insist that the principle of consequential responsibility should reflect and be grounded in our ordinary moral experience of assigning attributive responsibility, whatever the basis on which attributive judgements are made?

I reject the notion that there is such a thing as our ordinary moral experience of assigning attributive responsibility (that is, a shared, coherent basis on which people ordinarily assign attributive responsibility) but, even if that objection to the attributivist approach

is unconvincing and there is such a thing, we may yet reject the idea that a just principle of consequential responsibility should reflect it. Arguing against the continuity of Dworkin's and John Rawls' principles of justice, Cohen writes that the appeal to continuity as a characteristic of principles of justice that somehow functions to justify them as correct is baseless, or at least question-begging. The contingently ordinary or 'familiar way of thinking' itself requires justification: it has no justificatory power simply by virtue of happening to be ordinary or familiar (Cohen 2004: 23). In short, the appeal to continuity 'may be nothing but an appeal to popular opinion' (Cohen 2004: 23). I follow Cohen (2003 and 2004) and Adam Swift (1999) here in understanding empirical facts about people's beliefs and practices as constraints on what can be done to achieve justice, rather than as directly constitutive of what justice is. As Swift argues, those facts may also be relevant to the *legitimacy* of principles of justice *if* we support an independent principle of democratic legitimacy or of legitimate expectations. If we do, popular beliefs and ordinary moral experiences and practices inform how legitimate a principle of justice is. But it is a mistake to think that those popular judgements can play a role in justifying a principle of justice as correct. Mason ignores what Swift describes as a distinction 'between principles being justified as legitimate principles to govern the distribution of benefits and burdens in a society and their being justified as correct principles of justice' (Swift 1999: 355, for further discussion see 351-357). If Mason's principle reflects ordinary moral experience, that fact may be important to its public justification, but it does not make the principle correct. Swift writes:

Popular beliefs about distributive justice are indeed important factors for the political philosopher to take into account, but for

reasons of feasibility or legitimacy, not because they play any role in the justification of principles of distributive justice. (Swift 1999: 361)

I think this view is both plausible and clear-headed, but realize that Mason may yet insist that continuity with ordinary moral experience relates to the correctness – not merely the legitimacy – of principles. The disagreement between Mason and I is, after all, to do in part with how we understand the proper justification of the principle of consequential responsibility, and that disagreement runs deep. In a discussion of the relative appositeness and appeal of continuous and discontinuous approaches to understanding the grounds of responsibility principles, Dworkin observes that:

argument may in the end be unavailing. [...] anyone's choice between the two principles will probably reflect deeper attitudes and dispositions that lie beyond argument. (Dworkin 2011: 229)

I must acknowledge the force of this observation, but I also want to draw attention to some considerations that may tell against Mason's version of continuity.

A criticism Knight makes of Roemer's approach to luck egalitarianism is relevant here. Roemer's approach does not defend continuous principles or insist that consequential responsibility should track ordinary moral experience of assigning attributive responsibility. It holds that people should be held consequentially responsible for those costs and benefits for which they are metaphysically responsible, but holds that the decision regarding what people are metaphysically responsible for must be a political decision, taken by the body politic (Roemer 1996: 181-182, 1998: 8). In other words,

similarly to Mason's approach, what the just distribution looks like follows from people's moral judgements regarding responsibility (though, dissimilarly, the responsibility in question is metaphysical, not attributive). Knight writes:

We want members of the decision-making body to make judgments about the truth rather than merely express their preferences. We are less likely to get this as the body gets larger and less familiar with the topic. *Many members of the public may be motivated by unreflective attitudes, stereotypes, and self-interest.* [...] In some spheres, democracy may further luck egalitarian ends; in this one, however, it does not. (Knight 2006: 187, my emphasis)

Marc Fleurbaey makes a similar observation of Roemer's proposal, claiming that it is a 'dangerous tool for wanton applications of biased ideologies' (Fleurbaey 2001: 503). These statements express the worry that inviting everyone to have a say in what people should be held consequentially responsible for is inviting objectionable inequality. People may make their judgements for reasons philosophers should reject as unattractive and disconnected from justice. This criticism does not apply directly to the attributivist approach: on this approach, people are not invited to collectively decide the content of consequential responsibility. But their judgements of blame and praise form the basis of the principle of consequential responsibility. It is hardly any *less* likely that those sorts of judgements should be utterly devoid of unreflective attitudes, stereotypes, self-interest and biased ideologies. The relevant point is that ordinary moral experience of the conditions of attributive responsibility, if it exists, may well turn out to be mean-spirited, petty, prejudicial, self-serving, or simply woefully misinformed. Elevating contingent

and potentially repugnant moral experience to the status of the grounds of principles of justice seems both undermotivated and fraught with risks. If the content of justice follows from the basis on which people ordinarily blame and praise people, how they blame and praise people (here and now in this non-ideal, decidedly unjust society) had better be fair and decent. If it is not – and I submit that in the absence of comprehensive empirical evidence there can be no guarantee either way – the principles of justice that emerge from it will necessarily be noxious. If the arguments I proposed in section 1.2.4.1 are unsuccessful, it might be open to defenders of the attributivist approach to insist, in reply to this point, that ordinary moral experience is not repugnant, but Scanlonian. The point should be far more worrying, however, to any who deny the validity or force of my objection to the general claim that there is such a thing as ordinary moral experience of assigning attributive responsibility (which should ground the principle of consequential responsibility), but concede the point that it is not Scanlonian (and might, therefore, be repugnant).

More generally, I worry, though can only speculate, that requiring the principle of consequential responsibility to reflect ordinary moral experience of assigning attributive responsibility may risk not only importing unattractive notions and motivations into the heart of justice, but also the radical capacity of egalitarian theory. Ultimately, moral experiences are contingent and changeable. Indeed, they are contingent upon yet more contingent and changeable facts about the world. And things might change: people may become increasingly or decreasingly convinced of the virtues of particular moral positions, including positions on how to assign blame and praise. Even if the empirical research that I have cited in an attempt to show that moral experience of assigning

attributive responsibility is neither homogenous and coherent nor generally Scanlonian is wrong, and Mason is correct that it is currently Scanlonian, it may change. If it did, the attributivist approach would be faced with a choice between keeping its Scanlonian elements and abandoning continuity with ordinary moral experience (which entails all the problems I canvassed in section 1.2.4.2), and committing to reflecting ordinary moral experience, whatever its content, and abandoning the Scanlonian view of attributive responsibility (which entails the problems I have just raised). But the latter choice raises another potential problem (my worry). Importantly, radical theories of justice may have some substantive role to play in informing the processes of deliberation by which people come to make judgements about attributive and consequential responsibility. The continuity requirement limits the radical capacity of theories of justice, which are thereby required to reflect (some aspect of) contemporary morality and, so, serve to entrench it. But on a different approach, released from that requirement, theory might serve instead to inform, challenge and invigorate contemporary morality. And egalitarian philosophers might recognize the active roles we may play in the ongoing struggle for equality. As Swift has it:

Rather than taking the feasible set as given, it might be thought that it is precisely the task of the philosopher to change that set, by changing the content of those popular beliefs that do so much to determine it. (Swift 1999: 359)

Defenders of the continuity requirement might, of course, respond by pointing out that it is by no means certain that any attempts to persuade people of the merits of our theories of justice will have any real effect, in terms of causing them either to agree with

or to actively pursue the implementation of our theories. Certainly, my view may involve an overestimation of the radically transformative potential of theory (and of activist-theorists). Yet its hopefulness is not entirely naïve. It is relevant to remember that, historically, much ordinary moral experience and practice told against equality of opportunity and of status between people of different genders, ethnicities, sexualities and abilities. Indeed, such equality may have seemed an impossibly utopian dream. But some feminist, queer, ethnicity and disability theorists refused to accept the moral status quo as a constraint on the content of their theories and proposals, and it is not implausible that at least a few were thereby able to play a role in rendering prejudice, discrimination and inequality of opportunity *less* morally acceptable today. If theorists of justice are not permitted by their theoretical approaches to voice radical views and to imagine and advocate any ways of organizing the world that are presently unsupported by or at odds with whatever our contemporary ordinary moral experience happens to be, our discipline may be doomed to mere parochialism.

In sum, I hope to have shown what the attributivist approach to distinguishing between luck and choice and assigning consequential responsibility consists in, and also to have furnished luck egalitarians with convincing reasons to eschew such an approach. Judgements of moral appraisal – whether ‘ordinary’, or Scanlonian, or both – constitute an inappropriate foundation for judgements of egalitarian distributive justice. They cannot form the touchstone for a just, egalitarian distribution of benefits and burdens. In what follows, I outline an alternative metaphysical approach, which I believe is the most appropriate for a luck egalitarian theory of distributive justice that condemns the

inegalitarian influence of luck on life outcomes, but permits the inegalitarian influence of choice.

### **1.3 The Metaphysical Approach**

#### **1.3.1 Metaphysical Luck Egalitarianism**

My view is that luck egalitarian distributive justice should take a metaphysical approach to drawing the distinction between luck and choice and assigning consequential responsibility. As this is the approach I favour throughout the thesis, I provide here an outline of its central features in order to ensure clarity of meaning in subsequent chapters. In brief, this approach holds that the factors that influence a person's outcome count as matters of luck if they are beyond her metaphysical control and count as chosen if they are under her metaphysical control. The metaphysical approach is favoured by a number of luck egalitarians including, perhaps most prominently, Cohen (1989 and 2004), Arneson (1989), Knight (2006, 2009a and 2012) and Barry (2008).<sup>36</sup> Unlike

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<sup>36</sup> In Arneson's later work, he develops a theory of 'responsibility-catering prioritarianism', which differs in several significant respects from his earlier luck egalitarian theory of equality of opportunity for welfare (see, in particular, Arneson 2000). He does, however, maintain his commitment to a metaphysical understanding of responsibility (see Arneson 2004). Another luck egalitarian who has sometimes been characterized as favouring the metaphysical distinction is Roemer. Fleurbaey, for example, comments:

Mason, all of these theorists (except, latterly, Arneson) are properly luck egalitarian in the sense that, for them, the distinction between luck and choice specifies the fundamental principle of egalitarian distributive justice: a just distribution of advantage is one in which individuals' relative outcomes are insensitive to factors beyond their metaphysical control, but sensitive to their metaphysically free choices. To be clear, then, this approach is not committed to the claim that its conception of consequential responsibility is grounded in or continuous with any aspect of ordinary moral experience. The metaphysical distinction between luck and choice specifies the content of the discontinuous, fundamental luck egalitarian principle and that distinction is insensitive to contingent experience and practice. On this 'foundationalist' approach to normative theorizing, which I outlined in the introduction of the thesis, all fundamental principles are fact-insensitive: they express 'a value-judgment that remains the same, for the judger,

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In some theories of equality of opportunity (Arneson, Cohen, Roemer), individuals are held responsible for their "genuine choices." The sphere of responsibility in such theories coincides with the scope of individual control. (Fleurbaey 2008: 86)

Roemer does think luck should be conceived in metaphysical terms, contrasting luck with 'autonomous choice' (see Roemer 1998: 5-12). However, as I mentioned above, he ultimately recommends that what counts as luck should be a political decision, in the sense that the public should decide what is beyond the metaphysical control of individuals (Roemer 1996: 181-182, 1998: 8). For that reason, his is better characterized as a political approach.

under any and all assumptions about the facts' (Cohen, 2003: 214). In other words, what people believe about what it is appropriate to hold people responsible for does not generate any normative conclusions regarding what they should, for reasons of luck egalitarian distributive justice and absent other considerations, be held responsible for.

### **1.3.2 Consequential Responsibility and Metaphysical Responsibility**

The regulatory principle of consequential responsibility that serves the metaphysical luck egalitarian ideal can be expressed as follows: people should be relieved of consequential responsibility for factors beyond their control, but held responsible for the consequences of their metaphysically free choices. On the metaphysical approach to luck egalitarian distributive justice, then, lack of metaphysical responsibility is a sufficient condition for relieving consequential responsibility and metaphysical responsibility is a necessary condition of imposing consequential responsibility.<sup>37</sup> Thus, metaphysically free choice can legitimate inequalities of outcome. Metaphysical luck egalitarians have used various

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<sup>37</sup> As we will see below, advocates of the metaphysical approach do not always treat metaphysical responsibility as a sufficient condition of imposing consequential responsibility, nor lack of metaphysical responsibility as a necessary condition of alleviating consequential responsibility. The principle of consequential responsibility, as I have just expressed it, is therefore, in fact, missing a caveat: the expensive tastes clause. I return to this issue in section 1.3.2.4 but, for now, set it aside.

terms for this sort of metaphysically free, inequality-legitimating choice. Cohen, for example, uses the term ‘genuine choice’ (Cohen 1989: 131); following Cohen, both Barry (Barry 2008: 141) and Knight (Knight 2009a: 78) use the same term; and Arneson prefers ‘voluntary choice’ (Arneson 1988: 84). The core idea of the metaphysical approach is expressed (in welfarist language) by Arneson in the following terms:

When persons enjoy equal opportunity for welfare in the extended sense, any actual inequality of welfare in the positions they reach is due to factors that lie within each individual’s *control*. (Arneson 1989: 86, my emphasis)

Being in control in the metaphysical sense – making a genuine choice – refers to the independent exercise of human will. Although Dworkin does not favour this approach to distinguishing between luck and choice, he usefully explains what metaphysical control consists in:

We are in control when the causal chain that explains how we act travels back only to an impulse of our own will, not when it travels further back to past states and events that, together with natural laws, explain that act of will. (Dworkin 2011: 228)

Thus, what matters to the justice of holding people consequentially responsible for the costs and benefits that accrue to them is whether or not the accrual of those costs and benefits is a function of their will.

### 1.3.2.1 Metaphysical Theses

Clearly, then, on this approach, issues concerning causality and, particularly, the issues of hard determinism and free will are relevant to the application of the principle of consequential responsibility in our social arrangements. It is important to be clear, however, that the fundamental luck egalitarian principle holds under any assumption about the facts of metaphysical causality. As Cohen writes:

We can believe whatever we are inclined to do about how [metaphysically] responsible and/or culpable people are for their choices, and that includes believing that they are not responsible and/or culpable for them at all, while holding that on which I insist: that the pattern in such choices is relevant to how just or unjust a society is. (Cohen 2008: 141)

That is, at the fundamental level, luck egalitarianism is indifferent to the truth or falsity of theses of causality, including hard determinism and libertarianism. It holds that a lack of genuine choice excuses consequential responsibility, but is (in itself) agnostic regarding whether or not genuine choice is ultimately possible.<sup>38</sup> Answers to questions

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<sup>38</sup> In brief, hard determinists hold that every event, including every instance of human action, is an inevitable consequence of natural laws and prior conditions (for further discussion see, for example, Derk Pereboom 1995, 2001 and 2005). On the hard determinist view, the sort of choice with which luck egalitarians are concerned – metaphysically free choice – is not possible, as all choices are antecedently determined. Conversely, libertarians generally hold that human

about metaphysical causality do, however, have significant implications for what luck egalitarianism requires in terms of regulatory arrangements and what it implies about the justice of actual distributions. Notably, if hard determinism is true, such that people are incapable of the sort of genuine choice that would justify imposition of consequential responsibility, no inequalities of outcome are just. Cohen expresses this as follows:

Equality of access to advantage is motivated by the idea that differential advantage is unjust save where it reflects differences in genuine choice [...] on the part of relevant agents, but it [...] does not even imply that there actually is such a thing as genuine choice. Instead, it implies that if there is no such thing – because, for example, ‘hard determinism’ is true – then all differential advantage is unjust. (Cohen 1993: 28)<sup>39</sup>

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actions are possible that are not determined by anything prior to their occurrence, and that human action can be spontaneous and creative (for further discussion see, for example, Robert Kane 1996, 2002 and 2005). On this view, it is theoretically possible for people to make genuine choices.

<sup>39</sup> This point is reiterated throughout Cohen’s work (see, for example, Cohen 2006: 442) and in the work of other metaphysical luck egalitarians. Knight emphasizes that:

If hard determinism is assumed, then the luck egalitarian principle of equality of opportunity for advantage is in all possible circumstances equivalent to the outcome egalitarian principle of equality of advantage.

The salient point here is that, on the metaphysical approach to luck egalitarianism, the truth of metaphysical causality must be ascertained before it can be known for certain whether or not the imposition of consequential responsibility is ever just. If genuine choice is possible (because the thesis of determinism is false), then a detailed theory of metaphysical causality (that is, of soft determinism or libertarianism) is required before we can ascertain whether – and, if so, to what extent – a person is responsible for her outcome. But metaphysical luck egalitarians can remain entirely agnostic about causality and still usefully engage in theorization regarding what justice fundamentally is. They can also theorize in purely conditional terms about what justice would require given the truth of various theses of causality, while remaining agnostic on which thesis is correct.

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If no person is responsible for any of her actions, equality of opportunity for advantage's policy of compensating for those and only those disadvantages for which persons are not responsible amounts to equality of advantage's policy of compensating for all disadvantages.

(Knight 2006: 179)

And Arneson says the same:

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

To date, metaphysical luck egalitarians have tended to acknowledge the lack of theoretical certainty regarding the truth of causality, while employing a working assumption that some version of soft determinism obtains. (I follow suit here in taking this assumption to be the most plausible of the available alternatives and follow it throughout this thesis.) Accordingly, it is (tentatively) assumed that people may make choices, each of which may be more or less under their metaphysical control.

#### 1.3.2.2 The Nuance of the Metaphysical Distinction

On that assumption, the distinction between luck and choice is dichotomous only in theory. In practice, life outcomes tend to be a function of a complex mix of both luck and choice – of external factors and human will. And the orientation of human will is itself often profoundly influenced by external factors. Thus, choices may be more or less genuine, neither totally free nor totally determined. Complete absence of luck in the aetiology of a set of relative outcomes can justify inequalities of outcome but, if some version of soft determinism is true that entails people's choices are always influenced and more or less constrained by factors other than their own (pure) free will, luck will *always* play at least a *partial* role in the realization of any particular outcome. The more a choice is influenced and constrained by forces external to the person's will, the less it is under her metaphysical control, and the less genuine it is. The more a choice follows freely from a person's own will, the more it is under her metaphysical control, and the more genuine it is. Accordingly, responsibility for choice is standardly a matter of degree: a person is more (or less) responsible for a choice, the more (or less) genuine that choice is. Cohen elucidates some of the considerations that bear on determinations of metaphysical responsibility for choice:

In each case facts in the background to the choice, facts about degrees of control, and about the cost of alternatives, affect the proper allocation of responsibility for the consequences of the choice. [...] It is false that the only relevant questions about choice and responsibility are whether or not something (an action, a preference) is, simply, *chosen* (that is, *tout court*), and that the only relevant upshot is whether the agent is responsible, *tout court*. [...] we make judgments of *degree* of responsibility, and they are based on *graded* and *shaded* judgments about choice. (Cohen 2004: 21-22, original emphasis)

This illuminates the need to take a carefully nuanced approach to determining responsibility. The facts that are relevant to how genuine a choice is include the chooser's 'knowledge' and 'self-possession' (Cohen 2004: 22). Where factual information is relevant to a person's choice, how full and accurate is the information available to her? And, to what extent is she able to understand, process, and use that information to inform her choice? Considerations of cognitive ability come into play here, as do considerations of mental wellbeing and emotional functioning. For example, the genuine exercise of will may be difficult or impossible for those with certain mental health problems that involve compulsions. In some cases, people may be (or feel) compelled to do (and unable to resist doing) certain actions, without those actions being chosen in the sense of constituting a genuine exercise of will. Mental health issues including psychosis, neurosis, depression and addiction may affect self-possession and thus the genuineness of choice if people are compelled by these conditions to act in ways

that are a function, not of their will, but of their condition. Moreover, constraining circumstances and external influences on choice affect how free a particular choice is. Cohen holds that choice is always necessarily situated and thus can never be entirely independent of all forces that are external to the self. He writes that 'people do have choices: it is, indeed, *only* their choices that reproduce social practices; and some, moreover, choose *against* the grain of nurture, habit, and self-interest' (Cohen 1997: 25, original emphasis). But he emphasizes that it is also important to recognize the various ways in which choices are influenced by external factors:

although there exists personal choice, there is heavy social conditioning behind it and there can be heavy costs in deviating from the prescribed and/or permitted ways. If we care about social justice, we have to look at four things: the coercive structure, other structures, the social ethos, and the choices of individuals, and judgment on the last of those must be informed by awareness of the power of the others. (Cohen 1997: 26)

The first three of these things constitute the constraining and conditioning circumstances in which any choice is made. Constraining circumstances include, perhaps most obviously, the set of options for action that happens to be available to any given person. But circumstances can also limit and orient action in a less strict sense by, for example, conditioning and influencing the ways in which people understand and evaluate

their options.<sup>40</sup> As with the issues to do with self-possession outlined above, the ways in which circumstances condition a person's tendencies can make it *harder* for some than others to make any given choice. Arneson expresses this aspect of the nuance of the metaphysical approach – the relevance of the relative ease and difficulty of various choices to judgements of responsibility – in the following way:

- (1) one is not (properly held) responsible for what lies beyond one's power to control (call this “the control principle”), and (2) one is less responsible for what is harder and more painful to control (if one fails to control it) (call this “the extension of the control principle”) (Arneson 2004: 2)

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<sup>40</sup> Barry illustrates this kind of limiting and orienting with an example of two students who make different choices about higher education. He writes:

one individual has a more accurate perception of the advantages of college education than the other because of differences in their upbringing. This means that one student makes a more genuine choice of outcome than the other does, and the inequality that results between them is luck derived (Barry 2008: 145)

For more detailed discussion of how a person's holding false beliefs can make choices made on the basis of those beliefs less genuine, see Vallentyne (2011).

Thus, consequential responsibility follows from metaphysical responsibility, which is a matter of degree. How metaphysically responsible someone is for a choice depends on how full and accurate the chooser's information is, how able she is to process that information and use it to inform and guide her choice, how constraining the circumstances are in which the choice is made, and how conditioned the choice is by prior circumstances.

#### 1.3.2.3 Brute Luck Egalitarianism and All Luck Egalitarianism

Thus far, then, we have seen that the more genuine a choice is, the more consequential responsibility can be imposed for its consequences. But, in fact, this obscures some further complexity in the metaphysical approach. There are schisms within that approach and different versions can be distinguished according to how they treat 'option luck', or, the sort of luck that plays out when a gamble has been taken. Those versions run on a spectrum from those that treat genuine choices to gamble as legitimating the imposition of consequential responsibility on gamblers for the results of their gambles, to those that view option luck as luck that should not, for reasons of justice, have any inegalitarian influence on outcomes. That is, while some treat option luck as falling on the choice side of the distinction between luck and choice, others treat it as falling on the luck side. In what follows, I canvass two versions of the metaphysical approach that fall at the extremes of that spectrum (brute luck egalitarianism and all luck egalitarianism), as well as what might be termed moderate or middle ground approaches.

### Brute Luck Egalitarianism (Cohen and Arneson)

Dworkin was the first egalitarian theorist to draw a distinction between ‘brute luck’ (the *inegalitarian effects of which luck egalitarians condemn*) and option luck (the *inegalitarian effects of which a luck egalitarian might accept as appropriately chosen*). His theory of equality of resources is not *strictly* luck egalitarian and Dworkin himself explicitly rejects the label (Dworkin 2003: 191). However, he provides this canonical statement distinguishing brute luck from option luck:

Option luck is a matter of how deliberate and calculated gambles turn out – whether someone gains or loses through accepting an isolated risk he or she should have anticipated and might have declined. Brute luck is a matter of how risks fall out that are not in that sense deliberate gambles. If I buy a stock on the exchange that rises, then my option luck is good. If I am hit by a falling meteorite whose course could not have been predicted, then my bad luck is brute (even though I could have moved just before it struck if I had any reason to know where it would strike).

Obviously the difference between these two forms of luck can be represented as a matter of degree, and we may be uncertain how to describe a particular piece of bad luck. If someone develops cancer in the course of a normal life, and there is no particular decision to which we can point as a gamble risking the disease, then we will say that he has suffered brute bad luck. But if he

smoked cigarettes heavily then we may prefer to say that he took an unsuccessful gamble. (Dworkin 1981: 293)

Cohen and Arneson both accept this distinction between brute and option luck – modified to account for the genuineness of choices to gamble – as fundamentally pertinent to distributive justice, claiming the label of ‘brute luck egalitarians’. That is, they hold that any inegalitarian influence of brute luck on outcomes is unjust: consequential responsibility for costs and benefits that accrue to people as a matter of brute luck should be relieved. Conversely, as long as a risk is *both* genuinely chosen, and foreseeable and avoidable in the sense specified by Dworkin above, responsibility for the consequences of taking that risk may be imposed on the risk-taker.<sup>41</sup> Thus, the

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<sup>41</sup> Consideration of the case of the smoker from Dworkin’s canonical statement of the distinction between brute and option luck illuminates the importance of the risk-anticipation clause attached to option luck and of informational constraints on choice. Before the link between smoking and cancer was established, smokers could not have been conceived as taking a *calculated* gamble that turned out badly, because they could not have known they were taking any risk with their health. They did not have access to the information required to form the true belief that the choice to smoke holds a risk to health and thus to *anticipate* that risk. As such, brute luck egalitarians might previously have held it to be a smoker’s brute bad luck if she developed a smoking-related disease. Given that the risks of smoking are currently far better publicized in countries like Britain than they used to be, brute luck egalitarians might now be more inclined to count a choice to start smoking and any subsequent disease as matters of option luck. On the other hand, given differences in people’s susceptibility to smoking-related

option luck that plays out when a gamble is taken may justly influence the outcome of the gambler for better or worse.

Vallentyne (2002) and Barry (2008) both note that brute luck egalitarians have sometimes used the term option luck to indicate the results of genuine choice as well as the results of genuinely chosen gambles, but argue that expressing the distinction between luck and choice as a distinction between brute luck and option luck is misleading. Barry suggests that, because the genuineness of the choice to gamble matters to brute luck egalitarians, they should be careful to distinguish their understanding of option luck from Dworkin's (according to which the genuineness of the choice is not conceptually or morally relevant). He writes:

to avoid confusion, luck egalitarians may do well to refer directly to “genuine choice” and “genuinely chosen gambles” instead of option luck. [...] In fact, this is the approach Cohen tends to adopt in his own work, where he rarely uses the term “option luck.” (Barry 2008: 143)

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diseases, lack of knowledge about one's own susceptibility might be viewed as a relevant informational constraint on the genuineness of the choice to smoke, perhaps particularly for those who are unaware and have no way of finding out that they face a higher than average risk of developing smoking-related diseases.

Vallentyne argues that the distinction between luck and choice should, in fact, be understood as a fourfold distinction that more adequately captures the types of ‘factors that jointly determine what outcomes are realized’ (Vallentyne 2002: 538). Explaining the fourfold distinction, he writes:

However exactly brute luck is understood, it will include luck in initial opportunities for advantage (e.g., one’s initial genetic endowment and one’s initial social position) and some kinds of outcome luck (i.e., some kinds of luck in how things turn out; e.g., whether an uninfluenceable contingent possibility of a lightning strike is realized). Not included in brute luck are outcomes that are suitably related to choice – option luck. This includes both outcomes that are directly chosen in some appropriate sense (e.g., avoidable foreseen and certain outcomes of one’s choices; e.g., being wet when one chooses not to open one’s umbrella in the rain) and those that are risky outcomes that are suitably related to one’s choices (e.g., winning or losing a lottery for which one purchased a ticket) – option outcome luck. (Vallentyne 2002: 538)

Thus, for the sake of clarity and precision, brute luck egalitarians might continue to differentiate between genuine choices and genuinely chosen gambles, imposing responsibility for the consequences of both. And they might also differentiate between

brute luck in initial opportunities and brute outcome luck, relieving consequential responsibility for both.<sup>42</sup>

### All Luck Egalitarianism (Knight)

Not all metaphysical luck egalitarians have accepted that option luck inequality (or, inequality resulting from genuine choices to gamble) is just. Knight (2012, 2013b) defends the view that all luck-based inequality – including option luck inequality – is unjust, and that people should therefore be relieved of consequential responsibility for costs and benefits accruing to them as a matter of option luck.<sup>43</sup> (It should be noted that Knight, *pace* Vallentyne (2002), does not include direct choice in his construal of option luck, which indicates only the luck involved in gambles.) According to this ‘all luck egalitarian’ approach, the inegalitarian influence of all luck on outcomes is condemned by justice whether or not the luck is brute or a matter of how a genuinely

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<sup>42</sup> In his later work, Cohen expresses some doubts about the fairness of option luck inequality, though he continues to judge it legitimate to hold people responsible for the option luck gains and losses they accrue. See Cohen (2009) and, for discussion, Daniel Butt (2012).

<sup>43</sup> Other egalitarians, including Vallentyne (2002), Alexander Cappelen and Ole Norheim (2005), and Kasper Lippert-Rasmussen (2005), have also described views according to which consequential responsibility for costs accruing to people as a result of gambles should be fully relieved. For a critique of all luck egalitarianism, see Segall (2010: chapter 3).

chosen, deliberate and calculated gamble turns out. As Knight recognizes, because far less inequality is permitted by this approach than by brute luck egalitarianism, such that it lies somewhere between brute luck egalitarianism and outcome egalitarianism, it ‘offers a more radically egalitarian interpretation of the central luck egalitarian objective of counteracting the distributive effects of luck’ (Knight 2013a: 932). Explaining the considered judgement that informs and motivates his all luck egalitarianism, Knight writes:

I submit that to allow gambles to stand is to allow a morally arbitrary influence on distribution, while preventing them or redistributing their effects need not create a morally arbitrary influence on distribution if would-be gamblers are compensated for their reduced opportunities. Furthermore, I believe that we should not only prohibit or correct for gambles, but prohibit or correct for all forms of option luck. The wager which turns on a coin toss or roll of the dice is special only in that things are clear cut. Any action for which there is a range of possible outcomes is a gamble of a sort, even if the action is involuntary, and the unfairness of an outcome where two persons make identical choices but receive different results remains the same even if those results are not immediately obvious. If two identically capable people choose to pursue different careers with identical prospects and identical demands, and each exerts an identical degree of conscientious effort in support of it, there is moral arbitrariness in

an outcome of one becoming a millionaire and the other a pauper on account of some change in the marketplace which neither foresaw. The best strategy for the egalitarian is therefore to prevent gambles or redistribute after the event to losers from winners and, if redistribution is made, to compensate the ‘winner’ wherever an unchosen welfare loss arises. (Knight 2012: 555)

Here, Knight expresses the thought that luck egalitarians should be fully committed to the position that outcomes are morally arbitrary and thus unjust if they are not genuinely chosen. While people may make genuine choices to gamble, no one has metaphysical control over how gambles they have chosen to make turn out, and so the results are not genuinely chosen. (Indeed, this lack of control over the result constitutes a significant element of the definition of a gamble.) Given this commitment, luck egalitarians should recognize that the morally arbitrary inequalities produced by gambles are condemnable on distributive justice grounds. When brute luck egalitarians claim that the distribution of advantage should be luck-neutral and choice-sensitive, this amounts to a claim that *some* luck – the luck of how gambles fall out – can influence the distribution of advantage, as long as it is mediated by a genuine choice to gamble. All luck egalitarians, on the other hand, really do mean that the distribution of advantage should be insensitive to any form of (morally arbitrary) luck. (Thus, all luck egalitarianism recommends minimizing ‘access to choices which create exposure to option luck’ (Knight 2013b: 1066). If gambling and other forms of risk taking result in option luck inequality, either those actions should be prohibited, or any option luck inequalities that result from them should be fully redressed.) On this view, then, Vallentyne’s fourfold distinction collapses into a

threefold distinction between direct choice on the one hand, and luck in initial opportunities and outcome luck (including brute and option outcome luck) on the other. People should be held consequentially responsible for the outcomes they choose, but relieved of consequential responsibility for costs and benefits to the extent that their accrual has been mediated by luck of any type.

### Middle Ground Approaches

Falling somewhere between brute luck egalitarianism and all luck egalitarianism are a range of views that allow some – and only some – option luck inequality to stand. Lippert-Rasmussen (2001) draws a distinction between ‘gambles proper’ and ‘quasi-gambles’ that forms the basis of a distinction between types of option luck. In gambles proper, the gambler prefers the gamble itself to the expected value of the gamble: she would rather take her chance for a larger win than refrain from gambling and walk away with the value of the winnings she can expect. In quasi-gambles, the gambler prefers the expected value of a gamble to facing the gamble: she would rather not take the risk and instead walk away with the value of the expected winnings. Barry (2008) has argued for an approach according to which consequential responsibility should be fully relieved for option luck wins and losses resulting from quasi-gambles, but imposed for the option luck wins and losses of gambles proper. Responsibility for the former should be relieved because, first, the way option luck plays out is beyond the control of the individual gambler and, second, as the (reluctant) gambler prefers the expected outcome to the gamble, relieving consequential responsibility is consistent with the underlying motivation of the ‘choice’ to gamble.

This moderate position seems intuitively appealing in the sense that it recognizes the relevance of the content of the reasons behind people's choices to the judgement of whether we should respect those choices by allowing their results to stand. It attends to what people actually will. If someone would really rather not gamble, it seems reasonable to judge a choice to go ahead with a gamble as less than genuine and thus not the sort of choice that can justify the resulting inequality. That is because metaphysical luck egalitarians are concerned with the free exercise of will. *Reluctance* to gamble indicates that the choice to (nevertheless) gamble does not properly reflect the will of the gambler. It indicates, instead, that the choice is made in the face of external constraints limiting access to viable alternative, risk-free routes to accruing the expected value of the gamble. On the other hand, if someone really does want to take a particular gamble, and would rather gamble and lose than not gamble at all, the choice to go ahead with it can reasonably be judged genuine. Moreover, in these cases we can say that, because morally arbitrary outcomes are inherent to and indeed a defining element of gambles, the moral arbitrariness of the outcome of a gamble proper might *itself* be at least part of the object of choice.

Knight admits there may be a better 'intuitive case for denying assistance to losing gamblers proper than there is for denying assistance to losing quasi-gamblers, who might, after all, be risk averse, and exposing themselves to option luck only because it is the prudent thing to do given the lack of attractive low-risk alternatives' (Knight 2013a: 931). However, he nevertheless concludes that it is unnecessary to permit any choices to gamble or any option luck inequalities resulting from gambles to stand. So the question arises, is there any luck egalitarian reason to preserve gambles proper? Dworkin

argues that ‘we can say that the possibility of loss was part of the life they [gamblers] chose – that it was the fair price of the possibility of gain’ and, further, that if ‘winners were made to share their winnings with losers, then no one would gamble, as individuals, and the kind of life preferred by those who in the end win and those who lose would be unavailable’ (Dworkin 1981: 294). This, clearly, is not an argument for preserving option luck inequality entailed by quasi-gambles, as quasi-gamblers do *not* prefer the gambling kind of life and would avoid it if they reasonably could. Gambling, for them, is only a means to an end they would rather reach by other means and is not inherently valuable. But is it a serious argument for preserving gambles proper and the option luck inequalities they produce? Both Barry and Knight suggest that the moral arbitrariness of all gambling outcomes tells against allowing them to stand. As Barry writes:

by endorsing the idea of noncompensable option luck, brute luck egalitarians allow inequalities to emerge even if they have not been directly chosen. This sits uneasily with the underlying motivation of luck egalitarianism, which is to achieve a choice and responsibility-sensitive pattern of distribution. [...] Just because a person has chosen to bring luck into play is no reason for her to be entitled to all its fruits. Why should a person enjoy the full benefits of luck when all she has done is place a bet? It seems a

strange position for egalitarians to take if they aim to prevent morally arbitrary differences in well-being (Barry 2008: 137-138)<sup>44</sup>

But Barry ultimately accepts the force of Dworkin's point and concludes this moral arbitrariness is rendered acceptable when (and only when) people value the actual gamble. I would add that in cases where the object of the gambler's choice is not merely partaking in the *risky* process of gambling, but also accruing *luck-based* winnings and losses, we might think the moral arbitrariness of the result of the gamble is itself diminished. In these cases, luck itself is an object of choice: what is chosen is both the process of fortune playing out and the fortune or misfortune – the luck-based nature – of the result. Knight, however, does not accept Dworkin's point. He insists that gambling outcomes are morally arbitrary and thus unacceptable, and not rendered any

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<sup>44</sup> The same point is expressed by Knight as follows:

it is unclear why an egalitarian should be interested in securing for individuals the possibility of creating inequalities between themselves and others who have made similar (genuine) choices. This seems like a recipe for the kind of moral arbitrariness that egalitarians seek to avoid. How can the roll of a dice or toss of a coin be thought to carry sufficient moral weight to (potentially) make one person's life go much better than a similarly responsible other person's? (Knight 2012: 552-553)

less so merely if and because a risky process is an object of genuine choice. I suspect he would neither concede that the luck-based nature of the result being an object of choice renders that result just. Knight's position seems to trade on a point I made in section 1.1.3 regarding a form of asymmetry in the distinction between luck and choice. If the egalitarian injunction to ensure luck-neutral outcomes is weightier than the responsibilitarian injunction to impose the consequences of choice then in cases such as genuinely chosen gambles, where luck and choice are copresent and inextricable, luck-neutrality trumps choice-sensitivity. Knight's view is that 'committed egalitarians' can and indeed should be expected to prioritize luck-neutrality over choice-sensitivity (Knight 2012: 553). Thus, as option luck manifests inextricably copresent elements of both luck and choice, such that preventing or redressing option luck inequality maintains luck-neutrality but forfeits choice-sensitivity while permitting it to arise maintains choice-sensitivity but forfeits luck-neutrality, those who endorse this form of luck egalitarian asymmetry have a reason to treat option luck as luck rather than choice.

Moreover, Knight argues that the sacrifice thereby entailed (the forgoing of preferred lives of gambling) should not be too worrying: 'Committed egalitarians would hardly be surprised or dismayed by the possibility that some individuals would have to give something up to achieve social equality' (Knight 2012: 553). Admittedly, this is unlikely to convince those luck egalitarians of a more responsibilitarian bent (those who prioritize choice-sensitivity over luck-neutrality), but Knight also has a 'simple' reply for them:

What egalitarians require qua egalitarians need not be what they require all things considered. Brute luck egalitarians are usually pluralists, endorsing values other than equality (see Arneson 1999;

2000; 2011; Cohen 2008). There is no reason why egalitarians opposed to option luck inequalities cannot take a similar stance. If, for instance, equality was endorsed as a value alongside welfare promotion, as brute-luck egalitarians often suggest, the latter would provide good reasons for keeping open risky but potentially rewarding activities, provided that the rewards were sufficiently large relative to the risks (and if they were not, it is hard to see much justification for allowing the activity in the first place). [...] The proposal of combating option luck can thus be combined with non-egalitarian values for those of more qualified egalitarian views. (Knight 2012: 553)

Ultimately, then, luck egalitarians' various positions on option luck reveal the relative strength of their egalitarian and responsibilitarian credentials and any asymmetry in their favoured distinction between luck and choice. For those (such as Cohen and Arneson) who favour imposing consequential responsibility for option luck gains and losses, gambles can be understood and treated in terms of a relatively more expansive conception of responsible choice. Those (such as Knight) who favour relieving consequential responsibility for (or restricting opportunities to accrue) option luck gains and losses see, manifested in gambles, a clash between luck and choice, and prioritize luck-neutrality and equality over choice-sensitivity and responsibility. Others (such as Barry) might be described as moderate in the sense that they occupy a place in the middle ground between these two extremes. Rather than attempt here to defend one particular position, when I apply luck egalitarian theory to a case study of internships, I will

illustrate some of the differences between the implications of brute luck egalitarian and all luck egalitarian approaches.

#### 1.3.2.4 The Expensive Tastes Clause

Before moving on to a brief defence of the metaphysical approach and account of my reasons for favouring it, I must canvass a final feature, to which I will refer in subsequent chapters. A number of luck egalitarians including, most prominently, Cohen, have argued that the addition of an extra non-responsibility clause is required to work in conjunction with the core principle that lack of metaphysical control over the accrual of costs and benefits excuses consequential responsibility for those costs and benefits. This additional clause, which can be termed the expensive tastes clause, concerns when people can be held responsible for the costs of satisfying their relatively expensive tastes. Those with expensive tastes require to spend more than others to secure an equal level of welfare. Holding all else (including the resources people have at their disposal) equal, bearers of expensive tastes would thus achieve a lower level of welfare than their counterparts with inexpensive tastes. Luck egalitarians who favour a purely resourcist conception of the currency of justice are unconcerned about welfare inequalities – whether chosen or unchosen. But welfarists (such as Knight) and those who favour a conception of advantage that includes a welfarist element (such as Cohen and Barry) are concerned about inequalities of access to welfare. Each of these luck egalitarians has claimed that some expensive tastes are such that their bearers should not be held

consequentialy responsible for the costs of satisfying them.<sup>45</sup> For Cohen, the relevant subset of expensive tastes are those that may be termed ‘valuational’: their bearers identify with them, such that to forgo their satisfaction would be to violate their own judgement and experience ‘alienation from what is deep in them’ (Cohen 2004: 14).

Cohen writes:

I distinguish among expensive tastes according to whether or not their bearers can reasonably be held responsible for the fact that their tastes are expensive. There are those that they could not have helped forming and/or could not now unform without violating their own judgment, and then there are those for whose cost, by contrast, they can be held responsible, because they could have forestalled their development, and/or because they could now quite readily unlearn them, without violating their own judgment. (Cohen 2004: 8)

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<sup>45</sup> Barry favours Cohen’s approach to expensive tastes (see Barry 2008). Knight, on the other hand, has suggested an approach that might be understood as following from Cohen’s, though it differs in some respects (see Knight 2009b). In what follows, I concentrate exclusively on Cohen’s version of the clause.

Thus, whether or not a person made a genuine choice, at some point in the past, to develop expensive tastes, if forgoing their satisfaction would require her to act against her judgement and thereby face alienation from a part of her identity, she should not be held responsible for the (relatively high) costs of satisfying them.

Dworkin, as we saw section 1.2.2.2 above, takes a different view: he thinks that precisely because people identify with their valuational tastes, they ordinarily expect to bear and be held responsible for the costs of satisfying them, and that justice should therefore hold them responsible. Cohen notes the difference between the two approaches:

So what Dworkin gives as a reason for *withholding* compensation [or, imposing responsibility] – the subjects' approving identification with their expensive tastes – is something that I regard as a reason for offering it [or, alleviating responsibility], since, where identification *is* present, it is, standardly, the agents' very bad luck that a preference with which they strongly identify happens to be expensive, and to expect them to forgo or to restrict satisfaction of that preference (because it is expensive) is, therefore, to ask them to accept an alienation from what is deep in them. (Cohen 2004: 14, original emphasis)

This point illuminates a crucial feature of expensive valuational tastes, the costs of the satisfaction of which people should not be held consequentially responsible for. While the expensive tastes clause may seem, at first glance, to be wholly independent of metaphysical considerations, in fact, it is not. When the relatively high price is incidental to the development of someone's tastes, it is a matter of luck for the individual that

satisfaction of those tastes happens to be costly. In a market economy, the high cost is a matter of luck for her because, as Cohen argues, the market is ‘at best a mere brute luck machine’: no one has individual control over the market-set costs of satisfying particular tastes (Cohen 2004: 17). On the other hand, if any tastes are cultivated largely because of the relatively high expense of satisfying them, it is clearly not the case that those tastes just *happen* to be expensive to satisfy. In such cases, it is not merely a matter of luck that a person has expensive tastes, as she set out purposefully to cultivate or continue to maintain her tastes precisely *because* of their relative costliness. The high cost is not simply an external constraint on the exercise of her will but, significantly, at least in part the object of choice and a desideratum of the will. This is why the high expense of satisfying a person’s tastes is only ‘standardly’ and not always a matter of luck. Thus, the expensive tastes clause recommends that people should be relieved of consequential responsibility for the high costs of satisfying valuational tastes that are, as a matter of luck for their bearer, expensive.<sup>46</sup>

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<sup>46</sup> The expensive tastes clause is important for my purposes not only because it has formed a key part of luck egalitarian thinking, but also because it might be argued that wanting to undertake internship work or to enter a sector in which working as an intern improves access to paid employment is, at least for some, a valuational taste. In chapter 3, I will argue that, if that is convincing, when the internships that are available are (and, of course, from the perspective of potential interns, just happen to be) unpaid, the disadvantages consequent on a

### **1.3.3 A Summary of the Metaphysical Approach**

In summary, a plausible reading of the metaphysical approach to luck egalitarianism proposes the following:

Metaphysical responsibility is the necessary condition of consequential responsibility: people should be relieved of consequential responsibility for brute luck in initial opportunities and brute outcome luck, and held consequentially responsible for their genuine choices (excepting choices to gamble). The less (or more) genuine the choice, the less (or more) consequential responsibility should be imposed.

Consequential responsibility for costs and benefits falling out from choice to gamble should be: imposed inasmuch as the choice to gamble is genuine; or, relieved (or gambles should be banned); or, imposed in the case of gambles proper and relieved in the case of quasi-gambles.

Consequential responsibility for the costs of satisfying valuational tastes that happen (as a matter of luck for their bearer) to be expensive should be relieved.

### **1.3.4 A Defence of the Metaphysical Approach**

The metaphysical approach to luck egalitarian distributive justice is the one I favour throughout this thesis. That approach has been robustly defended elsewhere and I do

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genuine choice to take up an unpaid internship may, in light of the expensive tastes clause, be conceived as unjust.

not attempt here to provide much further justification for it.<sup>47</sup> As such, I acknowledge that my view that it is the most appropriate approach to luck egalitarianism is an incompletely defended assumption of the thesis. That said, in what follows, I canvass two objections that might at first glance seem worrying for this approach and suggest some reasons why they are unconvincing. The first objection runs as follows: it tells against the metaphysical approach that it imposes no consequential responsibility if determinism is true. In section 1.3.4.1, I suggest that this objection is weak in the sense that it holds normative force only for those who already accept its premise and can do nothing to persuade metaphysical luck egalitarians that they are wrong. Similarly, though, if metaphysical luck egalitarians attempt to rebut this objection with the claim that it tells against other approaches if and because they would impose consequential responsibility if determinism is true, they must acknowledge that their claim will be equally unpersuasive to those who disagree with its premise. The second objection is potentially more worrying. It holds that, because the full implications of the metaphysical approach cannot be known until the truth of causality has been ascertained, the approach is theoretically unfulfilled and practically useless. In section 1.3.4.2 I suggest that lack of knowledge cannot tell against the metaphysical approach in any

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<sup>47</sup> For thoroughgoing arguments in defence of the metaphysical approach, see, in particular, Cohen (1989), Knight (2006 and 2009a: chapter 5).

fundamental way and need not prevent metaphysical luck egalitarians from making regulatory recommendations.<sup>48</sup>

#### 1.3.4.1 Reply to the objection that consequential responsibility is incompatible with determinism

On the metaphysical approach to luck egalitarian distributive justice, unlike on the attributivist approach, just consequential responsibility is incompatible with determinism: given determinism, the approach would recommend flat equality of outcome. Mason asserts that it ‘might be regarded as a disadvantage’ of the approach that it would impose no responsibility if determinism were true (Mason 2006: 171). In particular, we can expect that the metaphysical approach will be unappealing to any egalitarians who are attached to substantive judgements of just consequential responsibility in particular cases. That is, to any who hold stubbornly persistent intuitions that flat equality is unjust because there are some actions or behaviours for

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<sup>48</sup> Another line of objection might attempt to claim that the metaphysical approach is an incorrect reading of luck egalitarian distributive justice and should be abandoned because it is discontinuous with ordinary moral experience. I reject this objection for the many of the reasons I rejected the attributivist approach. In brief, the evidence suggests ordinary moral experience is too heterogeneous and incoherent to allow for continuity. Even if it were not, we would certainly need far more empirical evidence of what it consists in before we could hope to know which theories reflect it and which are at odds with it. Finally, continuity is no virtue of a principle of justice: rather, it risks elevating repugnant moral judgements to the status of the grounds of justice and may function to constrain theoretical radicalism.

which people should, for reasons of distributive justice, definitely be held responsible (which intuitions are insensitive to the truth of causality).

To illustrate this point, consider how the metaphysical approach accommodates the substantive judgement that 'lazy' people should be held responsible for their laziness. It might, perhaps, be thought unfair to make hardworking people bear the costs of others' laziness. This view involves a substantive judgement that 'lazy' people should (ordinarily) bear the costs of their own laziness. Dworkin's approach to distributive justice accommodates that substantive judgement because it (ordinarily) counts laziness as a feature of people's personalities and, therefore, as a choice, regardless of whether or not the characteristic of laziness could have been avoided. Conversely, the metaphysical approach does not necessarily accommodate that substantive judgement. It cannot insist that all 'lazy' people bear the costs of their laziness, because the characteristic of laziness, taken alone, bears no normative weight. Substantive judgements regarding the justice of imposing consequential responsibility in particular cases attend only to the genuineness of choice and *not* to the character of choice, such that the only relevant question is: how genuine is this – lazy or diligent – choice? If it is not genuine, responsibility should not be imposed.

But, while the flat equality of outcome that metaphysical luck egalitarianism recommends if determinism is true may seem – at least to some egalitarians – inappropriately generous to the 'lazy' and unfair to the relatively diligent, it is one of the reasons I find it appealing. If people have no more control over the development of characteristics of laziness and diligence than they have over, for example, their genetic inheritance, there is no compelling reason of distributive justice why the distribution of advantage should track

those characteristics. Because, on the metaphysical approach, substantive judgements (including those concerning responsibility for laziness) are flexible in the sense of being dependent on as yet unknown facts about causality, those whose judgements are flexible in this sense will find the metaphysical approach far more appealing than any theory on which people are definitely held responsible for certain actions (such as lazy behaviour) regardless of whether they were genuinely avoidable. Moreover, of course, value pluralist metaphysical luck egalitarians can note that if determinism is true, inequalities might be justified on the balance of reasons. For example, perhaps alleviating all responsibility would entail the moral hazard of encouraging ever-costlier behaviour. If so, externalizing the costs of all behaviour onto society may risk bankrupting society in the long term and, accordingly, for reasons other than distributive justice (namely, reasons to do with economic sustainability and efficiency), flat equality of outcome might be undesirable. Thus, metaphysical luck egalitarians can concede that, given determinism, some inequalities may be justified, all things considered, but they are committed to the position that those inequalities would be *unjust*.

Thus far, however, there has only been a trading of statements of intuitions and judgements, and no presentation of any persuasive arguments. I think, in response to the claim that it tells against the metaphysical approach that it waives all consequential responsibility if determinism is true, defenders of the approach can only counterclaim that it tells against other approaches if and because they impose consequential responsibility if determinism is true. Crucially, each claim is only persuasive if its premise has already been conceded. As such, neither claim amounts to a genuine objection to the other view. A statement by Knight helps to illuminate that egalitarians are simply

talking past each other on this point. He criticizes the continuity with ordinary ethical experience of Dworkin's principles of distributive justice on precisely the basis that they render consequential responsibility compatible with determinism:

It seems broadly right to say that people distinguish between choices and circumstances in the stark way Dworkin describes, and it is probably also correct that people generally can not help but blame themselves for their bad choices and blame others (or no one at all) for their bad circumstances. But it is quite a jump from there to the conclusion that distributive justice should track the same distinction. If 'hard determinism' is true, so there can be no free will and no true agent responsibility – no responsibility in a deep, morally- and metaphysically-valid way – it might follow that the people had best continue as though free will and responsibility did exist. [...] But it does not at all follow that social institutions should fall under the same spell. Treating individuals as though they are responsible for outcomes when it is known they are not [metaphysically responsible] is *manifestly arbitrary and unfair*. (Knight 2012: 543, my emphasis)

I agree with Knight that if determinism is true, distributive justice condemns the imposition of consequential responsibility. But I think the force of his claim is limited in the sense that it is only persuasive if the premise has already been conceded. The premise is that metaphysical issues matter to consequential responsibility. To anyone who affirms this premise, it is indeed manifestly arbitrary and unfair to impose

consequential responsibility on people for matters over which they have no control. But to those, such as Dworkin and Mason, who maintain that metaphysical issues are fundamentally irrelevant to consequential responsibility, determinism is equally irrelevant and provides no grounds for judging imposition of consequential responsibility unfair. We cannot persuade those who disagree with us merely by stating our intuitions and judgements: the argument must focus on the relative plausibility of the premises that underpin our positions.

I acknowledge, then, that the metaphysical approach will be unappealing to those with substantive views that there are particular instances in which people should, for reasons of distributive justice, be held responsible. Egalitarians who are resolutely opposed to equality of outcome will find the necessarily agnostic view of the metaphysical luck egalitarian – who must accept that flat equality may be required by justice – unappealing. But the statement that the metaphysical approach condemns all inequality if determinism is true does not amount to a *persuasive* objection. Neither does my insistence that it is wrong of other approaches that they impose consequential responsibility if determinism is true amount to a *persuasive* defence. We must turn our attention to the premises that underpin the metaphysical approach.

#### 1.3.4.2 Reply to the objection from uncertain causality

Perhaps one of the most *prima facie* obvious objections against metaphysical luck egalitarianism is that it is held hostage to the problem of theoretical uncertainty regarding

the truth of metaphysical causality.<sup>49</sup> The lack of certainty and consensus on the truth of metaphysical causality might be thought to tell against a fundamental principle that is premised on metaphysical notions of responsibility if, as a result of that uncertainty, the implications of the principle cannot be fully worked out. That is, if the metaphysical premise of this approach entails that we cannot employ our theory to judge how just or unjust contemporary society is, or to issue any firm regulatory recommendations, perhaps the premise should be abandoned. As Fleurbaey writes, ‘egalitarianism would be seriously endangered of being practically impotent if it was held hostage by metaphysics’ (Fleurbaey 2001: 502).

Cohen acknowledges that it might be objected that ‘to make choice central to distributive justice lands political philosophy in the morass of the free will problem’ and thereby ‘subordinates political philosophy to metaphysical questions that may be impossible to answer’ (Cohen 1989: 934). But, in reply, he notes that:

we may indeed be up to our necks in the free will problem, but  
that is just tough luck. It is not a reason for not following the  
argument where it goes. (Cohen 1989: 934)

In other words, our lack of understanding and agreement does not undermine the value of getting theory right: the particular limitations to philosophical understanding we are

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<sup>49</sup> Versions of the objection from the problem of uncertain causality have been suggested by Fleurbaey (2001) and Saul Smilansky (1997).

currently faced with do not and cannot tell against fundamental philosophical principles that are (on the foundationalist view) insensitive to (as yet unknown or unsettled) facts regarding causality. Uncertainty over causality does not motivate the abandonment of theories grounded in metaphysics but, rather, provides a case for further philosophical enquiry in that area. Uncertainty may be uncomfortable, but it does not indicate theoretical error. Moreover, in the meantime we can, of course, make *conditional* and *conjectural* statements about justice in contemporary society and about what regulation luck egalitarianism would recommend, given the truth of different theses of causality. Admittedly, luck egalitarian theory is not always properly caveated and can sometimes read as though some degree of genuine choice has been shown to be possible, but that is a problem with its expression and does not tell against its content.

Nevertheless, to comprehensively apply the theory at the level of regulation, it seems that a convincing theory of metaphysical causation is required to inform judgements about whether control is ever possible and, if so, under what conditions. Without such a theory, we cannot know for certain whether and, if so, when people make the kind of genuine choices that might justify imposition of consequential responsibility for costs and benefits. In response to this problem of implementation, Cohen attempts to reassure us with the following statement:

We are not looking for an absolute distinction between presence and absence of genuine choice. The amount of genuineness that there is in a choice is a matter of degree, and egalitarian redress is indicated to the extent that a disadvantage does not reflect genuine choice. That extent is a function of several things, and there is no

aspect of a person's situation which is wholly due to genuine choice. Let me illustrate this point. One of the things that affects how genuine a choice was is the amount of relevant information that the chooser had. But we do not have to ask, Exactly what sort and amount of information must a person have to count as having genuinely chosen his fate? All that we need say, from the point of view of egalitarian justice, is: the more relevant information he had, the less cause for complaint he now has. It seems to me that this plausible nuancing approach reduces the dependence of political philosophy on the metaphysics of mind.

(Cohen 1989: 934)

At first glance, Cohen's 'nuancing' approach might be thought to provide a practical way to reach judgements of consequential responsibility that releases luck egalitarian regulatory recommendations from dependence on the correct theory of metaphysical causality. But, on closer inspection, some theory still must be assumed, on which to predicate nuanced judgements. Cohen does, in the quotation cited directly above, seem to be making what Scheffler (2003a and 2005) and Fleurbaey (2001) have described as an assumption of metaphysical libertarianism. To claim that a chooser's having more of the relevant information makes her choice more genuine does, after all, assume that *some* degree of genuineness of choice is possible in principle.

More reassuringly, practical solutions to the problems of implementation are at hand. Knight recognizes those problems, but argues that there is, after all, an acceptable way to obviate them. He writes:

Can luck egalitarians take metaphysics seriously, as I have urged they should, and still offer concrete distributive proposals? I believe they can, provided they accept the pragmatic solution of legislating on the basis of our best metaphysical guess. (Knight 2006: 184)

Metaphysical luck egalitarianism favours whatever view of causality is correct. What is required in order to make ‘concrete distributive proposals’ is, therefore, an acceptable way of deciding which view of causality to use. Knight’s solution is to employ an expert panel of specialists in the field of metaphysics to make that decision (that is, to make a ‘best guess’ about the truth of causality). Describing his proposal, he writes:

Governments have various ways of arriving at educated guesses; luck egalitarianism has no preference here, other than favoring greater accuracy over lesser accuracy. I will describe one option here: a *responsibility committee* composed of some of the leading authorities on the relevant metaphysical issues. The committee would be representative in terms of the positions (hard determinism, libertarianism, compatibilism, and maybe others) initially held by each member, though they may change during the course of the committee’s deliberations. It would be charged with surveying the research appropriate to its topic and would ultimately provide the distributive arm of the government with their assessments of the likelihoods of each of the [...] positions] being correct. (Knight 2006: 185-186)

The appropriate distribution would then be based on a probabilistic compromise between each position that weights each according to the committee's best guess regarding the likelihood of its accuracy (see, in particular, Knight 2006: 186). It cannot be claimed either that this method would definitely make the correct judgements or that the panel would eventually reach consensus but it does seem to constitute an acceptable approach to overcoming the potential implementational problems of luck egalitarian regulation. As Knight comments, 'Our best guess is that metaphysicians are the group best qualified to make the required decision' (Knight 2006: 187). He goes on, 'If there is a fully neutral method, then luck egalitarianism is open to it; if there is not, then the committee will suffice' (Knight 2006: 188). The important point for now is that while, at first glance, the seeming intractability of the problem of determining the correct causal thesis might appear to render implementation of luck egalitarian regulatory requirements impossible and, therefore, to tell against the plausibility or appeal of the entire approach, Knight's work reveals that that problem need not be too worrying if we are willing to accept the best guess of informed experts acting in good faith. Even if we are not, there is no good reason to dismiss as impossible that other acceptable methods of implementation may yet be imagined.

In fact, we can certainly make *some* regulatory recommendations without a panel of expert metaphysicians and without presupposing any particular thesis of causality. In chapters 2 and 4, I discuss a number of luck egalitarian regulatory actions that could be implemented in the absence of a resolution to the debates around causality. Provision of *ex post* compensation to accurately offset (only) advantages and disadvantages that are a matter of luck would indeed require a plausible determination of the extent to which a

person's overall level of advantage or disadvantage is the result of luck, which would in turn require a working theory of causality. But I maintain that this is not the only kind of regulatory action that luck egalitarians might endorse. I argue that luck egalitarians have a (provisional) reason to endorse action to reduce unjust advantage and disadvantage *ex ante* redistributive compensation. Implementation of at least some kinds of *ex ante* luck egalitarian regulatory action is perfectly possible in the absence of agreement on the thesis of causality. That is (not least) because, regardless of whether or not genuine choice is possible, there are some factors (such as, for example, a person's gender) that are beyond metaphysical control and thus unchosen and a matter of luck on *any* thesis. Luck egalitarians can condemn the influence these forms of luck currently have on outcomes and recommend regulatory action to minimize that influence: rather than insisting that we must work out how much influence luck *has had* on a person's outcome, luck egalitarians might advocate a variety of regulatory actions that minimize the extent to which such factors influence distributive processes in the first instance. The idea that uncertainty over causality necessarily renders luck egalitarianism entirely impotent at the level of regulation is, then, certainly unfounded.

Ultimately, as I acknowledged above, Dworkin may be right that anyone's choice between the metaphysical view and other, continuous views may reflect deeper dispositions and convictions that are beyond argument. Discussing Cohen's view that metaphysical responsibility is the necessary condition of consequential responsibility, Scheffler comments that he 'just thinks that's the egalitarian intuition' (Scheffler 2005: 13). Arneson, Knight, Barry and I are in agreement with Cohen on that score. Indeed, I agree with Knight that holding people consequentially responsible when they are not

metaphysically responsible is manifestly arbitrary and unfair, but, of course, the unfairness is *not* manifest to many others and it does not seem unlikely that that divergence may reflect disparity in the deeper dispositions to which Dworkin refers. I do not claim to have provided a thoroughgoing defence of the metaphysical approach, but I do hope to have shown that it is not a persuasive objection against that approach that it recommends equality of outcome if determinism is true, and that the problems entailed by lack of certainty over the truth of causality are neither necessarily intractable nor, even as they stand, too debilitating. I would like to end by raising a final consideration that may tell positively in favour of the metaphysical approach. For my part, I think at least part of the underlying motivation for preventing or redressing the inegalitarian influence of luck on outcomes while permitting the influence of choice consists in the notion that people should have genuine – that is, metaphysical – control over how well their lives go. People should be able to determine their own outcomes. If there is to be inequality, people should be in control of where they end up and no level of advantage should be out of reach for reasons beyond individuals' control.<sup>50</sup> When a

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<sup>50</sup> One potential avenue for luck egalitarian theorists to explore, which I suspect may bear interesting fruit but do not venture into here, concerns the question of whether this motivation implies a luck egalitarian reason to relieve consequential responsibility – even for genuine choice – when its imposition would curtail or unacceptably limit a person's ability to be self-determining in future. For a discussion of related ideas, see Brown (2005a). Brown's argument holds that it is 'sometimes it is better not to hold individuals responsible for their past choices

person does not control her outcome and when that outcome is influenced by factors beyond her control, her self-determination is problematically compromised. The metaphysical approach to luck egalitarian distributive justice seems appealing to me in part because it speaks to this deep concern for genuine self-determination. It is the best expression of *my* egalitarian intuition.

## **Conclusion**

The distinction between luck and choice forms the touchstone of luck egalitarian theories of distributive justice. In this chapter, I have suggested that different approaches to understanding that distinction yield different principles of consequential responsibility and that luck egalitarians must choose between the alternatives with care. I hope to have shown that the attributivist approach to luck, choice and responsibility outlined in section 1.2 yields an implausible and unattractive candidate for the central luck egalitarian principle, and should be rejected. The notion of ‘ordinary moral experience of blaming and praising’ that it presupposes is in itself dubious and, in any case, can tell us nothing about the content of egalitarian distributive justice. Instead, luck egalitarians should favour a discontinuous, metaphysical approach to the distinction between luck and choice, and to the alleviation and imposition of consequential responsibility. With this metaphysical approach in mind, I now turn from the question

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by denying them aid now, so that they might be better able to assume individual responsibility at a later date’ (Brown 2005a: 23).

of what luck and choice consist in to the question of what to do about the inegalitarian influence of luck on life outcomes. I ask: given that, for reasons of distributive justice, factors beyond individuals' metaphysical control should not unequally influence their relative life outcomes, what regulatory strategies should luck egalitarians endorse?

## Luck Egalitarian Regulatory Strategies:

### Compensation, Levelling, and Direct Structural Regulation

#### **Introduction**

This chapter examines the regulatory strategies through which the luck egalitarian ideal can be pursued. At the fundamental level, that ideal holds that a just distribution of advantage is one in which people's outcomes are insensitive to matters of luck beyond their control, but sensitive to their genuine choices. Accordingly, at the level of regulation, the luck egalitarian ideal holds that people should be relieved of consequential responsibility for matters of luck, but held consequentially responsible for their choices. In other words, luck egalitarianism demands that the inegalitarian influence of luck on outcomes is neutralized. In what follows, I argue that this regulatory demand may be met through a variety of regulatory strategies. My argument is motivated by the tendency of luck egalitarian theory to conceive of luck egalitarian regulation in terms of compensation: the regulatory demand of luck egalitarianism is standardly presented as a demand for compensation.

In section 2.1, I outline how the term ‘compensation’ has been understood within the luck egalitarian literature. I highlight how it has been used in both a narrow and a broad sense. In its narrow usage, it indicates the imposition of taxation to offset luck-based advantage and the provision of compensation to offset luck-based disadvantage.<sup>51</sup> In its broad usage, it is a vague (and, I will argue, inappropriate) term for any kind of luck egalitarian regulatory action. In section 2.2, I present a conceptual argument intended to bring greater clarity to discussion of luck egalitarian regulation. This argument proposes that a great variety of regulatory actions might be employed in service of luck egalitarian ends, and that these may all be usefully categorized into three different types of regulatory strategy. That is, all luck egalitarian regulatory action can be understood as falling within (at least) one of three broad categories, depending on its strategic rationale and the target to which it is oriented. These categories of luck egalitarian regulatory strategy are: ‘redistributive compensation’, ‘levelling’, and ‘direct structural regulation’. In section 2.3, I draw attention to a number of features and implications of this pluralist approach to the regulatory strategies of luck egalitarian distributive justice, which I think render it a plausible and attractive approach. I then go on to consider how the relational egalitarian ideal can inform the choice between regulatory strategies and attempt to show that there are good reasons, in some instances, for luck egalitarians who value relational

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<sup>51</sup> By luck-based advantage and disadvantage, I mean advantage and disadvantage that is a function of unchosen inequalities of opportunity and/or outcome luck.

equality to pursue distributive equality through levelling and direct structural regulation, rather than through redistributive compensation.

## **2.1 Redistributive Compensation**

### **2.1.1 The Paradigmatic Status of Redistributive Compensation**

For all its diversity, there is a remarkable congruity in luck egalitarian theory regarding the paradigmatic status of redistributive compensation.<sup>52</sup> Within theoretical work on luck egalitarian regulation, the lines of reasoning tend to conceive of luck egalitarian regulatory demands as demands for compensation, and the characteristic questions concern whether, to what extent, and how compensatory transfers should be implemented. On John Roemer's version 'Equality of opportunity requires compensating persons for the differences in their circumstances [...] but not compensating them for the consequences of the differential application of effort' (Roemer 1998: 6-7). In order for Arneson's 'strict equal opportunity for welfare to obtain, it must be the case that any windfall gains that some agents get and sheer misfortunes that others suffer are fully offset by compensation after the fact, so that it

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<sup>52</sup> I take inspiration here from Young's definition of a paradigm as:

a configuration of elements and practices which define an inquiry: metaphysical presuppositions, unquestioned terminology, characteristic questions, lines of reasoning, specific theories and their typical scope and mode of application. (Young 1990: 16)

remains true that agents who behave with comparable prudence will gain the same level of welfare' (Arneson 1999: 490-491). On Kristin Voight's account, 'distributions should, as a matter of justice, reflect the choices that it is reasonable to hold agents responsible for, while the effects of "brute luck" must be compensated for' (Voight 2007: 389-390). Segall writes that 'justice requires compensating individuals only for disadvantages for which one cannot be held responsible' (Segall 2007: 177). For Hugh Lazenby, 'the prime focus of egalitarian concern' is 'the compensation of unearned or unchosen comparative disadvantage' (Lazenby 2010: 271). Carl Knight takes the 'generic distributive principle' of luck egalitarianism to be 'equality of opportunity for advantage', according to which 'disadvantages that arise from [...] circumstance are typically said to give rise to entitlements for compensation, for they derive from inequalities of opportunity, whereas those that arise from choices [...] do not, for they reflect different uses of opportunity' (Knight 2006: 173). In his last published paper on the subject, G. A. Cohen writes that 'luck egalitarianism says: distribute equally, compensating appropriately for luck-induced deficits, and then whatever arises from people's choices is just' (Cohen 2009: 18).

Commentators on and critics of luck egalitarianism have also tended to conceptualize luck egalitarian regulation in terms of compensation in their descriptions and analyses, writing of luck egalitarianism as a theory of compensation. In her influential 1999 essay 'What is the Point of Equality?', Elizabeth Anderson begins her critique of luck egalitarianism with the observation that 'egalitarian writing has come to be dominated by the view that the fundamental aim of equality is to compensate people for undeserved bad luck' (Anderson 1999: 288). Marc Fleurbaey characterizes luck egalitarians as committed to 'the principle of compensation', which holds that 'opportunities should be

equal, or, in other words, that *unequal circumstances should be compensated* by appropriate transfers' (2001: 506, original emphasis).<sup>53</sup> And Neil Levy includes among the 'central questions' of distributive justice the question of 'whether we ought to compensate people for bad luck' (Levy 2011: 11). This view of the existing literature is justified, for luck egalitarians share a tendency to write in the language of compensation.

### **2.1.2 The Nature of Redistributive Compensation**

But what do supporters and critics of luck egalitarianism mean by the term compensation? In short, compensation has both a narrow and a broad meaning. As Wolff notes, luck egalitarianism:

sees the goal of egalitarian justice as that of neutralizing the effects of good and bad (brute) luck on individual fortunes. The method by which it is proposed to achieve such neutralization is normally termed 'compensation'. [...] Now it is not always clear what is

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<sup>53</sup> On Fleurbaey's definition of this principle, it states that 'inequalities not due to responsibility should be eliminated' (Fleurbaey 2008: 7). Luck egalitarians do tend to interpret elimination in terms of compensation but, as I will argue in section 2.2, the inegalitarian influence of luck might be eliminated through strategies other than compensation. Accordingly, the name given to the principle might (and, I hold, should) be judged to accurately capture much of the theory on luck egalitarian regulation thus far but, ultimately, to inappropriately characterize the luck egalitarian position as committed to disregarding non-compensatory strategies.

meant by ‘compensation’. Sometimes it appears to be little more than a placeholder for the idea that ‘something must be done’. But sometimes compensation is viewed in cash terms, or at least in terms of material goods, the provision of which is regarded as ‘making up for’ something else which is lost or lacking. (Wolff 2009a: 114)<sup>54</sup>

Let us consider the narrow meaning first. On this view, the central rationale of redistributive compensation is to *redress* unjust inequalities of outcome by offsetting luck-based advantage and disadvantage. It targets overall outcomes – individuals’ overall levels of advantage – and adjusts these so that they are what they would have been, were it not for the *inegalitarian* influence of luck. Thus, it brings about luck-neutral outcomes. Compensatory regulatory action typically takes the form of policies that impose financial taxes and provide financial benefits. Money is collected from those who reap the benefits of luck to offset luck-based gains. Conversely, money is provided to those who suffer the adverse consequences of luck to reimburse luck-based costs.<sup>55</sup> Following

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<sup>54</sup> The pluralist approach I develop throughout this chapter amounts, on the one hand, to a rejection of the view that compensation in the narrow sense is *the* method through which luck-neutral outcomes should be achieved and, on the other, to a much needed framework for thinking more clearly about what sorts of things can be done, given that something must.

<sup>55</sup> On the standard luck egalitarian view, the costs of providing compensation to offset luck-based adverse consequences are socialized, that is, paid out of the public purse. In section 4.2.1,

Michael Otsuka, full compensation can be understood as ‘an amount of money awarded that would make the person indifferent between (1) that amount of money plus the harm and (2) the absence of that amount plus the absence of the harm’ (Otsuka 2002: 44). Otsuka’s ‘indifference test’ can also be extended to apply to luck-based benefits: full tax of the benefits of luck would make the individual indifferent between (1) reaping the benefits of luck and paying the tax and (2) not reaping the benefits of luck plus not paying the tax. The idea here is that the costs and benefits that people accrue as a matter of luck should be exactly offset by redistribution.<sup>56</sup> The strategy of redistributive compensation is therefore backward-looking or *retrospective* in its orientation: it aims for *ex post* redress of injustice after the fact of its creation. This narrow reading of the meaning of compensation is suggested by, for example, Lazenby, who writes that:

the ultimate aim of the luck egalitarian project [...] is] to delineate which elements of a person’s situation they can be said to have responsibility for and which elements they cannot, allowing

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I consider an alternative view proposed by Steiner (1998), according to which compensation for adverse consequences that are not the result of choices made by a third party is paid out of the public purse. The costs of providing compensation for adverse consequences that are the result of others’ choices are paid by those whose choices caused the adverse consequences.

<sup>56</sup> Of course, feasibility constraints and the demands of other values may constrain the extent to which full compensation can be achieved. If compensation is partial, rather than full, it only mitigates, and does not neutralize, the inegalitarian influence of luck on outcomes.

relative welfare to be a function only of the former. [...] once these elements have been drawn apart we can begin trying to adjust the effects of brute luck between individuals through taxation of the 'brute' lucky and compensation of the 'brute' unlucky. (Lazenby 2010: 274)

Much of Cohen's discussion of luck egalitarian regulation also focuses on eliminating luck-based inequality through 'income taxation which redistributes to fully luck egalitarian effect' (Cohen 1997: 9). And, in his critique of luck egalitarianism, Fleurbaey suggests that the purpose of luck egalitarian policy is standardly to redistribute 'resources so that the influence of circumstances over well-being [...] is exactly counterbalanced by appropriate transfers' (Fleurbaey 2008: 26).

### **2.1.3 Beyond Ex Post Redress of Unjust Outcomes**

However, the regulatory proposals advanced by luck egalitarians are not exhausted by redistributive policies that aim to adjust unjust outcomes *ex post*. First, resources might be redistributed for the purpose of adjusting individuals' future opportunities for advantage, as well as or instead of for the purpose of redressing unjust outcomes. Thus, regulatory action that luck egalitarians characterize in terms of compensation may have more than one rationale. Moreover, although provision of financial benefit and imposition of financial taxation is certainly the *primary* regulatory strategy discussed and recommended by luck egalitarians, some luck egalitarian theorists have recommended (or, at least, mentioned the possibility that luck egalitarians could recommend) very different sorts of regulatory action. Knight, for example, mentions that increasing access to high quality state education and training among those who would otherwise lack skills

would ‘prevent many unfair disadvantages from arising in the first place’ (Knight 2009a: 129). Roemer also argues that, while luck egalitarian outcomes might be achieved through a redistributive income tax policy, regulation of education systems might also be implemented to reduce the inequalities of opportunity that children will face in future (see Roemer 1998: chapter 9). Indicating a broader reading of the term compensation, Cohen mentions that luck egalitarians might endorse an ‘antimarket policy’ according to which libraries charge all library users the same fee, regardless of the expense of the books they borrow. This, he states, would constitute a form of compensation for expensive tastes in books (see, in particular, Cohen 2004: 11-12, 17-18). Segall (2012a) advocates direct regulation of job recruitment processes to ensure that job distribution serves luck egalitarian ends. (I examine Segall’s arguments in more detail in chapter 4.) And Knight (2013b) suggests that a ban on gambles might be enacted in order to reduce exposure to option luck. These policies do not amount to *ex post* compensation for unjust advantage and disadvantage: the rationale is not to redress injustice after the fact of its creation by adjusting unjust outcomes, but to equalize opportunities for advantage in future. Despite this diversity, however, Knight, Roemer, Cohen and Segall use the *label* of compensation to indicate all kinds of luck egalitarian regulation action. It seems to me that their work hints at the possibility of a pluralist approach to the regulatory strategies of luck egalitarian distributive justice, but never fully develops the implications of these intimations. The approach I advocate is intended to develop those implications much more fully and to provide a framework that explicitly recognizes and clearly categorizes the many and diverse regulatory actions luck egalitarians might recommend.

In sum, supporters and critics of luck egalitarianism often overlook regulatory action that is not compensatory in the narrow sense of the term. This, as I explain in section 2.2, is unnecessarily and unhelpfully reductive: luck egalitarian outcomes can and sometimes should be achieved through alternative strategies. Alternatively, those who allow that alternative strategies are available to the luck egalitarian continue to characterize all luck egalitarian regulatory actions as forms of compensation. The latter tendency is, I think, less worrying than the former, as it does not preclude sensible luck egalitarian policies. But it is, nevertheless, a misstep that luck egalitarians should avoid: it obscures the real variety of available luck egalitarian regulatory actions. In what follows, I hope to show that it is at best imprecise and at worst misleading to use compensation as a catch-all term for luck egalitarian regulation whether or not it is compensatory in the narrow sense. Theoretical clarity and precision is enhanced by distinguishing between the different targets and rationales of regulatory action, and the pluralist approach I advocate enables those distinctions to be made clearly while also focusing attention on the range of possible action. But the critical force of my argument is directed against the position that compensation in the narrow sense – that is, *ex post* imposition of financial taxation and provision of financial benefit to adjust unjust outcomes by offsetting luck-based advantage and disadvantage – is the *only* regulatory strategy of luck egalitarian distributive justice.<sup>57</sup> That position renders invisible any luck

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<sup>57</sup> For the remainder of this chapter, unless otherwise stated I use the terms ‘compensation’ and ‘compensatory redistribution’ in this narrow, specific sense.

egalitarian regulatory strategies that target *ex ante* differences in circumstance or the structures that set the terms of dynamic inequality creation in order to equalize opportunities for advantage and prevent unjust outcomes from being produced. In focusing on compensation as *the* appropriate regulatory strategy through which to achieve luck neutralization, luck egalitarians have tended not to engage in very much critical analysis of current and possible background distributive systems – the systems which, taken together, determine the distribution of benefits and burdens *ex ante* any redistributive compensation (or, pre-redistribution). The luck egalitarian society is too often presented as, or implied to be, one in which luck *is* permitted to have an inegalitarian influence on outcomes: justice is achieved to the extent that *ex post* redistribution redresses the unjust inequalities that are thereby created. Hence, two important questions seldom arise. First, the question of whether different social arrangements might reduce luck-based inequalities of outcome pre-redistribution. Second, the question of whether, if they would reduce such inequality, those different social arrangements might be desirable in the name of equality, and even desirable on the balance of all relevant considerations. This entails that the radical capacity of luck egalitarianism as a transformative theory of justice is limited: it recommends tweaking the outcomes of distributive processes, rather than transforming the very processes that produce those outcomes. Throughout the remainder of this chapter, I attempt to demonstrate that treating compensation as the sole or primary strategy of luck egalitarian regulation is unnecessary, unjustified and unhelpful. Theorists of luck egalitarian distributive justice should relinquish attachment to the compensatory paradigm and embrace a pluralist approach to regulatory strategies.

## **2.2 A Pluralist Approach to Luck Egalitarian Regulatory Strategies**

This aim of this section is to illustrate that luck egalitarian regulatory strategies are not exhausted by redistributive compensation to redress unjust advantage and disadvantage, and to propose a clear and useful framework for thinking about alternative regulatory options. While luck egalitarians have tended to recommend that inequalities of outcome resultant on inequalities of opportunity and outcome luck should be compensated, compensation strikes me, in many instances, as the wrong strategy in response to inequalities of opportunity, given the availability of others. Instead of responding to the inequalities of opportunity that are implicated in the production of luck-based advantage and disadvantage by leaving them intact and compensating individuals for the unjust outcomes that result, luck egalitarians can, alternatively, respond by *equalizing opportunities*.

### **2.2.1 Wolff's Tripartite Model of Opportunities**

I employ here Wolff's tripartite model of the determinants of opportunity to show that inequalities of opportunity may be eliminated or reduced by regulation that targets one or more of the original determinants of those inequalities. Explaining his model of opportunity, Wolff writes:

A person's opportunities in life are determined by three kinds of factor: first, his or her internal resources (Rawlsian natural assets); second, his or her external resources (money, property and so on); and third, the social and material structure of that person's society.  
(Wolff 2009a: 113)

I elaborate further on what precisely is meant by the social and material structure of society in section 2.2.4 below but suffice it to say for now that it includes ‘laws and customs, the influence of tradition, religion, language, culture and other social norms; the configuration of the material and natural environment; and perhaps other things too’ (Wolff 2009a: 123). Wolff defines the ‘overall formula’ as follows:

the interaction of your internal and external resources with the social and material structure within which you find yourself determines your opportunities, creating for you paths of varying cost and difficulty. In short, your resources are what you have to play with; the structure provides the rules of the game. (Wolff 2009a: 124)

Wolff himself advances a formulation of justice according to which the primary distributive goal is to ensure *sufficient* – not equal – genuine opportunities for secure functionings by ‘declustering disadvantage’ (see, in particular, Wolff and de-Shalit 2007). He is not a luck egalitarian. But I believe it is possible to harness his view of opportunity to luck egalitarianism. To demonstrate this, I draw on Wolff’s discussion of how society should address disability relating to cognitive and physical impairment, and explain how his insights can be interpreted from a luck egalitarian perspective. Wolff understands disability in terms of an unacceptable lack of opportunity, which is a function of the triaxial conjunction of impaired mental or bodily functioning (that is, impaired internal resources), external resources, and the social and material structure. He writes:

To be disabled is to be in a position where one’s internal resources do not provide one with sufficient genuine opportunities for

secure functionings, given the social and material structure in which one lives [...] and the external resources at one's disposal.  
(Wolff 2009a: 113)

Luck egalitarianism requires that people have equal – not merely sufficient – opportunities for advantage. And people may have lesser or greater opportunities for advantage than luck egalitarianism demands.<sup>58</sup> Thus, extending Wolff's foregoing claim, we can say that to lack opportunities is to be in a position where one's internal resources and other personal characteristics provide one with lesser opportunities for advantage (than the norm), given the social and material structure in which one lives and the external resources at one's disposal.<sup>59</sup> It is necessary to add 'other personal characteristics' here because luck egalitarianism is concerned with how opportunities for advantage are delineated on the basis of unchosen personal properties that are not

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<sup>58</sup> By lesser opportunities, I mean opportunities below the normative level of equality required by luck egalitarianism. By greater opportunities, I mean opportunities above that level.

<sup>59</sup> The emphasis can, of course, be placed on any of the three factors determining opportunities: to lack opportunities is to be in a position where the external resources at one's disposal provide one with lesser opportunities for advantage (than the norm), given the social and material structure in which one lives and one's internal resources and other personal characteristics; or, to lack opportunities is to be in a position where the social and material structure in which one lives provides one with lesser opportunities for advantage (than the norm), given one's internal resources and other personal characteristics, and the external resources at one's disposal.

normally understood as constituting either internal or external resources. Most notably, those personal properties include characteristics such as gender, ethnicity and sexuality or, more precisely, those features of the body that are taxonomized into social categories of gender, ethnicity and sexuality. (For the sake of economy of expression, in what follows I use the term ‘personal resources’ to indicate a person’s gender, ethnicity and sexuality, as well as their internal and external resources.) Moreover, the luck egalitarian version of Wolff’s model of opportunities, as I have just expressed it, is neutral with regard to the currency of justice. Internal and external resources are not coterminous with outcomes, as the opportunities they provide (given the social and material structure) might be opportunities for welfare, resources, capabilities, or some combination of these metrics. Thus, given differences between people’s internal and external resources and other unchosen personal characteristics, the structure provides unequal opportunities for advantage, with advantage understood in terms of whatever currency is favoured.

How, then, can opportunities be adjusted? In order to equalize (currently unequal) opportunities, the opportunities of those with opportunities below the normative level of equality must be improved, while the opportunities of those above that level must be reduced. Wolff’s analysis demonstrates that, given the view of opportunities as determined by the three factors outlined above:

if someone is thought to be lacking in opportunities, then, in principle, there are at least three spheres in which we might try to address this: internal resources; external resources; and social structures. (Wolff 2009a: 124)

Wolff argues that strategies to tackle disability-related disadvantage by improving the opportunities of disabled people can be categorized according to a fourfold typology. The strategies are distinguished by their target. ‘Cash compensation’ augments a person’s external resources: money is provided to the individual to spend as she wishes (Wolff 2009b: 50-51). ‘Targeted resource allocation’ also augments a person’s external resources, but takes the form of provision of non-monetary resources that must be used for a particular purpose (and not, for example, sold for cash). Such resources might include equipment such as wheelchairs or large button telephones, carer support, or ‘even money with strings attached about how it can be spent’ (Wolff 2009b: 51). ‘Personal enhancement’ works to augment internal resources: ‘action is taken directly on the impairment, by surgery, physiotherapy or training and so on’ (Wolff 2009b: 51). Finally, ‘status enhancement’ makes changes to the social and material structure of society ‘in order to modify the structural mediating factors between impairment and adverse consequences’ (Wolff 2009b: 51). Status enhancement may take various forms: for example, removal of discriminatory laws and implementation of laws against discrimination, alterations to the physical environment to improve wheelchair access, and promotion of social norms of equally respectful treatment. This kind of regulatory action aims to alter the structure in such a way as to improve disabled people’s opportunities without acting directly on either internal or external resources.

One of Wolff’s central complaints about luck egalitarianism and one of the reasons he rejects it as an expression of justice is that it tends to disregard the great variety of regulatory strategies that might be employed to promote distributive justice in favour of cash compensation. He notes, ‘luck egalitarianism – at least in the forms currently on

offer – typically recommends a strategy which is rarely thought of as appropriate, or at least sufficient, for addressing disability’ (Wolff 2009a: 115). I think Wolff is right and that his objection undermines the standard compensatory approach to luck egalitarian regulation. But it also helps to motivate the pluralist approach to luck egalitarian regulatory strategies that I advocate. There is no reason why luck egalitarians should not accept one of his central insights: regulation to address distributive injustice need not be restricted to compensating (or ‘making up for’) unjust advantage and disadvantage after the fact of its creation. When that insight is harnessed to luck egalitarianism, it becomes clear that luck egalitarian regulation may *also* aim to prevent unjust advantage and disadvantage from arising by equalizing opportunities for advantage. It can do this by targeting any of the three factors that, as Wolff demonstrates, determine opportunities. That is, a regulatory agency seeking to promote luck egalitarian distributive justice might attempt to make adjustments to a person’s internal and external resources and the social and material structure.<sup>60</sup> Indeed, there is a luck egalitarian reason to endorse the very sorts of regulatory actions – medical treatment, changes to the built environment, and so on – that Wolff recommends: they work to equalize opportunities for advantage and thereby prevent unjust, luck-based inequalities of outcome from arising.<sup>61</sup>

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<sup>60</sup> By ‘regulatory agency’, I mean the state or other body charged with enacting and implementing regulation on behalf of all members of society.

<sup>61</sup> On my approach (as we will see shortly) targeted resource enhancement and personal enhancement can both be viewed as subcategories of regulatory strategy that fall into the

### **2.2.2 An Outline of the Pluralist Approach**

Luck egalitarian regulatory action may, then, compensate for all unjust inequalities of outcome, *or* it may prevent some of those unjust inequalities of outcome that can be prevented (by following one or both of the two strategies to equalize opportunities – levelling and direct structural regulation) and then compensate for any unjust outcomes that are not thereby prevented. I advocate the latter, pluralist approach. Before drawing out the details of that approach, I will briefly summarize here its key features.

The three categories of luck egalitarian regulatory strategy – redistributive compensation, levelling, and direct structural regulation – are exhaustive but not mutually exclusive. That is, all luck egalitarian regulatory actions can be categorized according to this typology, and single actions may fall into more than one category. The strategy of redistributive compensation is already familiar. The pluralist approach does not reject that strategy as unimportant or useless, but seeks to clearly *delineate* its features, and *supplement* it with other strategies. As outlined at the start of section 2.1.2, the rationale of redistributive compensation is to redress unjust inequalities of outcome produced in and through the original (pre-redistribution) distribution of benefits and burdens. It occurs *ex post* inequality creation, and the effect is to retrospectively offset – make up for, rectify, or remedy – unjust advantage and disadvantage consequent on either unequal

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category of levelling, while status enhancement can be viewed as a subcategory of direct structural regulation.

opportunities or outcome luck. Redistributive compensation targets people's overall levels of advantage, adjusting those overall levels by providing or exacting money until they are what they would have been, were it not for the inegalitarian influence of luck.<sup>62</sup> On the pluralist approach, if a regulatory action does not have these features, it is not an instance of redistributive compensation.<sup>63</sup> The strategies to which I am most eager to

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<sup>62</sup> Wolff writes of cash compensation for disability:

A disabled person, we noted, suffers from adverse consequences of impairment. Cash compensation simply provides money to “make up for” these adverse consequences (Wolff 2009b: 50).

In luck egalitarian terms, cash compensation for disability can be categorized as an instance of compensatory redistribution. The general case can be expressed as follows: an unjustly disadvantaged person suffers from adverse consequences of luck. Money is provided to the person to make up for (or, to offset) those luck-induced costs. Conversely, an unjustly advantaged person reaps the benefits of luck. Money is collected from the person to offset those luck-induced gains.

<sup>63</sup> Thus, if financial resources are provided to an individual solely for the purpose of improving her future opportunities and *not* for the purpose of retrospectively offsetting a cost they have previously accrued as a matter of luck, the action does not count as an instance of redistributive compensation but, rather, as an instance of levelling. Of course, such financial provision may often serve both purposes, in which case it falls into the categories of *both* levelling and redistributive compensation. I address these issues in more detail below.

draw attention, however, are levelling and direct structural regulation. Levelling targets individuals' sets of internal and external resources and acts to remove (or, at least, reduce) differences in the structurally determined values of those sets. In effect, it removes (or, reduces) inequalities of opportunity for advantage. Levelling occurs *ex ante* inequality creation and its rationale is to prevent unjust outcomes from arising (or, at least, to reduce the degree of unjust advantage and disadvantage produced by the original distribution of benefits and burdens). Direct structural regulation targets social and material structures to alter the ways in which inequalities are produced. Like levelling, it occurs *ex ante* inequality creation, works to equalize opportunities, and is done for the purpose of preventing unjust outcomes from arising. Thus, while compensation can be understood as a strategy of redress in the sense that it works to redress injustice, levelling and direct structural regulation can be understood as strategies of prevention in the sense that they work to prevent it.

To extend Wolff's game metaphor, direct regulation changes the *rules* of the game, levelling equalizes the *resources* people have to play with, and compensation alters the *prizes*. A mathematical metaphor might also be used: direct regulation changes the *terms* of the complex equation that produces inequality, levelling changes (that is, adds to or subtracts from) the *input variables* of that equation, and compensation changes (that is, adds to or subtracts from) the final expression or *output value* given by the equation. The target, rationale, effect and timing of the regulatory strategies, on which they are distinguished, are illustrated in the table below.

Table 2: Distinctions between the Regulatory Strategies

	Target	Timing	Rationale	Effect
Compensatory redistribution	Overall levels of advantage	<i>Ex post</i> inequality creation	To redress injustice	Offsets luck-based advantage and disadvantage
Levelling	Personal resources	<i>Ex ante</i> inequality creation	To prevent injustice	Equalizes opportunities
Direct structural regulation	Social and material structures	<i>Ex ante</i> inequality creation	To prevent injustice	Equalizes opportunities

### 2.2.3 Levelling

So, unjust inequalities of outcome consequent on inequalities of opportunity can be prevented by equalizing opportunities (or reduced by reducing inequalities of opportunity). Opportunities are a function of people's personal resources, and social and material structures: those structures furnish people with unequal opportunities on the basis of differences in personal resources. Were *unchosen* differences in personal

resources to be eradicated, they could no longer herald the kind of inequality of opportunity that produces unjust inequality of outcome. To illustrate the basic point with a simplification, if society were arranged such that units of advantage were simply bought at a uniform (monetary) price and could not be acquired through any other means, and there were no differences in the financial resources at people's disposal, all individuals would (holding all else equal) have equal opportunities for advantage. Of course, in reality things are not so simple, but the point still holds. If unchosen differences in internal and external resources – unchosen differences in cognitive and physical ability, wealth, and so on – were erased, inequalities of opportunity based on those differences would necessarily disappear.

I should emphasize, however, that levelling does not, in fact, aim to eradicate (or reduce) unchosen differences in personal resources *per se*. Levelling targets individuals' personal resources to remove or reduce those unchosen differences among them that are pertinent to inequality creation. Importantly, not all unchosen differences are pertinent. Levelling does not seek to make us all the same, but to make our unchosen personal resources the same in one particular respect: their *structurally determined potential rate of return*, or, *value*. To say that the social and material structures of society provide people with unequal opportunities for advantage on the basis of differences in personal resources is to say that structures place unequal values on different sets of personal resources. The value of a set of personal resources is its potential rate of return to the individual in terms of advantage. If, given structures, person A's set of personal resources afford her better opportunities for advantage than person B has with her set, we can say that person A's set of resources is more valuable than person B's: it has a

higher potential rate of return. Levelling (unlike direct structural regulation) does not change the way structures impose (unequal) values on different sets of resources: it does not challenge the structurally determined inequality of those valuations. Rather, it seeks to provide everyone with sets of personal resources that are (at least more) equally valuable, *given* the structurally determined values of sets of personal resources. Thus, levelling acts on unchosen differences in people's personal resources, which would otherwise have heralded inequalities of opportunity, to level the value of personal resources and thereby reduce the scope for the production of unjust outcomes. Levelling of personal resources is an *ex ante* regulatory strategy of luck egalitarian distributive justice, the rationale of which is to prevent unjust outcomes from arising by equalizing opportunities. In other words, it works to improve the fairness of the background circumstances of future inequality creation.<sup>64</sup>

If levelling were the only regulatory strategy of luck egalitarian distributive justice, it would seek to eliminate all pertinent unchosen differences in people's sets of personal resources. In other words, those sets would be valued equally – they would each have

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<sup>64</sup> In section 4.2.2, I suggest that levelling regulatory action can target and adjust people's internal and external resources, but that it is deeply infeasible to adjust personal characteristics such as gender, ethnicity and sexuality. Thus, levelling aims to equalize opportunities for advantage, given social and material structures, by ensuring people's unchosen personal resources (their internal and external resources *and* personal characteristics) have an equal potential rate of return, but does so by adjusting internal and external resources only.

an equal potential rate of return (except inasmuch as differences resulting from genuine choice are permitted). This kind of ‘full levelling’ or, bringing about luck egalitarian outcomes through levelling alone, would seek to ensure that people’s unchosen personal resources provided them with equal opportunities for advantage, given the social and material structures of society. ‘Partial levelling’ might also be implemented to adjust personal resources so that their structurally determined values are *more* equal than they would otherwise be. This kind of partial levelling would only reduce (rather than fully remove) inequalities in the structurally determined values of unchosen personal resources, but it may be particularly effective in reducing particular kinds of luck-based inequalities. For example, if technological advances made it possible to provide medical treatment to reduce differences in sight (an internal resource) such that everyone could see but some needed eyeglasses (an external resource) to see well, which were also freely provided, inequalities of opportunity for advantage based on differences in sight would surely all but disappear. Some professions, of course, might still require entirely unimpaired vision, which might entail that some degree of inequality of opportunity for advantage remained between those who wore glasses and those who did not. But there would nevertheless be a considerable reduction in sight-based inequalities of opportunity and outcome (and, therefore, in the amount of compensatory redistribution required to redress remaining inequalities).

#### Examples of Regulatory Actions in the Levelling Category

Having outlined the general features of the luck egalitarian regulatory strategy of levelling, I will now illustrate some examples of levelling regulatory actions, which luck

egalitarians might endorse. Wolff's personal enhancement policies are exemplary instances of regulatory action falling within the category of levelling. Wolff writes:

An attempt to address disadvantage in the 'space' of internal resources means, in effect, acting on the person [...] This would include education and training as well as medical and surgical intervention. This, for obvious reasons, I call personal enhancement. (Wolff 2009a: 124)

On Wolff's policies of personal enhancement of internal physical resources, 'action is taken directly on the impairment, by surgery, physiotherapy or training and so on' (Wolff 2009b: 51). Medical and surgical intervention that targets individuals' internal resources to reduce or remove impairment and thereby improve opportunities constitutes a form of levelling. In Wolff's terms, impairment is measured against an instrumentally useful standard of ability. Those whose internal resources do not enable them to reach that standard would, on a personal enhancement policy, be entitled to receive free medical treatment to augment their internal resources until they did so enable the normative standard to be met.<sup>65</sup> In my terms, medical intervention can reduce pertinent differences

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<sup>65</sup> Of course, medical technologies are not, at present, so advanced that personal enhancement can eliminate all impairment. One implication of this is that, in cases where it is desirable but not technologically possible to treat certain physical impairments, there may be a reason of justice to research and develop the necessary medical technology.

in physical ability, to reduce inequalities in the structurally determined valuations of people's internal resources and so equalize opportunities for advantage (or, at least, render opportunities *more* equal).

Given its target and rationale, Wolff's targeted resource allocation also counts as an instance of levelling. On these policies:

resources are made available to the disabled person. These can take the form of equipment, support from carers or family, or even money with strings attached about how it can be spent. Such a policy differs from cash compensation in the conditions attached to the grant of money or goods. Its point is to enable the disabled person to find alternative means of achieving the ends that are put in jeopardy through impairment. Hence the support is targeted in the sense that the resources are provided for a particular purpose and are restricted in their permitted uses. For example, those provided with a wheelchair from the state would not normally be permitted to sell it, use it to make a go-cart for their children, or even to give it away (Wolff 2009b: 51)

Other examples of targeted resources include eyeglasses, large-buttoned telephones, guide dogs, hearing aids, stair lifts, mobility scooters, and prosthetic body parts.

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Targeted resource allocation, then, aims to level inequalities in the potential rates of return of sets of personal resources by acting on and augmenting external resources.

Other regulatory actions falling into the category of levelling might target internal cognitive resources and external financial resources at the age of majority. As children before the age of majority are not capable of the sort of responsible choice that can justify inequality between them, differences in their personal resources are entirely unchosen and therefore should not, given social and material structures, afford them unequal opportunities. Education systems might be radically re-hauled, to the end of furnishing all individuals with equally valuable internal cognitive resources – abilities, skills, and so on. That is, education might be arranged to ensure (as far as possible or desirable) that on reaching the age of majority, everyone's various abilities were such that, given the social and material structures of society, any differences in ability would not translate into inequalities of opportunity for advantage.<sup>66</sup> The value of people's external financial resources at the age of majority might also be equalized (or rendered far more equal). Regulatory actions to achieve this might include the imposition of a ban on inherited and gifted personal wealth. Additionally, a substantial, universal,

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<sup>66</sup> For further discussion of how this kind of educational policy might work, see Roemer (1998: chapter 9). As this form of regulatory action targets and aims to adjust the structure of educational systems (in order to level ability) and works to equalize future opportunities for advantage, it can be viewed as an instance of direct structural regulation, as well as an instance of levelling.

unconditional grant might be made to people at their majority. Together, these two regulatory actions would do a great deal to reduce inequalities in the value of the external resources with which people begin adulthood.<sup>67</sup>

#### ***2.2.4 Direct Structural Regulation***

Luck-based inequalities of opportunity are a function of how social and material structures treat differences in unchosen personal resources. But luck egalitarians tend neither to pay those structures much sustained critical attention nor to focus their discussions of regulation on regulatory action to change them. In what follows, I outline a category of luck egalitarian regulatory strategy that I term direct structural regulation. Into this category fall any regulatory actions that directly target and act on social and material structures for the purpose of equalizing (or reducing inequalities of) opportunities for advantage. Direct structural regulation captures the idea that if inequalities should not track luck-based differences in personal resources, one way to achieve that desideratum is to arrange structures such that they do not afford people unequal opportunities on the basis of those luck-based differences. It reduces or nullifies what the differences ‘count for’. In other words, where levelling seeks to provide people with personal resources of (more) equal value, given structurally determined valuations

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<sup>67</sup> For further discussion of a ban or 100% tax on gifts and inheritance see, in particular, Otsuka (2004: 70-78 and 2009: 132-144), Dworkin (2004: 352-353), Philippe Van Parijs (2009: 145-163), and Steiner (2009: 242-246). For further discussion of the unconditional grant see Bruce Ackerman and Anne Alstott (1999) and Carole Pateman (2003).

of sets of resources, direct structural regulation alters the way structures determine the value of personal resources. It changes those structurally determined valuations. Thus, given differences in personal resources, structures can be regulated in order that the potential rate of return to different sets of resources is (more) equal. To borrow Wolff's terms, direct structural regulation changes the rules of the game. By equalizing (or reducing inequalities of) opportunities for advantage, it *prevents* (at least some) unjust outcomes from ever arising.

What precisely is meant by 'social and material structures'? Material structures refer to 'the configuration of the material and natural environment' (Wolff 2009a: 123). They comprise the spaces through which we navigate ourselves and make up the 'physical world' in which we live, including, among other things, 'the design of street furniture, shopping centres and even domestic appliances' (Wolff 2009b: 52, 54). Given various differences in people's physical abilities (and particularly differences in mobility and vision), the configuration of physical space has an important role in determining inequalities of opportunity. (For example, different configurations may be more or less accessible to users of wheelchairs.) Social structures refer to a vast range of phenomena and might be more accurately termed social, cultural, legal, and economic structures. As we saw briefly in section 2.2.1, they include both formal structures such as laws and legal frameworks, and other structures such as customs, norms, and attitudes. These correspond to what Cohen terms the 'legally coercive structure of society' and the non-coercive, informal structure, which, together, produce the 'major distributive consequences' (Cohen 1997: 28, 23). The coercive structure '*prevents* people from doing things by erecting insurmountable barriers [...], and it *deters* people from doing things by

ensuring that certain forms of unprevented behavior carry an (appreciable risk of) penalty' (Cohen 1997: 28, original emphasis). Informal structures, on the other hand, order society 'by rules and conventions of accepted practice' (Cohen 1997: 20). Cohen writes that informal structures constitute a powerful 'socially constructed expectation which [can] possess informal coercive force', thus ensuring that 'some people have much more power than others to determine what happens *within* those [coercive] rules' (Cohen 1997: 22-23, original emphasis). Informal pressure is 'as relevant to distributive justice as it is to liberty' (Cohen 1997: 22): it is part of the structure that determines an individual's opportunities, given their personal resources. Institutions that are a part of the social structure include, among others, the education system, the job market (including, for example, job recruitment and promotion rules and practices), and the healthcare system.

So, regulatory action falling within the category of direct structural regulation intervenes in and imposes change on the social, cultural, legal, economic and material structures that, given differences in personal resources, determine inequalities of opportunity, to eliminate (or reduce) luck-based inequalities of opportunity. Wolff's strategy of status enhancement (on which regulatory action makes changes to social and material structures such as to improve the opportunities of disabled people and so reduce disability-related disadvantage) can be considered a subcategory of direct structural regulation. Wolff writes of this strategy that:

changes to social, material and cultural structure [sic] are made in order to modify the structural mediating factors between impairment and adverse consequences. An individual's status is

improved in the sense that external barriers to achievement are removed and so the person will have a wider range of opportunities. [... It can] take a material and cultural form. Physical access to places can be improved, technology can be adapted to meet the needs of a wider range of people, and employers, shop-keepers and other citizens can come to treat disabled people in the same way as they treat others. To the degree it is successful, status enhancement “cancels out” impairment, turning disability into “difference”. (Wolff 2009b: 51)

This conception can be reformulated and extended in order to express luck egalitarian direct structural regulation: changes to social, material and cultural structures are made in order to modify the structural mediating factors between luck and adverse or beneficial consequences. To the degree it is successful, direct regulation ‘cancels out’ luck, preventing unchosen differences in sets of personal resources from translating into inequalities of opportunity or outcome. Thus, direct structural regulation targets neither people’s personal resources *ex ante* inequality creation (as levelling does), nor people’s outcomes *ex post* inequality creation (as redistributive compensation does) but, rather, applies directly to the structures that set the terms of the processes through which inequality is produced. The rationale is to prevent or reduce unjust inequalities of outcome by equalizing opportunities for advantage. As Wolff writes of status enhancement, it is typically ‘a collective, rather than individualized, approach, in that it

can improve the opportunities of many people without acting directly on any of them' (Wolff 2009b: 51).

Direct structural regulatory action may take stronger or weaker forms. Strong 'command and control' legislation uses the force of the law to set and enforce fixed standards of acceptability, immediately prohibiting unacceptable structural rules or processes. (Examples include laws against discriminatory hiring practices and laws that require certain buildings to be accessible by wheelchair.) A regulatory agency might also take strong direct structural regulatory action to change the material environment, by arranging or executing reconfigurations thereof. (For example, a regulatory agency might build and supply some work premises, or undertake to build or maintain well-ordered pavements with adequate ramps.) Legal sanctions and incentives – 'imposing negative or positive taxes or deploying subsidies from the public purse' (Robert Baldwin, Martin Cave and Martin Lodge 2012: 111) – which can discourage or encourage particular changes to be made and sustained, may take stronger and weaker forms: lighter or heavier sanctions for failing to meet certain standards, and more or less generous incentives to meet others. (A current example would be the differential tax on leaded and unleaded petrol. A more salient potential sanction might take the form of, for example, fines imposed on any companies that have inadequate female representation on their boards.) Other weaker direct structural regulatory actions might include the issuing of guidelines or other arrangements for self-regulation. (A legal requirement to publish statistics on female representation at board level might constitute an example of a very weak form of this kind of regulation, if the requirement could be shown to contribute to improve opportunities for women in business, although it might be

insufficiently effective.) A regulatory agency might also undertake to organize, contract or fund public information and awareness-raising campaigns, in an effort to change social norms and attitudes. (A recent example in Britain is the government's part funding of Mind and Rethink's Time to Change public information campaign, which aimed to change social norms regarding mental health (Time to Change 2011).) Norms and attitudes can also, of course, change in response to strong direct structural regulatory action, as well as in response to norm- or attitude-focused campaigns. (For example, it is possible that attitudes have become more hostile to smoking since the Health Act (2006) introduced a smoking ban in public spaces across England and Wales. Kudlur Praveen et al. (2009) researched attitudes toward smoking among mental health service staff, and found a 'small but noticeable change in staff attitudes following initial reforms in smoking policy. [...] Staff were generally less permissive towards smoking in mental health units when compared with previous studies' (Praveen et al. 2009: 84).)

### Examples of Direct Structural Regulation Policies

With these general features of direct structural regulation in mind, I now turn to a closer examination of some examples of regulatory action falling within that category. Luck egalitarians might endorse direct structural regulatory action to change hiring and promotion processes, unjust social norms, and the built environment.

Sexist, racist, heteronormative, cisnormative, ableist and other prejudiced norms still pervade society, constraining the extent to which the original distribution yields luck egalitarian outcomes. Various theorists have highlighted the phenomenon of bias in the sphere of employment and, in particular, discrimination in selection for jobs and promotions. Young (1990), for example, argues that more or less unconscious racism,

sexism, homophobia, ageism and ableism on the part of those making hiring and promotion decisions set certain groups at a disadvantage. There is plenty of empirical evidence to support this insight. For example, a 2012 report from the University and College Union has shown that equivalently qualified black and minority ethnic (BME) academics applying for top positions in British universities are less successful than their white peers at the interview and appointment stages: 'White applicants are three times as likely to be successful in securing a professorial role as their BME colleagues' (UCU 2012: 12). A 2013 report from the Equality Challenge Unit (a charity funded by grants from the UK higher education sector funding bodies, Universities UK and GuildHE) concludes that underrepresentation of BME appointees to top academic jobs may be explained by unconscious bias on the part of employers. Rather than (merely) compensating BME (and other) academics for any disadvantage they suffer as a consequence of discrimination, luck egalitarians might advocate direct structural regulatory action that targets hiring and promotion processes directly, to reduce the inegalitarian influence of ethnicity (and other luck-based characteristics) on those processes. For example, laws such as the Sex Discrimination Act (1975), the Race Relations Act (1976), the Disability Discrimination Act (1995) and the Equality Act (2010) have made discriminatory hiring and promotion practices illegal in the UK. However, existing legislation appears insufficient to prevent unconscious bias from having an important inegalitarian influence on individuals' outcomes (at least where some discretion is afforded to decision makers). Direct structural regulation might, then, go further in an attempt to tackle biased and discriminatory hiring and promotion practices: for example, the Equality Challenge Unit (2013) advocates anonymous shortlisting. Where shortlisting is anonymous, decision makers do not have access to

the sort of information (on applicants' gender, ethnicity, sexuality and so on) that could bias their decisions. But, of course, unconscious bias may yet set certain people at a disadvantage at the interview stage.

On the pluralist approach to regulatory strategies I defend, luck egalitarians can recommend direct structural regulatory action that aims to change the very social norms that underpin bias and discrimination. Where social norms ensure people face unequal opportunities on the basis of gender, ethnicity, sexuality, and so on, there is a reason of luck egalitarian distributive justice to target them directly.<sup>68</sup> Examples of regulatory action to tackle such social norms include mandatory equality and diversity training for key decision makers, and poster and email campaigns to raise awareness of the fact of unconscious bias and to encourage greater self-reflection on these issues. The Equality Challenge Unit has also commissioned and distributed among institutions of higher education an academic literature review on BME underrepresentation to persuade academics, with empirical evidence, to recognize that current appointment processes produce unjustly unequal outcomes, and to re-think any biases they may have. On my approach to regulatory strategies, these are all direct structural regulatory actions that luck egalitarians certainly could (and, all things considered, probably should) endorse.

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<sup>68</sup> The reason is provisional in the sense that targeting social norms may be only one of a number of things that could be done to tackle inequalities of outcome based on gender, ethnicity, sexuality, and so on. Luck egalitarianism provides a reason to tackle those inequalities and, so, a provision reason in favour of any regulatory action that would be effective in doing so.

They each target the aspects of the formal and informal structures that set the terms of inequality creation, to reduce inequalities of opportunity for jobs and thus reduce the *inegalitarian* influence of luck on outcomes.

With regard to tackling luck-based inequalities of outcome consequent on inequalities of opportunity between disabled and able-bodied people, much regulatory action could be taken – and, indeed, some has been taken – to change the built environment in such a way as to limit the extent to which the material structure of society translates physical impairment into disadvantage. For example, as Wolff suggests, physical access to places can be improved for those with impaired mobility. Precisely what sorts of regulatory action might achieve this? Perhaps most obviously, a regulatory agency might take responsibility for ensuring public spaces are accessible to those in wheelchairs: they might, for example, build (or contract to be built) all new public pavements in accordance with standards of accessibility, including specifications about the evenness and width of the surface, and availability of ramps between the pavement and road. They might also re-build (or contract to be re-built) any public pavements or buildings that do not conform to accessibility specifications. When space or material is not publicly owned, a regulatory agency may nonetheless impose direct structural regulation on it in the form of accessibility requirements. (The costs of meeting those requirements might fall to the owners of the space or material, or be subsidized by the state.) The Disability Discrimination Act (1995), for example, makes UK taxi licenses conditional on meeting accessibility regulations. It also requires public transportation buildings to be well lit, with timetabling information available in consistent, clear, large print, which requirements have the effect of improving the opportunities of people with impaired

sight. Each of these regulatory actions directly target aspects of the material structure that would otherwise ensure opportunities were delineated on the basis of differences in personal resources (namely, mobility and vision). They aim to equalize (or reduce inequalities of) opportunities between disabled and able-bodied people, and to thereby prevent (at least some) unjust disadvantage from arising.

### **2.2.5 Exhaustive But Not Mutually Exclusive**

The three categories of luck egalitarian regulatory strategy identified above are not mutually exclusive, in two senses. Firstly, a single regulatory action undertaken by a regulatory agency may qualify as an instance of more than one type of strategy. As explained above, the strategies are distinguished on the basis of their target and rationale. The rationale of redistributive compensation is to redress unjust advantage and disadvantage *ex post* (that is, after it has arisen). It targets and adjusts individuals' overall outcomes, to offset luck-based costs and benefits. Levelling and direct structural regulation share the same rationale but have different targets. The purpose of both of these strategies is to prevent (at least some) unjust advantage and disadvantage from arising, by equalizing (or rendering more equal) opportunities for advantage. Levelling does this by targeting individuals' sets of personal resources, adjusting these to reduce inequalities in their structurally determined values. Direct structural regulation does it by targeting social and material structures, adjusting these to reduce inequalities in the valuations they make of different sets of resources. But a single regulatory action may have more than one target and rationale.

Consider the case of a policy of providing financial benefit to the unjustly disadvantaged. Within the luck egalitarian literature, this has standardly been understood as an instance

of redistributive compensation. But it might *also* be understood as an instance of levelling. This would be so if the policy not only aimed to adjust an individual's overall outcome – that is, overall level of advantage – to redress the unjust influence of luck on that outcome, but also to augment the individual's personal resources to improve their future opportunities for advantage. Indeed, the pluralist approach to luck egalitarian regulatory strategies brings to the fore that such a policy might quite often be understood in those terms and endorsed on the grounds that it fulfils both of those purposes. If a single regulatory action might be undertaken for two reasons, in service of two purposes, theoretical clarity requires that we distinguish between those two reasons, and specify whether the action is undertaken for one or both. The approach I advocate both demands and facilitates this theoretical clarity.

The second sense in which the three categories of regulatory strategy are not mutually exclusive is, I hope, already clear. Luck egalitarians are not required to follow one strategy exclusively in pursuit of luck egalitarian outcomes. In section 2.3, I suggest some reasons why redistributive compensation should not be understood as the sole regulatory strategy of luck egalitarian distributive justice, but neither should levelling or direct structural regulation. All three strategies are available to use and various combinations of regulatory actions spanning the three categories might be implemented to bring about luck egalitarian outcomes. Luck egalitarianism itself provides no reason to prefer any one combination over others: it simply demands that luck egalitarian outcomes somehow be brought about. Thus, all combinations of regulation actions that are equally effective in bringing about luck egalitarian outcomes are equally favourable from the perspective of luck egalitarian distributive justice. But feasibility constraints and the

demands of other values will inform judgement of which combination of regulatory actions is most desirable, all things considered.<sup>69</sup>

To illustrate, consider the case of disability-related disadvantage. Imagine that the balance of reasons tells strongly against following a purely compensatory approach to tackling disability-related disadvantage. Perhaps, for example, to do so would constitute an unacceptable failure of respect. But feasibility constraints and the demands of other values may limit the extent to which we can prevent disability-related disadvantage through levelling. For example, medical technologies are, at least at present, insufficiently developed to remove all impairment. Moreover, some people with physical impairments may not wish to receive medical treatment, in which case their liberty (or right) to refuse treatment may trump any other considerations. And perhaps it is also the case that no configuration of social and material structures is possible that would offer people with impairments and people without impairments completely equal opportunities for advantage or that, if it is possible, it would not be desirable on the balance of reasons. In that case, a luck egalitarian might advocate levelling (in the form of medical intervention to reduce impairment and provision of targeted external resources) as far as is possible and desirable in light of all relevant values, in addition to direct structural regulation to improve the opportunities of disabled people as far as is

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<sup>69</sup> That said, in section 2.3.3 below, I consider the possibility that, in a specific range of cases, luck egalitarianism itself provides a reason to favour strategies of prevention over strategies of redress.

possible and desirable. Then, whatever unjust disadvantage is thereby, on the balance of reasons, unable to be prevented might be compensated. So the approach I advocate is also pluralist in two senses. First, it insists that plural regulatory strategies are available to the luck egalitarian. Second, it recognizes that luck egalitarians may themselves be value-pluralist. Luck egalitarian distributive justice is one important value among others that must be accommodated in our social arrangements. In choosing among the different ways in which we could regulate those arrangements, we will choose the combination of regulatory actions that best serves luck egalitarianism, while respecting the properly balanced demands of other values.

Knight has claimed that if provision of compensation would either fail to improve or worsen an individual's outcome, luck egalitarianism would simply not recommend its provision. Knight's claim is a response to Wolff's critique of the compensatory approach to luck egalitarianism, which expresses the concern that gathering the information required to ascertain the correct level of compensation due to any given individual would require 'shameful revelation': it may be 'demeaning' for some individuals to have to admit that, for example, their native endowments set them at a disadvantage in the sphere of employment (Wolff 1998: 113-114). Knight argues that, at least on a welfarist approach that accounts self-respect an important element of advantage, wherever provision of compensation would undermine individuals' self-respect to the extent that, overall, they would be worse off than they would have been without it, it would not be provided (Knight 2009a: 132-133). On the pluralist approach to regulatory strategies, it is unacceptable to stop there. The unjust disadvantage remains, and perhaps unnecessarily. Luck egalitarians must ask: given that, on the balance of reasons, compensation is

undesirable, are other sorts of regulatory actions to tackle the disadvantage available and desirable? Can we, instead, level the pertinent differences in personal resources or directly regulate (by adjusting or even completely overhauling) social and material structures? I think the answer will often be yes.<sup>70</sup>

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<sup>70</sup> Knight does not, in fact, ‘stop there’. As a response to unemployment-related disadvantage, he recommends a ‘group based’ policy, on which financial benefit is provided to unemployed people regardless of the aetiology of their unemployment (Knight 2009a: 134). Thus, ‘being unemployed’ is used by a regulatory agency as a kind of proxy for ‘being unemployed due to matters of luck’. This does not, of course, account for the influence of choice on outcomes. But it would not require the sort of shameful revelation that may damage self-respect, and may also be more economically efficient than ascertaining and providing the amount of compensation that would be correct from the perspective of luck egalitarian distributive justice, given the administrative costs of implementing the latter policy. (Knight’s position seems, once again, to indicate his preference for luck-neutrality over choice-sensitivity. That is, it appears to rest on a judgement that the twin demands of luck egalitarianism are asymmetrical in the sense of being unequally weighty: the injunction to relieve responsibility for luck is weightier than the injunction to impose responsibility for choice.) Knight also briefly mentions that New Deal-style public sector jobs might be created to provide more opportunities for employment (Knight 2009a: 134). As this action targets and changes a part of the social structure (namely, the job market) in order to improve the opportunities of disadvantaged people, it falls into the category of direct structural regulation.

## **2.2.6 More Ideal and Less Ideal Theory**

Thus far, I have not attempted to situate my arguments anywhere on the spectrum of more to less ideal theory. It might be thought, at first glance, that the pluralist approach is relevant only to less ideal theory that is concerned with how to tackle distributive injustice here and now, given background inequalities of opportunity. Cohen writes that inequalities are unjust unless they reflect ‘patterns of choice against a background of equality of access’ (Cohen 1989: 920). Barry also argues that, given background inequalities of opportunity, ‘few of the inequalities that exist today are acceptable’ (Barry 2006: 102). Background equality of opportunity might, then, be thought to be a given in all discussions of compensatory redistribution. That is, it might simply be *assumed* that there are no background inequalities of opportunity and that compensatory redistribution applies only to the costs and benefits of what Vallentyne (2002) terms ‘outcome luck’. But, even on this assumption, it should be recognized that constant regulatory action would be required to ensure background equality of opportunity. If opportunities are to be equal, as assumed, then the personal resources and social and material structures of which they are a function must be appropriately configured, which is to say that they must be regulated. Even at this more ideal level of theory, then, levelling and direct structural regulation are required to provide the background equality of opportunity against which equality-upsetting choices can be made: they are necessary parts of the set of regulatory strategies required to achieve luck egalitarian outcomes.

Discussion of less ideal worlds also looms large in luck egalitarian debates, and here the exclusion of levelling and direct structural regulation seems even more obviously myopic and unjustified. Given the fact of pronounced inequalities of opportunity, luck

egalitarians might usefully refocus discussion on the regulatory actions required to equalize opportunities – that is, on regulatory actions falling into the categories of levelling and direct structural regulation. Compensation is standardly taken to be the appropriate response not only to counteract the inegalitarian influence on outcomes of outcome luck happenings, but also to redress inequalities of outcome that are resultant on inequalities of opportunity. (Consider once again Knight's statement that 'disadvantages that arise from [...] circumstance are typically said to give rise to entitlements for compensation, for they derive from inequalities of opportunity' (Knight 2006: 173).) But compensation often seems an inadequate response to such inequalities of opportunity. The pluralist approach to luck egalitarian regulatory strategies provides a clear and useful framework for thinking about the best way to respond. It illuminates that, while unjust inequalities of outcome consequent on luck-based inequalities of opportunity might be offset through compensation, they might instead be avoided if effective levelling and direct structural regulatory strategies are available.

Thus, in luck egalitarian theoretical discussion, when background equality of opportunity is assumed the (hitherto largely unacknowledged) implication must be that levelling and direct structural regulation are in force. When inequalities of opportunity are assumed, the (hitherto largely unacknowledged) implication must be that levelling and direct structural regulation could (and I will argue in the next section, often should) be employed to equalize opportunities.

## **2.3 The Implications of the Pluralist Approach**

Thus far, I have outlined the core elements of the pluralist approach to luck egalitarian regulatory strategies I advocate. In this section, I want to draw out in more detail some of the most important features and implications of that approach and also to suggest that it enables luck egalitarianism to answer a number of criticisms that have been raised against it. In particular, I focus on the implications of the readiness of the approach to critique and to recommend changes to the way in which the original distribution of benefits and burdens is produced.

The corollary of holding redistributive compensation to be the sole regulatory strategy of luck egalitarianism is taking a laissez-faire approach to the original distribution of benefits and burdens. The problem of the unjust, luck-based advantage and disadvantage that is created within the original distributive system, *ex ante* redistribution, can supposedly be ‘solved’ without changing that system. Thus, compensatory luck egalitarianism recognizes that the original distribution produces unjust results – unjust outcomes – but, rather than looking to the causes of those unjust results, it recommends adjusting them after the fact of their production. On the compensatory approach, there is no space or reason to critique the differences in personal resources and the social and material structures and processes that are so crucial in determining people’s outcomes, *ex ante* redistribution. There is no reason to consider whether and how more just outcomes might be produced – no reason to consider changing how benefits and burdens are originally distributed – because unjust outcomes can simply be tweaked through imposition of tax and provision of benefit until they are just (that is, luck-neutral). In other words, compensatory redistribution targets and adjusts unjust results

without attending to the causes of injustice. In doing so, it privileges and protects from critique the status quo of the original distributive system.

By contrast, the pluralist approach to the regulatory strategies of luck egalitarianism opens up space for critique of all elements that play a role in the production of unjust outcomes. On this approach, injustice can be addressed by attending to its causes: the problem of unjust outcomes can be tackled at its roots through interrogation of how those outcomes are originally produced. In addition to the option of compensating to redress unjust advantage and disadvantage, there is also the option of changing how the original distribution works (that is, how outcomes are produced), to lessen the extent to which unjust advantage and disadvantage are created in the first instance. Instead of responding to inequality of outcome consequent on inequality of opportunities with compensation, we can respond by equalizing opportunities. The pluralist approach to the regulatory strategies of luck egalitarianism is, then, a more *radical* approach in the sense that it provides a space and rationale for radical and wide-ranging critique of the status quo. In what follows, I examine what I think are the most important and attractive features and implications of this more radical, pluralist approach. First, employment of strategies of prevention may enhance the feasibility of achieving luck egalitarian outcomes. Second, because these strategies target the causes of unjust outcomes, they enable us to prevent injustice: luck egalitarians are not committed to permitting unjust outcomes to arise and then redressing them. Third, levelling and direct regulation can be employed to improve access to specific, important goods. And fourth, the pluralist approach brings to the fore the social construction of ‘good’ and ‘bad’ luck.

### 2.3.1 The Feasibility of Neutralization

As we saw in the introduction of this chapter, the fundamental principle of luck egalitarianism expresses what luck egalitarian distributive justice is: a just distribution of advantage is one in which individuals' distributive outcomes are insensitive to their luck but sensitive to their choices. At the level of regulation, luck egalitarianism requires the *inegalitarian* influence of luck on individuals' outcomes to be neutralized (while that of choice is permitted). Absent consideration of the demands of values other than distributive justice, luck egalitarians should endorse the regulatory strategy or strategies that enable that demand to be fulfilled as far as possible, given feasibility constraints. One might think, then, that in order for redistributive compensation to warrant its paradigmatic status – and for the neglect of the two other available regulatory strategies to be justified – it should *at least* be the case that the compensatory approach can neutralize luck just as well as the pluralist approach. However, drawing support from Otsuka (2002), I argue here that the (heretofore paradigmatic) regulatory strategy of redistributive compensation cannot, on its own, accomplish the task of neutralizing luck, and that additional employment of the other available strategies renders the accomplishment of that task more feasible. This is so not only if the currency of distributive justice is equal opportunity for non-commensurable preference satisfaction or hedonic welfare, but also if the currency is equal opportunity for resources or commensurable preference satisfaction. Luck egalitarians should, therefore, embrace the pluralistic approach to luck egalitarian regulatory strategies.

As Wolff writes, cash compensation:

is perfectionist in that it appears to assume that the only good is either some form of money or something that can be acquired through the possession of money, such as preference satisfaction [...] the key assumption behind the strategy of cash compensation as a preferred or exclusive approach is that all disadvantage can be made good through awards of cash. [...] one theory on which this is so is on a resourcist understanding of advantage, in which external resources are provided to make up for a lack of internal resources. Another is that of subjective preference satisfaction in which all preferences are, in principle, commensurable (Wolff 2009a: 22-23)

The thought here is that on resourcist or commensurable preference-satisfaction views of advantage it is always possible to provide those who experience unjust disadvantage with some amount of money that, in Otsuka's (2002) terms, would make them indifferent between having the disadvantage and the money, and having neither the disadvantage nor the money. However, I concur with Otsuka that *even* on resourcist or commensurable preference-satisfaction views, cases arise in which cash compensation cannot fully neutralize the *inegalitarian* effects of luck on outcomes (at least, if indifference is the test of luck-neutrality). As Otsuka comments:

Ailments such as blindness or insanity might be impossible fully to compensate because no amount of money could purchase a [...] supply of other things which money can buy, which in turn would make an individual indifferent between a situation in which

he or she was never afflicted by the ailment and one in which he or she is afflicted by the ailment but it is remedied or offset by the monetary award. (Otsuka 2002: 44)

This demonstrates that, even if resources or preferences are fully commensurable, a luck-based deficit may nonetheless be noncompensable if the deficit is, as they say, ‘off the chart’ – if it constitutes a kind of infinite loss or cost for the individual. In the cases of ‘blindness or insanity’, then, it seems neutralization would at least sometimes be better served (that is, it would be more likely to be achieved) if additional strategies were employed. Early, high quality psychiatric intervention would, to the extent it is effective, count as a form of levelling of internal resources; medical treatment to stop the onset of blindness or treat it where possible would, again, count as a form of levelling of internal resources; and direct structural regulation of social and material structures might also help to minimize the extent to which differences in individuals’ sight and mental health translate into inequalities of opportunity. It should be noted that part of what may make the costs of blindness and insanity *so* costly to some individuals – infinitely costly, rather than just very costly – is the way those attributes are dealt with by society. Levelling and direct structural regulation may, then, render full compensation possible in a greater number of cases, by reducing the degree of disadvantage that requires to be compensated. If, for example, social norms and employment law were targeted by direct structural regulatory action, with the aim of removing or reducing the disadvantaging social stigma that is often attached to experiencing mental health problems and ensuring that workplaces are reasonably accommodating of mental health problems, the distributive disadvantages consequent on experiencing those problems might be much

reduced. Indeed, such regulatory action might make the difference between the sort of infinite cost to advantage that is noncompensable and the sort of cost that could in theory be compensated.

On incommensurable preference satisfaction and hedonic welfare approaches, it is even clearer that it may be infeasible to redress some luck-based welfare deficits through compensation alone. Extra cash may be able to neutralize some of the costs of luck, but the utility conversion rate of cash depends on individuals' utility functions, and utility functions of many human beings (that is, too many to ignore) are such that *money cannot buy happiness*. For example, consider the case of a newly-paraplegic theatre lover. She enjoys theatre so much and is so persistently disenchanted with alternative pursuits that, were she unable to go to the theatre, she simply could not reach the normative level of preference satisfaction or hedonic welfare from which departures must be chosen. Money would not help. On the pluralist approach, however, it is immediately obvious that luck egalitarians can recommend a direct structural regulatory policy to require theatres to ensure their premises are accessible to people who use wheelchairs. Luck egalitarians can, after all, endorse regulatory action that would enable the newly-paraplegic theatre lover to take part in the activity that makes her happy.

Thus, while it may at first glance seem that, on resourcist and commensurable preference satisfaction approaches, it is always possible for cash compensation to accomplish neutralization, even on these approaches there will be cases in which no amount of money can make up for 'off the chart' luck-induced deficits. That such cases will arise on incommensurable preference satisfaction and hedonic welfare approaches is even more obvious. Given the problem that cash compensation is not up to the job of

neutralizing the inegalitarian influence of luck on outcomes, the solution is to recognize and utilize the broader range of regulatory strategies that are available. Wherever the additional employment of levelling and direct structural regulation would make luck neutralization more feasible, there is a pro tanto reason of luck egalitarian distributive justice to endorse their employment.

### **2.3.2 The Prevention of Injustice**

Another implication of the pluralist approach to luck egalitarian regulation and its eschewal of any commitment to a laissez-faire attitude toward the original distribution of benefits and burdens, which I think counts in its favour, is that it enables us (at least sometimes) to recommend regulation to *prevent injustice from arising*, rather than (always) recommending that injustice be permitted to arise and then redressed *ex post*. If, given differences in personal resources, distributive structures produce unjust results that require to be rectified, it seems unnecessarily defeatist, restrictive, and myopic to insist that only the results should be altered. We can, instead (or, as well) challenge and alter those differences and structures of which unjust outcomes are a function. If it is possible to level differences in personal resources and/or directly regulate distributive structures, to produce fairer outcomes (such that less injustice is created that then requires to be redressed), luck egalitarians should recognize that possibility. In other words, when the distribution of benefits of burdens produces outcomes that luck egalitarians condemn as unjust, we can tackle the unjust outcomes or the *causes* of those unjust outcomes, and there is no reason to rule out tackling the causes in order that *less injustice arises in the first instance*.

This eschewal of the commitment to a laissez-faire attitude toward the original distribution enables luck egalitarianism to meet a criticism made by Mason. Mason raises a complaint that is, I think, a specific case of a wider problem with compensatory luck egalitarianism's inability to prevent injustice from arising by changing how inequality is created. His specific complaint is that luck egalitarianism does not condemn or recommend banning racial or sexual discrimination. This is because:

discounting black applicants or women applicants in the process of filling a particular set of prestigious advantaged social positions might be fully compensated by adjusting the overall distribution of benefits and burdens, through some system of redistributive taxation. (Mason 2006: 154)

On a compensatory approach, the correct response to unjust disadvantage consequent on racial or sexual discrimination is to provide compensation. Mason sees this as a real defect of luck egalitarianism, but it is clearly not an objection that can be raised against luck egalitarianism when it endorses the pluralist approach to regulatory strategies, which incorporates the possibility of directly regulating the structures and processes (including hiring practices) that set the terms of distribution. Discrimination is a problem because it results in – it is a cause of – unjust outcomes. On my approach, we can tackle the result (by compensating people who have been discriminated against for their unjust disadvantage), or we can avoid the result altogether by tackling its cause (by banning

discrimination).<sup>71</sup> Thus, there is a luck egalitarian reason to (either compensate for or) ban discrimination. The crucial point here is that luck egalitarianism, on my approach, is *not* committed to allowing discrimination and then redressing the unjust inequality of outcome that results from it: it can recommend banning discrimination. The final choice between the strategies will be informed by the demands of other values and feasibility constraints. In section 4.2 I suggest that the value of relational equality tells in favour of direct structural regulation rather than compensation as the best regulatory strategy to employ in response to discrimination. Mason also suggests that banning discrimination might be more Pareto efficient than compensating for it (Mason 2006: 154). On the pluralist approach to luck egalitarian regulatory strategies, these considerations can be accommodated.

It is illustrative to take this point further: sexual discrimination is one facet of gendered inequality of opportunity in the sphere of work. As a generalization, women have worse opportunities than men for highly paid jobs, resulting in unjustly unequal outcomes (see, for example, Wendy Olsen and Silvia Walby (2004) for evidence and analysis of the gender pay gap). This inequality of opportunity may involve discrimination against

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<sup>71</sup> For example, direct regulation of legal structures might be employed to ban (and impose serious negative sanctions on) discrimination against black or female applicants in the labour market, including during recruitment processes. A regulatory agency might also take direct structural regulatory action to tackle and dislodge the racist and sexist social norms that underlie discrimination, which might help to ensure legal prescriptions were followed in good faith.

women during recruitment processes, but that is not all it involves. Women may also face discrimination within education systems that encourage development of certain talents while discouraging development of others. Social norms may also play a role in encouraging people of different genders to make different choices about their education, careers and domestic labour. Further, legal rules and norms contribute to unequal opportunities between men and women who have children by providing far shorter paternity leave than maternity leave, thereby making it difficult for many couples with children to take an equal share of time-consuming childrearing duties. Faced with this unequal legal provision, many women will take more time out from work than men, which in turn can damage their career prospects (Rebecca Ray et al. 2009: 1-2). Compensatory luck egalitarianism has no reason to be concerned about any of these things: the unjustly inegalitarian outcomes that follow from unequal opportunity sets can and should be remedied through compensation. Conversely, on the pluralist approach, because all of these things are implicated in the production of unjust inequalities of outcome, they are *prima facie* potential targets of regulatory action. Thus, luck egalitarianism provides a provisional reason of distributive justice to equalize opportunity sets by directly regulating structures in order to ensure recruitment practices, socialization and legal rules do not result in unjustly disadvantaged outcomes for women. In other words, we may prevent – not just redress – injustice: we can prevent much unjust advantage and disadvantage from ever arising by equalizing opportunities. Admittedly, we might compensate instead – that option is available – but I think as soon as we bring in other considerations to inform the (all things considered) choice between the available regulatory strategies, we will be glad to have the option of direct structural

regulation, and will find strong reasons from without distributive justice to favour that strategy over compensation.<sup>72</sup>

### **2.3.3 Access to Important Goods**

A further, related implication of the pluralist approach is that it can recommend improving access to important goods. A point raised by Scanlon is relevant here. He notes that, in some cases, the proper response to inadequate opportunities for important goods is not compensation, but the provision of better access to those goods. He cites three of Cohen's expensive taste cases, for which Cohen thinks compensation is due:

- (a) a person who finds the taste of ordinary water 'gagging'; (b) a person who cannot stand eggs but lives in a place where fish and

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<sup>72</sup> An interesting point in relation to this is that, even if compensation can always perfectly redress the inegalitarian effects of luck on outcomes (and I have argued it cannot), a luck egalitarian might see the creation of injustice as itself undesirable. That is, it might be better from the perspective of distributive justice, absent other considerations, to prevent injustice from arising than to permit it to arise and then redress it. The correct response to unjust advantage and disadvantage consequent on unequal opportunities would then be to equalize opportunities, rather than adjusting the unjust outcomes through compensation. If that point is accepted, it introduces a lexical ordering to the three strategies. All else equal, and absent other considerations, levelling and direct regulation are (equally) preferable to compensation: compensation should be provided to redress *only* those injustices it is not possible to prevent entirely.

eggs are the only available nutrients and fish is much more expensive; and (c) a person who cannot perform ordinary physical movements without pain. In each case, Cohen believes that equality requires that people be ‘compensated’ for these special difficulties. It seems to me that special treatment may be called for in some of these cases. [...] The people in these examples do not have unusual tastes. They want the same things that everyone wants: nourishment, hydration, and the ability to move freely. The normative force of the examples derives from the objective importance of these interests, rather than from the value of satisfying special tastes or preferences. The problem these people have is that they cannot pursue these quite ordinary aims without pain, or gagging, or feelings of disgust. What they need is help in overcoming these obstacles. This help might be provided by giving them water or food that they like better, or money to buy it. But it could just as well be given by providing access to medical treatment. ‘Compensation’ is therefore a somewhat misleading term for what is required, since *the point is to enable the people to have these essential things without difficulty, not simply to raise their level of welfare* (understood hedonistically or in terms of preference satisfaction). Understood in this way, these cases are analogous to those of individuals who live far from the available supply of drinkable water, or who cannot get it themselves because of chronic weakness. What these people are entitled to is transportation, or

special water supplies, not compensation. (Scanlon 2006: 79, my emphasis)

Scanlon's criticism raises a number of important points. The first is that luck egalitarianism is far more appealing when it is open to ensuring fair access to important goods: it should not restrict its regulatory demands to compensation for disadvantage consequent on inadequate access. Provision of medical treatment and transportation to improve the opportunities of those who are currently disadvantaged are options that are available to the luck egalitarian to recommend and should not be ruled out or ignored. When regulatory action can be implemented to improve access to important goods (rather than to compensate for any disadvantage consequent on lack of access), the balance of reasons may tell in favour of such action.<sup>73</sup> Now, Cohen might respond by claiming that water or food or medical treatment could all be conceived as non-financial forms of compensation. I would agree, but I think that response can only go so far.

A second point, which I have already noted above, is that theoretical clarity is much improved when we distinguish between the different targets and rationales of regulatory action. Compensation does not tell the whole story of regulation to provide medical

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<sup>73</sup> Consider again the case of discrimination on the basis of gender in job recruitment: if women have consistently lower access to highly paid jobs due to gender discrimination in recruitment processes, compensation does nothing to improve their access to those important goods. But luck egalitarianism can recommend direct structural regulation to ban discrimination and this *would* help to improve access to those goods.

treatment and transportation. Medical treatment, whether or not it is an instance of compensation, is certainly an instance of levelling. Its target is the individual's internal resources and its rationale is, at least in part, forward-looking because it aims to ensure better access to advantage in future. Building a better transportation system is a form of direct regulation of material and social structures: it acts, not on the individual's resources or overall outcome but, rather, directly on the configured environment to improve the opportunities of those who would otherwise have borne unjust (though compensated) costs. Again, the rationale is to provide better access (to water) in future. The pluralist approach both demands and facilitates clarity on these different facets of regulatory action. Further, what I think Scanlon is alluding to, when he claims compensation is a misleading term, is that it gives or risks giving the impression that what is being referred to is compensation in the narrow sense. Certainly, using the term without making it explicit that, in the present case, it is being used in the broad sense as a placeholder to indicate some unspecified form of regulatory action may be misleading, especially given that so much luck egalitarian discussion uses the term in the specific, narrow sense.

But a third point, which is at least implied by Scanlon's remarks, is that there may be reasons intrinsic to distributive justice itself to *favour* equalizing access to important goods. The currency debates that have dominated political philosophy for the last few decades are useful and important. Distributive justice needs a currency, a focus, to know what it is about people's lives that makes them go well and, thus, what they should have equal opportunities to accrue. But, the focus on overall, macro-outcomes should not cause egalitarians to lose sight of the *disaggregated goods* about which people care and which are – on any currency – crucial to how well they do. There are some goods possession

of which constitutes or has an irreducible effect on a significant part of a person's outcome. That is, these goods have a significant weight in the measurement of overall levels of advantage, whatever metric is employed. They include, for example, jobs, university places, places on specialist vocational training programmes, and internships. It may be that luck egalitarianism itself provides reasons to favour equalizing access to these weighty goods over compensating for disadvantage consequent on luck-based inequalities of access, and that the weightier the good, the weightier the reason of luck egalitarian distributive justice to ensure that access to that good is not unequally influenced by luck. It may be that, as Scanlon notes, these goods are objectively important and so hold a special place in distributive justice. In the context of luck egalitarian distributive justice, this would amount to a claim that luck egalitarianism provides a (defeasible) reason to allocate these special goods in accordance with luck egalitarian principles. In other words, it rejects what Roemer terms the 'anonymity of goods maxim', according to which 'Once the type of outcome that is our concern [resources, welfare, or advantage] is named, then the names of resources that generate it should not count further' (Roemer 1996: 165). Such a position might draw some support from Mason, who, as we saw in section 1.2.1, focuses on the allocation of important goods (including, for example, jobs and leisure), treating their allocation as a question of distributive justice.

But there may be another, more characteristically luck egalitarian reason to treat important and weighty goods as special to distributive justice. A central motivation of the luck egalitarian project is the idea that people should choose how *well* their lives go (with 'well' understood in terms of their level of advantage). This can be understood in

terms of a commitment to a certain kind of self-determination: people should determine for themselves how well their lives go. But people very often do not, in shaping their life plans, aim only to reach a particular level of advantage. They have ideas about what it is they want to do, which is to say they have ideas about how they want to accrue advantage, or, about *how* they want their lives to go. People often aim to get a particular job, to get a place at university, or to undertake specific training or internship work in a particular sector. Luck egalitarianism might also, then, be concerned with people's ability to be self-determining in this latter sense. For example, we can recognize that people do not tend to aspire merely to, say, a particular level of income, but also to earn an income from particular sorts of work or work within particular sectors. Jobs are a weighty good in the sense that they have a significant influence on current outcomes, and they are also significant in the sense that they tend to form an integral part of people's qualitative life plans. The luck egalitarian concern with self-determination might, then, motivate a position according to which access to goods (such as jobs) that have a weighty influence on outcomes and which form an integral part of people's qualitative life plans should not be influenced by luck. The weightier the good, the weightier the reason of luck egalitarian distributive justice to ensure that access to that good is not unequally influenced by luck. This is because, when people are excluded from access to such goods on the basis of luck, their self-determination (in the sense of choosing *how* their lives go) is compromised. If a theory of distributive justice cannot object to individuals and particular groups of people (women, minorities, and so on) having consistently worse access to these important things as a matter of luck, instead recommending that they be adequately paid off, then it is missing something important. But that is precisely what the compensatory approach entails. It is a bean-counting kind of approach to regulation

and is unappealing because its response to inequalities of access to weighty goods that form important parts of people's life plans is not to equalize them, but to compensate the unjust outcomes they herald. If this point has force, there is a reason of luck egalitarian distributive justice to favour regulation to equalize access to important goods over compensating for disadvantage consequent on lack of access. (If it does not, then it is still a virtue of the pluralist approach to luck egalitarian regulatory strategies that it insists the option of equalizing access to goods should be considered alongside the option of providing compensation.)

#### **2.3.4 The Social Construction of 'Good' and 'Bad' Luck**

The final feature of the pluralist approach to which I wish to draw attention is that, because it requires consideration of how unjust inequalities are produced to inform the design of regulation to abrogate those inequalities, it brings to the fore the social construction of 'good' and 'bad' luck. This has two important implications. First, it enables luck egalitarians to emphasize that many aspects of people's circumstances – things that are beyond the individual's control and thus count as matters of luck – are not inherently or essentially good or bad. Second, it enables us to emphasize that inequalities are by social design: they are not beyond *all* control. What luck egalitarians term 'luck-based inequality' is not simply or wholly serendipitous. In what follows, I draw out these two implications.

I follow Lesley Jacobs (2004) in understanding all inequalities as necessarily social and *not* natural. I acknowledge that there is 'incredible natural diversity among persons' (Jacobs (2004: 52). But that natural diversity (for example, in potential for intellectual or physical prowess) amounts only to difference. Of course, as I outlined above, natural

differences are treated differently by social and material structures: those structures afford better and worse opportunities to people on the basis of the natural differences between them, and natural difference thereby *translates* into inequality of opportunity as a result of how structures treat it. But natural differences as such do not constitute inequalities in any way that matters to distributive justice: they are factors that play into the determination of inequalities of opportunity and outcome. In short, natural inequality is ‘a myth’ (Jacobs 2004: 53). As Jacobs writes:

All inequalities must be mediated by social institutions and practices; all inequalities are thus [...] by social design, and do not originate in nature. (Jacobs 2004: 54)

For distributive justice, then, that which is a matter of luck for the individual, including native endowment, is only ‘good’ or ‘bad’ in light of the better or worse opportunities that are afforded to the individual by social and material structures, on the basis of their luck. This means that luck egalitarians have no need ever to use the phrases ‘good luck’ and ‘bad luck’ and, further, it entails that those phrases in fact misrepresent what is going on – what it is that is really good or bad. They imply that it is the matter of luck *in itself* that is the proper object of evaluation, and in doing so imply that some forms of luck (say, some natural attributes) are *inherently or essentially* good or bad, when it is actually the *distributive consequences* of luck (which are determined by changeable structures and thus non-essential) that are positive or negative.

Consider the cases of disability and gender. Disability is consistently referred to as a form of *bad luck* by Dworkin.<sup>74</sup> But this unnecessarily and unhelpfully essentializes being disabled as a ‘bad’ thing. On my view, physical impairment is (only) a form of *luck*. Given social and material structures, it tends to have a negative influence on opportunities and outcomes. What is ‘bad’ (from the perspective of distributive justice) is, then, not the luck – the fact of physical impairment – but its unjust negative distributive consequences. And there may be ways to significantly reduce the negative distributive consequences of physical impairment by directly regulating social and material structures to reduce inequalities of opportunity for advantage between disabled and able-bodied people. This nuance is lost – or, at least, fades from the foreground – when disability is labelled ‘bad luck’. As Peter Handley writes, on Dworkin’s approach to disability-related disadvantage, ‘wider structural and attitudinal factors that relate to disability remain unquestioned’ (Handley 2003: 111). The same argument applies to gender (and, indeed, ethnicity and sexuality). With regard to gender, Dworkin could consistently call being a woman ‘bad luck’. I would reply that it *is* a matter of luck for women that they are women. But, I maintain, it is a matter of social design that being a woman in a patriarchal society is disadvantageous, relative to being a man. It might be

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<sup>74</sup> See, for example, Dworkin’s statement that he accepts ‘the commonsense view that handicaps of various kinds are a misfortune’ (Dworkin 2000: 347). (In this particular instance, Dworkin uses the term ‘handicaps’ to indicate what I have been calling ‘cognitive and physical impairments’, though he uses it in a broader sense elsewhere (see, for example, Dworkin 1981: 302-303).)

possible to arrange social and material structures so that different gender identities yielded no inequalities of opportunity for advantage. To label being a woman ‘bad luck’ would be to misrepresent the locus of the badness, and essentialize being a woman as a bad thing. It manifests an evaluative judgement of the wrong object, which is to say that it gets the object of evaluation wrong. It is not the luck – the being a woman – that is bad, but only its negative distributive consequences, which are determined by social and material structures. On my approach to luck egalitarian distributive justice, then, ‘good luck’ and ‘bad luck’ are misrepresentative and misleading terms for ‘luck that, given social and material structures, has positive or negative distributive consequences’.

But, of course, social and material structures are not simply given. What luck egalitarians call ‘luck-based inequality’ is not wholly serendipitous: it is not beyond *all* control but is, instead, in part a function of how we *collectively* arrange our society.<sup>75</sup> The relevant point is that we could collectively decide to arrange things differently – to arrange structures in such a way that they offer everyone equal (or, at least, more equal) opportunities. My approach brings that to the fore: in service of luck egalitarian ends, we can either compensate unjust inequalities, or level differences in personal resources, or directly regulate social and material structures. The structural status quo is, therefore, always up for examination and changing it through direct regulation may, all things considered, quite often be the most desirable luck egalitarian regulatory strategy to follow. To be

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<sup>75</sup> I assume here a *democratic* society, although I do not claim that we all have an equal say or deny that some people have more power to influence our arrangements than others.

clear, I do not mean to imply that disadvantage can *always* be effectively addressed by changing only social and material structures. Rather, I want to emphasize, first, that we should always consider whether it can and, second, that we will often find it can. Furthermore, even if it is the case that disadvantage cannot be fully addressed through structural change, we must still recognize that it is the *conjunction* of personal resources and structures that produces disadvantage. On my approach, then, even if it is not deeply or sociologically feasible to fully address, say, disability-related disadvantage by implementing direct structural regulatory action, it should still be clear that the disadvantage is a function of impairment on the one hand and social and material structures on the other, and *not* impairment alone. And it should also be clear that what luck egalitarians must object to – what is ‘bad’ from the luck egalitarian perspective – is not the impairment, but the disadvantage.

In her critique of the distributive paradigm, Young writes that ‘it tends to ignore, at the same time as it often presupposes, the institutional context that determines material distributions’ (Young 1990: 18). This is certainly an accurate characterization of compensatory luck egalitarianism. Young criticizes theorists of luck egalitarian distributive justice for failing to highlight that inequalities are (in Jacobs’ terms) by social design. She observes:

A large set of the causes of an unequal distribution of resources or unequal opportunities between individuals [...] is attributable neither to individual preferences and choices nor to luck or accident. Instead, the causes of many inequalities of resources or opportunities among individuals lie in social institutions, their

rules and relations, and the decisions others make within them that affect the lives of the individuals compared. (Young 2001: 8)

Anne Phillips makes the same point. She claims that, on the standard luck egalitarian view:

The cause of the bad luck becomes incidental. It no longer matters much whether it arose from genetic disorder, from racism or sexism, or the rules governing the inheritance of money; and since the cause of the bad luck is no longer the issue, there is less interest in identifying which ones are open to structural change.

(Phillips 2004: 17)

This is a crucial point and one that my approach to luck egalitarianism fully embraces. Institutions form part of the social and material structures that determine opportunities. They are not given and they are not a function of either individual choice or luck: they are, at least in a democratic society, a matter of collective choice. They can be changed through direct structural regulation. My approach is, therefore, not subject to the criticism Young and Phillips advance. It neither ignores nor presupposes institutions that determine opportunities but, instead, both scrutinizes their role in the determination of inequalities and insists they are potential targets of direct structural regulation.<sup>76</sup>

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<sup>76</sup> Admittedly, as my approach is concerned with institutions and other structures *only* as they affect distributive justice, it might seem at first glance to fall within the distributive paradigm. However, Young notes that 'What marks the distributive paradigm is a tendency to conceive

Because luck egalitarians focus so closely on luck, we must be especially careful to avoid implying that luck-based inequalities – or, to be precise, inequalities that are a function of how *socially designed* social and material structures treat attributes that are a matter of luck for the individual – are wholly serendipitous.

In sum, the pluralist approach I advocate brings a number of benefits. It may render achievement of luck egalitarian outcomes more feasible than it would be through compensation alone. It invites and, indeed, requires interrogation of the causes of unjust outcomes and allows for regulatory action to tackle injustice at its roots. Luck egalitarians need not be committed to permitting unjust outcomes to arise and then redressing them after the fact of their creation. It also leaves space to argue for more equal access to important and weighty goods. And it brings to the fore the social construction of ‘good’ and ‘bad’ luck. It emphasizes that essentialist evaluative judgements of people’s attributes can and should be avoided by theorists of distributive justice: it is not luck itself that is good or bad, but the unjust distributive consequences of luck – consequences that are a function of luck and socially designed structures – that should be characterized as beneficial or costly.

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social justice and distribution as coextensive concepts’ (Young 1990: 16). I hold that value-pluralist luck egalitarians may endorse a conception of justice that is inclusive of but not exhausted by distributive justice. In section 2.3.5, I propose that the value of relational equality is also a concern of justice.

### **2.3.5 Distributive and Relational Equality**

In what follows, I want to demonstrate how the pluralist approach to luck egalitarian regulatory strategies can help to frame discussion of alternative regulatory responses to distributive injustice. When considering how to tackle unjust advantage and disadvantage, the pluralist approach encourages us to consider whether levelling or direct structural regulatory action might prevent it. If a range of alternative regulatory actions might be implemented – that is, if in addition to redistributive compensation, there are options to implement levelling or direct structural regulation – then a decision between them must be made. The decision of which regulatory actions to implement should be based on an all things considered judgement about which from among the feasible set are most desirable. Luck egalitarian distributive justice is but one important value among others that must be accommodated in the design of our social arrangements. From among the wide range of policies that might potentially be implemented in service of luck egalitarian ends, the policies we actually choose to implement should be maximally compatible with the properly balanced demands of all relevant values. It is beyond the scope of this thesis to provide an all things considered judgement regarding which regulatory actions it is both feasible and maximally desirable to implement. To accomplish such a task would require not only detailed factual information concerning the deep and sociological feasibility of the relevant regulatory actions: information on our present technological capabilities, on how popular and thus ‘votable’ the policies are, and so on. It would also require a determination of the demands of all relevant values and of how those demands should be balanced against each other, as well as a comprehensive analysis of how well each possible set of regulatory actions would meet

the properly balanced demands of all relevant values. However, the issues of how different values should be weighted and which should take priority in cases of value conflict are still very much a matter of philosophical debate.<sup>77</sup> I do not seek to resolve that debate here but, rather, to consider how two policies that I think would do much to reduce unjust, luck-based inequality fare in light of just one other value. I consider whether the value of relational equality tells in favour of or against two luck egalitarian regulatory actions. The first action – provision of medical treatment for physical impairment – falls into the category of levelling. The second action – reform of social norms concerning appearance, ‘ugliness’ and ‘beauty’ – falls into the category of direct structural regulation.

I assume, then, that relational equality is one of the values that it is important to respect in our social arrangements. Before proceeding with the analysis, it will be useful to briefly outline what the value of relational equality consists in. Where distributive equality is a property of the distribution of burdens and benefits in society, relational equality is a property of social relations. In its most general expression, it requires that people view and treat each other as equals. Wolff characterizes the distinction between distributive and relational equality as follows:

it has become common in recent discussions of equality to distinguish between a distributive ideal of equality, in which

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<sup>77</sup> See, for example, Steiner (1994: chapter 4).

equality requires the equal provision of some good to all, and an ideal of social equality in which equality concerns the relations in which people stand to each other. (Wolff 2009a: 121-122)

He goes on to explain that theorists of relational equality have not tended to provide a positive specification of the value, instead defining it in terms of what it is not:

Limited progress, however, has been made in understanding the latter idea [...]. Most often the idea of social equality is expressed negatively: an opposition to snobbery and servility; and opposition to hierarchy and patterns of deference. [...] In the current context the most important aspect of social equality is that if people are not accepted in their differences from each other they will be excluded or marginalized. [...] a society of equals is one that accepts people in their differences' (Wolff 2009a: 122-123)

For present purposes, then, we can think of relational equality as the value of accepting people in their differences and respecting them as equals.<sup>78</sup> Crucially, while theorists of relational equality often present their views in opposition to luck egalitarianism, as Arneson (2013) writes, 'these disparate equality ideals need not be opposed'. My view is that relational and distributive equality are not rival interpretations of the value of

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<sup>78</sup> For further discussion of the value of relational equality see, for example, Scheffler (2010) and Schemmel (2011).

egalitarian justice but, rather, both follow from what Christian Schemmel terms ‘the abstract moral equality of humans, according to which all humans, *qua* humans, enjoy a basic equality of moral standing’ (2011: 370). Both matter, and not just for their implications for the other. Relational equality matters in itself: given our basic equality of moral standing, it is morally desirable that we view and treat each other as equals. Relational inequalities are not only unjust if and because they undermine distributive equality. (Thus, contra Barry (2006), I do not think oppression is only objectionable because of the luck-based distributive inequality it entails, but also because it is an *inegalitarian* and unjust form of social relation.) Distributive equality matters in itself: given our basic equality of moral standing, it is morally desirable that no one is worse off than anyone else through no choice of her own, regardless of whether we view and treat each other as equals. (Thus, contra Schemmel (2011), I do not think distributive inequality is only unjust if and because it harms relational equality.)

Why focus on relational equality? First, this thesis is a work of egalitarian political philosophy, and so to start with another egalitarian value – that is, a non-distributive egalitarian value – seems logical. Second, luck egalitarianism has sometimes been accused of failing to recognize the importance of relational equality and I wish to demonstrate that this failure is not inherent to the luck egalitarian position. Wolff expresses the criticism as follows:

The failure of luck egalitarianism has been attributed to its excessive concentration [on] the idea of fairness between individuals, to the exclusion of the idea of creating relations of equality between people. However it is important not to make the

opposite mistake of imagining that all that matters is social relations. Rather equality is surely a matter both of distribution and social relations (Wolff 2009a: 116)

It is true that luck egalitarian approaches that view regulation as coextensive with redistributive compensation do not accommodate the idea of creating equal relations. First, luck egalitarians may reject that relational equality is a value that is worth pursuing in its own right. Second, even if it is viewed as an important value, if the luck egalitarian regulatory strategy – compensatory redistribution – is fixed in advance of any consideration of the demands of relational equality, in a range of cases those demands will seem to simply tell against implementing luck egalitarian regulatory action. (As we saw above, if provision of compensation that would accurately neutralize the inequalitarian effects of luck on individuals' outcomes requires people to engage in shameful revelation, which undermines self-respect and is therefore offensive to relational equality, that tells against the policy.) But once the range of luck egalitarian regulatory strategies is opened up, it becomes clear that alternative (non-compensatory) regulatory actions may be permissible in light of the demands of relational equality and some may even serve that value. Thus, a concern with creating a society of equals is relevant to and will inform the choice between the different luck egalitarian regulatory strategies that might be employed. When a policy of compensation is unacceptably offensive to relational equality, policies falling into the categories of levelling and direct structural regulation may be more appealing on broad egalitarian grounds (that is, on distributive egalitarian *and* relational egalitarian grounds). Indeed, the ends of distributive and relational equality may often be available through the same means, that

is, the same regulatory action. The scope for those two ideals of equality to work in tandem is, then, considerable: there is nothing in my version of luck egalitarianism that necessarily ‘excludes’ the idea of relational equality. In what follows, I consider whether levelling regulatory action that targets physical impairment and direct structural regulatory action that targets social norms concerning appearance are compatible with – whether they serve or undermine – the value of relational equality.

#### 2.3.5.1 *Medical Treatment of Physical Impairment*

The first policy I want to consider in relation to relational equality is one on which medical treatment is provided to remove (or reduce) physical impairment.<sup>79</sup> This is an instance of levelling, which acts on a person’s personal internal resources (namely, their physiology), to increase their value or potential rate of return, given social and material structures. By removing impairment, medical treatment can improve the opportunities of people who were previously disabled. Whether relational equality tells in favour of this policy or is, in fact, undermined by it is not a straightforward matter.

Many proponents of the social model of disability – including many disability rights activists and campaigners in the UK – insist that there is nothing inherently disadvantageous or undesirable about physical impairment and that we should not seek to eradicate it: the onus is on society to accommodate it. On this view, a sharp distinction

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<sup>79</sup> Wolff, as we saw above, terms this ‘personal enhancement’.

is drawn between impairment and disability. An early statement of the social model of disability states that:

it is society which disables physically impaired people. Disability is something imposed on top of our impairments, by the way we are *unnecessarily* isolated and excluded from full participation in society. (UPIAS 1976: 3, my emphasis)<sup>80</sup>

This implies that provision of medical treatment is the wrong response to disability. As Tom Shakespeare writes:

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<sup>80</sup> This quotation comes from a report entitled *Fundamental Principles of Disability*, released by The Union of the Physically Impaired Against Segregation and The Disability Alliance. The report continues:

it is necessary to grasp the distinction between the physical impairment and the social situation, called 'disability', of people with such impairment. Thus we define impairment as lacking all or part of a limb, or having a defective limb, organism or mechanism of the body and disability as the disadvantage or restriction of activity caused by a contemporary social organisation which takes little or no account of people who have physical impairments and thus excludes them from participation in the mainstream of social activities. (UPIAS 1976: 14)

If disability is about social arrangements, not physical or mental impairments, then attempts to mitigate or cure medical problems will be regarded with intense suspicion. They will appear irrelevant or misguided responses to the true problem of disability, and distractions from the work of barrier removal and civil rights.

(Shakespeare 2006: 31)

Thus, a central reason why relational equality may tell against provision of medical treatment to remove impairment is that the policy may fail to respect people in their differences, incorrectly locating the ‘problem’ in people’s bodies and minds, rather than in our social arrangements. As Wolff notes, provision of medical treatment:

appears essentialist, or, at least, perfectionist. It pre-supposes that there is a particular way in which people ought to be. Of course it can be replied that at least some forms of personal enhancement are enabling in that they will allow people to pursue many new goals, and in that way are antiperfectionist. However this should not be allowed to obscure the point that very often forms of personal enhancement are proposed as ways of bringing people closer to some form of idealised stereotype, if only that of ‘normal species functioning’. (Wolff 2009a: 128)

It might be thought that all standards of physical normality are offensive to relational equality, because to deem those do not reach it ‘abnormal’ – even ‘*subnormal*’ – is to fail to respect those people in their differences, to marginalize and to stigmatize them. Even the term ‘physical impairment’, which is fully endorsed by most proponents of the social

model of disability, seems to imply a normative standard of *unimpaired* functioning. Shakespeare notes that during the 1970s, when some deaf people began organizing as a social movement, they sought to challenge the notion of deafness as hearing impairment, instead defining themselves as a 'linguistic minority, using the model of ethnicity' (Shakespeare 2006: 69). Petra Rose and Gary Kiger explain:

The transformation involved deaf persons: (a) identifying themselves as members of a community sharing common values and traits (e.g. sign language) and (b) evaluating the group and its values and traits in a positive light. (Rose and Kiger 1995: 522)

Perhaps, then, relational equality always tells against a policy of providing medical treatment to remove impairment. Perhaps that value (considered in isolation from others) suggests direct structural regulation is always a preferable strategy to employ in response to disability because, as Wolff has it, 'changing the world can be better than changing the person; it sends a message of acceptance of people as they are' (Wolff 2009b: 56).

On the other hand, it may be that provision of medical treatment need not *always* be so offensive to relational equality. (Of course, medical treatment should always be offered and never imposed: coercion of individuals into medical treatment would immediately constitute a gross failure to respect the person and the integrity of their bodies, not to mention a breach of their liberty (or right) to refuse medical treatment.) It does not seem clear to me that the offer of medical treatment will always conflict with the demands of relational equality, particularly if direct structural regulation is applied extensively to social and material structures such as to reduce, as far as is justifiable on

the balance of considerations, inequalities of opportunity and disadvantage consequent on impairment. If some disability yet remains, a regulatory agency offering medical treatment might make clear that it understands and endorses the view that there is nothing inherently ‘wrong’ with having an impairment and that disability is a function of how society treats impairment. It might emphasize that it has taken all justifiable steps to equalize opportunities – that is, to remove disability through social and material reform – but that, unfortunately, it is unable to entirely eradicate the disadvantages faced by some people with impairments. It might then state a concern, in light of this regrettable but unavoidable failure, that the remaining disabilities be somehow addressed, lest people with physical impairments be left worse off than they need be, and offer medical treatment (or, indeed, compensation) to any who desire it. In cases where a disability cannot be fully removed through direct structural regulation, it seems less disrespectful than in cases where a disability can be removed in this way to demonstrate a concern to address the disadvantage by targeting impairment. In other words, where society can be arranged in such a way as to accommodate impairment and prevent it from being translated into disability, relational equality provides a reason for it to be so arranged and against medical treatment. Here, the demands of relational and distributive equality are compatible. But where society cannot accommodate impairment, the reason relational equality provides against medical treatment seems less decisive. The social model of disability assumes that exclusion from full participation in society is avoidable and unnecessary: it occurs only because society fails to respect people with impairments and therefore takes little or no account of them in the design of social arrangements. But it seems to me that reform of social and material structures may not be sufficient to remove all disability. If so (and given extensive direct structural

regulation), it is not a failure of respect that unnecessarily causes exclusion, but a failure of current sociotechnological capability that determines it. As Wolff observes, some impairment ‘is very tightly connected to an adverse consequence – those who are blind cannot achieve the enjoyments of visual experience’ (Wolff 2009b: 53-54). Treatment to enhance vision can enable people to pursue new goals and develop new interests and so, in that way, can promote self-determination and perhaps also self-respect, at least among those who accept treatment. Thus, Wolff, even given his strong commitment to the value of relational equality, endorses its provision on the balance of considerations.

That said, I confess I still share the concern of many disability rights activists and campaigners that such policies run the risk of exceptionalizing those who cannot or do not wish to receive treatment. If provision of particular medical treatments is offensive to relational equality, for the reasons canvassed above, that does tell against their provision. But such provision may *also* be extremely effective in promoting distributive equality. Ultimately, in the selection of real world regulatory actions, these conflicting considerations must be balanced against each other: the cost to relational equality entailed by a policy of providing medical treatment of impairment may be acceptable in light of the benefit the policy brings to distributive equality.

#### 2.3.5.2 Reform of Social Norms Regarding Appearance

One of the most significant features of the pluralist approach to luck egalitarian regulatory strategies, I have argued, is that it provides a provisional reason to endorse regulatory action to change social norms when they function to set individuals at an unfair disadvantage. This is a crucial point of differentiation between that approach and compensatory luck egalitarianism. The latter has been criticized by a number of

theorists, including Anderson (1999), Mason (2006) and Wolff (2009a), for failing to provide such a reason, and for accepting unjust norms as long as their distributive consequences are offset through compensation. Such action may also have an additional point in its favour: it may sometimes serve the value of relational equality, too. This certainly seems the case with regard to action to tackle social norms regarding appearance. To illustrate this point, consider Anderson's objection to luck egalitarianism on the grounds that it offers – and can only offer – compensation for any disadvantage people face as a result of being deemed 'ugly'. She writes:

What about the ugly? Are they not entitled to compensation for their repugnant appearance, which makes them so unwelcome in social settings? Some luck egalitarians would view this bad luck as calling for a remedy, perhaps in the form of publicly subsidized plastic surgery. Democratic equality refuses to publicly endorse the demeaning private judgments of appearance which are the basis of such claims to compensation. Instead it asks whether the norms based on such judgments are oppressive. Consider a birth defect, affecting only a person's appearance, that is considered so abhorrent by current social norms that people tend to shun those who have it. Since the capability to participate in civil society as an equal citizen is fundamental to freedom, egalitarians demand some remedy be provided for this. But the remedy need not consist in the plastic surgery that corrects the defect. An alternative would be to persuade everyone to adopt new norms of

acceptable physical appearance, so that people with the birth “defect” were no longer treated as pariahs. (Anderson 1999: 335)

Luck egalitarians who adopt the pluralist approach to regulatory strategies can put this objection to rest.<sup>81</sup> First, we can agree with Anderson’s implicit claim that it is inappropriate to equate ‘ugliness’ with ‘bad luck’. An individual’s personal appearance is (at least in large part) a matter of luck. But appearances are only costly or beneficial in light of certain informal structures: social norms that function to ensure opportunities for advantage are delineated on the basis of differences in physical appearance. Some appearances are more socially acceptable – and thus have a higher potential rate of return in terms of advantage – than others. This view does *not* essentialize or in any way ‘endorse’ the view of certain physical traits as constituting ‘good’ or ‘bad’ luck, but acknowledges the social construction of appearance norms, including notions of ‘ugliness’ and ‘beauty’.

Second, as we have now established, luck egalitarianism does, in fact, provide a provisional reason to follow the alternative approach Anderson favours. Luck egalitarianism condemns appearance-related disadvantage and says, in response, that we

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<sup>81</sup> In fact, on the pluralist approach, provision of plastic surgery counts as an instance of levelling. Surgery acts directly on the physical body in order to improve opportunities for advantage in future. But Anderson’s point still holds, and also holds against a policy of cash compensation: the issue in this case is that both levelling and compensatory policies fail to target the problematic social norms that set ‘ugly’ people at a disadvantage.

might implement either a policy on which compensation is provided for the costs of being ‘ugly’; or a policy on which plastic surgery is provided to make ‘ugly’ people more attractive; or a policy on which those aspects of the social structure (including appearance norms) that set ugly people at a disadvantage are altered in order to remove or reduce appearance-based inequalities of opportunity; or some combination of these policies. If appearance norms are indeed demeaning to those they posit as ‘ugly’ – if, that is, they are offensive to the value of relational equality – then it is clear that value tells against those strategies that would leave current norms in place (compensation and levelling) and in favour of the sort of direct structural regulation that seeks to ‘persuade everyone to adopt new norms of acceptable physical appearance’ (Anderson 1999: 335).

How, precisely, does the value of relational equality tell in favour of a policy to reform appearance norms? That policy shares a number of the features Wolff ascribes to his policies of ‘status enhancement’ to tackle disability-related disadvantage. Indeed, he terms action to change structures to improve the opportunities of disabled people status enhancement precisely because it is so closely ‘connected with the idea of a society of equals’ (Wolff 2009a: 113). There are three central reasons, Wolff claims, why relational equality will often be better served by reform of social and material structures, rather than by adjusting personal resources or outcomes, all of which apply to this case:

One is that status enhancement is non-stigmatising. A second is that it is inclusive. A third is that it benefits everyone.’ (Wolff 2009a: 130)

Reform of appearance norms avoids targeting individuals and so represents a more communal approach to tackling disadvantage. As Wolff writes of status enhancement,

it ‘helps to communicate a message that human beings are all equals and should all be included in our social arrangements’ (Wolff 2009a: 131). It also benefits everyone by reducing the risks we all face of future exclusion and marginalization. Wolff notes that anyone may accrue an injury that leads to quadriplegia:

A world already adapted to the needs of people with impairments makes disability less of a disadvantage, and hence the prospect of possibly becoming disabled somewhat less threatening, at least to the preservation of one’s existing way of life. (Wolff 2009b: 55)

The same point applies to appearances. Each of us faces the risk of accidents that could leave us with what has been termed ‘facial disfigurement’. Most of us will also go through an ageing process that will change our appearances. In the UK, appearance norms seem to deem age itself unattractive, particularly in women. But we all age, for as long as we live, and so alternative, less demeaning appearance norms really would benefit us all.

That said, reformists must proceed with care to ensure that regulatory action to change social norms really does work to equalize both opportunities and social status. Attempts to reform social norms may be fraught with the risk of producing unintended consequences. Most notably, relational equality might itself be harmed in the event of backlash against reform. If, for example, advertisements, television programmes and fashion shows were required to include a broader range of physical types, as way of normalizing what is currently considered ‘ugliness’, some people working in those industries might grow to resent and blame the most direct beneficiaries of the restriction on their working practices. (For discussion of a similar point in relation to disability, see

Wolff 2009b: 53.) But, of course, policy can be designed with due attention to this possibility: if a policy were likely to produce a backlash of such proportions that relational equality would suffer, that policy would be, as a result, less desirable on the balance of reasons.

Now, luck egalitarians who favour a compensatory approach might object that reform of social norms may take some time. Compensation, on the other hand, can redress disadvantage much more immediately. I think this is a valid concern, but it does not amount to an objection against pursuing the direct structural regulatory strategy in this case. That ‘ugly’ people may continue to suffer disadvantage until the point at which social norms are successfully reformed may provide a reason to offer them compensation until that point. But as long as it would be better, on the balance of reasons, if appearance norms were less offensive to relational equality, there remains a reason to pursue their reform. It is also worth pointing out that following a compensatory or levelling strategy would not only leave current norms intact, but might be *additionally* stigmatizing to ‘ugly’ people. As Anderson implies, it might well be demeaning for a person to be judged so ‘ugly’ by a regulatory agency that she qualifies for financial benefit or surgery. If, on the balance of reasons, compensation would not be offered on those grounds, reform of social norms becomes even more urgent.

In sum, once it is recognized that a regulatory agency might attempt to bring about luck egalitarian outcomes through a plurality of different strategies, the range of regulatory actions that might be implemented for reasons of luck egalitarian distributive justice is thrown open. The choice from among the feasible set will be informed by consideration of how well different combinations of regulatory actions would respect the demands of

a number of values, including relational equality, liberty, economic efficiency, environmental sustainability, and so on. I have considered here whether regulatory action to provide medical treatment for physical impairment is compatible with relational equality and found that, although wide scale medical treatment would certainly prevent much unjust distributive disadvantage from arising, it may also manifest a failure to respect people in their differences. Regulatory action to reform appearance norms fares better in light of relational equality: the value of distributive equality and the value of relational equality both suggest the desirability of such action. Of course, whether or not either of these actions could actually be successfully implemented here and now, given deep and sociological feasibility constraints, is not something I have considered. Perhaps implementation of the reforms I have canvassed would require a change in the laws of nature and is, therefore, deeply infeasible. But, if not, and if the relevant feasibility constraints are only sociological then, of course, what is sociologically infeasible today may become feasible tomorrow. Sociological feasibility is liable to rapid change, as life changes, and so its lack should never be too disheartening.

## **Conclusion**

In this chapter, I hope to have shown that the compensatory approach on which much luck egalitarian theory has thus far been developed should be abandoned in favour of a pluralist approach to the regulatory strategies of luck egalitarian distributive justice. This approach makes explicit that, in addition to compensating for unjust outcomes, luck egalitarians may endorse regulatory action to prevent the original distribution of benefits and burdens from producing unjust outcomes in the first place. The pluralist approach also facilitates clarity on the target and rationale of regulatory action, enhances the

feasibility of luck neutralization, provides space for arguments in favour of more equal access to important goods, and exposes the social construction of ‘good’ and ‘bad’ luck. Ultimately, while compensatory redistribution functions to redress unjust, luck-based advantage and disadvantage after the fact of its creation, levelling and direct structural regulation work to *stay the hand of fortune*: they work to forestall fortune’s blows and blessings and to obstruct (rather than merely expiate) the inegalitarian influence of luck on life outcomes.

## **PART II**

### **LUCK EGALITARIANISM AND INTERNSHIPS**

## Internships:

### A Luck Egalitarian Analysis

#### Introduction

Recent years have seen a significant increase in the number of internship positions available in Britain and a parallel expansion of the range of industries and sectors within which internships are offered. Within many sectors, completion of a period of internship work has been shown to provide a relative advantage in subsequent competitions for paid employment and, within some, it is becoming a necessary condition of access to a variety of jobs. These trends might not be very worrying, were it not for the fact that a great number of contemporary internships are unpaid, sold at auction, or distributed on a nepotistic basis. These sorts of internships engender significant luck-based inequalities of opportunity for advantage, thus raising important issues of distributive justice.

This chapter analyzes these issues from a luck egalitarian perspective. In section 3.1, I briefly outline some of what is known about contemporary internships in the UK, and suggest a typology of internships, distinguishing between different types according to their distributive mechanism and whether or not they are adequately remunerated. In

section 3.2, I offer an analysis of how luck currently influences who may take up the different types of internship. This analysis motivates the case I present in chapter 4 for regulatory action to tackle the unjust inequalities contemporary internships help to create.

### **3.1 An Exposition of Contemporary UK Internships**

#### **3.1.1 UK Internships**

There is a notable lack of comprehensive, longitudinal studies of internships: contemporary British internships have yet to receive much investigation or sustained critical analysis from academic researchers (and have received none at all from egalitarian political philosophers). However, reports have been published by the Institute for Public Policy Research (IPPR), the Chartered Institute of Personnel and Development (CIPD), the government's Panel on Fair Access to the Professions (PFAP), campaign groups Interns Anonymous and Intern Aware, and Unite the union, and some smaller scale research has been published by The Guardian, which provide a view of the UK picture.

Thousands of internships are offered across the UK every year and there is some evidence to suggest the number may be rising. CIPD (2010a) estimates that 13% of employers intended to hire interns during the summer of 2009. By 2010, that figure had risen to more than one in five employers.<sup>82</sup> IPPR's 2010 report on internships claims

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<sup>82</sup> Subsequent CIPD reports do not present any data on intentions to hire interns.

that this CIPD figure from 2010 ‘is the equivalent of 280,800 organizations across the UK, potentially offering a quarter of a million internship places over the summer’ (IPPR 2010: 6). A further report from CIPD (2010c) estimates that just over half of all internships (56.5%) are located in London, where living costs are particularly high.

In recent years, internships have become a (more or less formal) precondition of access to paid employment within some sectors. This trend has been recognized by government, unions, professional organizations, and campaigners. For example, a recent report from the Social Mobility and Child Poverty Commission states that ‘83% of new entrants [into journalism] do internships’ (SMCPC 2014: 65). CIPD have also suggested that ‘internships are *the* ticket into an increasing number of professions but they are only accessible to some people, which has serious negative consequences for social mobility and ‘fair access’ to certain careers’ (CIPD 2010c: 6, original emphasis). The PFAP, meanwhile, writes in its 2009 report that:

Undertaking an internship is an important access point for entry to a career in the professions [...] Yet, by and large, they operate as part of an informal economy in which securing an internship all too often depends on who you know and not on what you know

(Alan Milburn 2009: 99)

The duration of internships varies, but they overwhelmingly tend to continue for months, rather than weeks. Many internships last for two or three months, but some go on for as many as six or twelve. The largest online survey of UK interns to date, which was conducted by the campaign group Interns Anonymous and gathered data from 594 respondents, found that 39% of the internships carried out by respondents lasted three

months or longer. Many graduate internship positions are advertised on the Graduate Talent Pool bespoke online job board run by the Department for Business and Skills (BIS), and analysis by The Guardian of 621 internships advertised on that website found that, of unpaid internships, over half (54.7%) lasted two to three months, while 7.8% lasted between seven months and one year (Lisa Evans 2011). With regard to working hours, research commissioned by Unite the union and campaign group Intern Aware reports that 48% of the interns they surveyed worked full time for five days per week, while 33% worked for three to four days per week (Charlotte Gerada 2013: 5).

All the reports agree that, while they vary in substance and quality, internships are distinct from both work experience and volunteering. As IPPR states in its 2010 report:

Internships normally work in a different way to work experience or volunteering. Genuine work experience placements tend to last for just a few weeks and primarily involve work shadowing and the completion of small tasks that do not form a core part of an organisation's work. Volunteering can take many forms, but for most people it does not involve full-time, set hours or specific required duties (IPPR 2010: 5)

Internship work involves more than work shadowing, in the sense that actual work is undertaken that would otherwise be done by an employee. Work experience placements, during which young people work shadow for a couple of weeks or so, should therefore be kept distinct and are not the focus of analysis here. Internships also differ from voluntary work: while interns tend to sign contracts agreeing to particular terms

(regarding working hours, duties, and so on), volunteers have no contractual obligations to work.

### **3.1.2 Remuneration**

Regarding pecuniary remuneration, most of the estimates agree that around half of all interns receive pay, while around a third receive limited expenses for travel and perhaps lunch. The *Guardian*'s analysis of BIS-advertised graduate internships found that 49.8% were paid, 33.5% provided limited expenses, and 15.5% were entirely unpaid (Evans 2011). Larger scale research by CIPD suggests that approximately half of all organizations employing interns pay them at least the National Minimum Wage, 28% pay expenses less than the National Minimum Wage, and 18% do not pay any expenses (CIPD 2010b). Remuneration also looks very different in different sectors. The *Guardian*'s analysis suggests that in the banking and financial sectors, internships are overwhelmingly paid. However, 92% of internships in the arts were unpaid, 77% of fashion internships were unpaid, 76% of public relations internships were unpaid, and 50% of media internships were unpaid (Shiv Malik and James Ball 2011). According to research into parliamentary and constituency office interns conducted by Unite the union, 'interns carry out about 18,000 hours of unpaid work each week and [... 44%] do not receive travel and food expenses' (Unite 2009).

### **3.1.3 Distributive Mechanisms**

The available data on internships reveal that they are distributed through a number of different mechanisms. I suggest here five conceptual categories of distributive mechanism, which capture what I believe to be the morally relevant empirical differences

between the central features of the different types of mechanism and which are, as far as I have been able to ascertain from the available empirical data, exhaustive of all internship distributive mechanisms within the UK. The categories of internship distributive mechanism are: open competition; closed competition; open auction; closed auction; and nepotism. The categories indicate the broad characteristics of the different internship distributive mechanisms. In practice these characteristics may be instantiated in different ways and so each conceptual category is sufficiently broadly specified to encompass those empirical variations. The broadly conceived features of each category of distributive mechanism signify how access to different internship positions operates and deployment of these conceptual categories therefore usefully facilitates the analysis, given in section 3.2, of how luck influences who can take up internships.<sup>83</sup>

### 3.1.3.1 Open and Closed Competitions

The distribution of internships by competition has two central features that are relevant for the purposes of constructing a luck egalitarian analysis of internships. These are, first, *application eligibility*, which pertains to initial entry into the competition and, second, *competitive selection*, which pertains to the selection of the winning competitor. First, then,

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<sup>83</sup> These categories of distributive mechanism bear some similarity to Jon Elster's 'allocative mechanisms', in the sense that they are intended 'to *describe* and *explain* how institutions allocate goods and burdens' (Elster 1992: 9, 2, my emphasis). However, while Elster's 'goal is not to evaluate allocative practices by some particular standard of justice', I go on to evaluate the distribution of internships by luck egalitarian standards (Elster 1992: 4).

application eligibility concerns who may apply to enter the competition. Some competitions for internships have no application eligibility restrictions, such that anyone may apply to them (including those who do not meet the competitive selection criteria). Others do have application eligibility restrictions, entailing that eligibility to apply is restricted on some basis and that some are therefore excluded from applying. In other words, *entry* into competitions for internship positions may be open, or more or less closed. I therefore propose two categories of competitive internship distribution: open competition (to which anyone may apply) and closed competition (to which only those who meet the application eligibility restrictions may apply).

Open competitions for internships, as I define them here, exhibit two essential characteristics: first, there are no restrictions on eligibility to enter the competition (that is, no one is barred or prevented from applying to the competition for the internship position); and, second, the internship vacancy is openly advertised, such that anyone looking for internship positions might find out about it. If a competition does not exhibit both of these characteristics, the competition is (more or less) closed. The distributive mechanisms of many of the internships advertised on the BIS website fall into the category of open competition. These internships are prominently advertised and anyone may apply, such that their distributive mechanisms exemplify the two essential characteristics of open competition. (Of course, those who do not meet the competitive selection criteria are unlikely to be offered the internship, but they may apply in any case.)

Closed competitions for internships either have specific restrictions on eligibility to apply that formally exclude some people from applying, or are visible (and therefore de facto accessible) only to a restricted range of potential applicants. Of course, how closed a

closed competition is will often, in practice, be a matter of degree. That is, application eligibility criteria may be more or less restrictive, and vacancies may be more or less visible. A growing number of internship vacancies now invite competitive applications by ‘word of mouth’, such that only those who hear of the vacancy may apply to the competition. The UK Commission on Employment and Skills reports that:

Word of mouth recruitment disadvantages young people without the right networks and contacts. But this is on the rise (UKCES 2013: 4)

Internships ‘advertised’ by word of mouth may have no formal or intended restrictions on eligibility to apply, but their invisibility to all who do not hear of them by word of mouth renders the competition more or less closed: the reality is that *only* those who hear about the vacancy know of its existence and are then able to apply. To illustrate, professionals within an organization may be asked to advertise an internship vacancy within their online social networks (such as Facebook or Twitter), simply because this form of advertising is cost-effective. But it serves to ensure that only members of those professionals’ networks find out about the vacancy and may apply to compete for it. The distributive mechanism of such internships thus falls into the category of closed competition. Other instances of closed competition differ in the way they restrict applications. For example, an internship vacancy may be advertised in a local newspaper, which entails only those with access to that newspaper can find out about the competition and apply to it. Application eligibility criteria may also be more formally or even intentionally exclusive: for example, if application to the competition is by invitation only. Professionals may be asked to invite people within their familial and

social networks to apply to an internship competition, perhaps because their organization values close interpersonal connections among colleagues. Moreover, if eligibility to apply to a competition for an internship position were restricted on the basis of, say, gender, ethnicity, sexuality, disability, age, religion or marital status, the internship distributive mechanism would, of course, fall into the category of closed competition. Competitions for internships may, then, be open or (more or less) closed, depending on whether (and the extent to which) applications to the competition are restricted.

The second feature of competition for internship positions that is relevant to a luck egalitarian analysis concerns the basis or bases on which the winning applicant is chosen by intern selectors. Regardless of whether a competition is open or closed, some competitive selection criterion or criteria will be applied by selectors to determine the selection of the intern from among the applicants. Competitive selection criteria can take a number of forms and, of course, if the categories of distributive mechanism were so fine grained as to capture all variations in competitive selection criteria, there would be as many categories as criteria. For present purposes, I retain the broadness of the competitive categories of internship distributive mechanism, but acknowledge that these might be thought to contain a variety of sub-categories that reflect differences in selection criteria.<sup>84</sup> As we will see in section 3.2, selection criteria partly determine which

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<sup>84</sup> Of course, an open competition and a closed competition might both employ the same selection criteria: the difference between the two categories is about entry to the competition, rather than selection of competitors.

forms of luck influence who is offered competitive internships. It will be useful, therefore, to briefly outline here some of the different sorts of selection criteria that are used within competitions for internships. Broadly speaking, competitive selection criteria tend to select for ability to successfully complete the duties attached to the internship position and ‘fit in’ with the organization. (They are therefore similar to competitive selection criteria used in job distribution, which tend to select for ability to do the job.) More specifically, the sorts of abilities that constitute qualification for a position might include abilities to communicate effectively in person, on the telephone and in writing, to work flexibly and to multitask, to work well with others, to work with computers or particular software packages, and so on. When selection criteria select (only) for ability to successfully complete the internship, the distributive mechanism can be conceived as belonging to a subcategory of competition, termed ‘ability competition’. Furthermore, as we saw in section 2.2.4, evidence suggests that bias persists in applicant selection for jobs in the UK.<sup>85</sup> We might infer from this that it is highly likely that the competitive selection criteria of *some* internships are, like those of jobs, biased. That is, in addition to the ability of applicants to successfully complete the internship, the selection criteria actually enacted by intern selectors may select for demographic characteristics such as gender, ethnicity, sexuality and (dis)ability, even when they

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<sup>85</sup> There is an abundance of further empirical research suggesting that candidate selection for jobs is sometimes biased. See, for example, John McConahay (1986), Martha Foschi et al. (1994), and Ralph Fevre et al. (2011).

nominally or officially select only for ability to successfully complete the internship. These characteristics then become substantive (though informal and perhaps misrecognized) qualifications for the internship.<sup>86</sup> When demographic characteristics are treated as qualifications, the internship distributive mechanism can be conceived as belonging to a subcategory termed 'biased competition'.<sup>87</sup> A final consideration is that competitive selection criteria might also favour applicants who are part of the personal networks of professionals within the organization offering the internship over applicants who are not so well-connected. That is, they might select for ability, but also treat the connection as a kind of qualification. The distributive mechanism of such internships

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<sup>86</sup> For further theoretical discussion of how bias can affect selection of job applicants, see Young (1990: chapter 7).

<sup>87</sup> Disability-related bias may be due to the ableist prejudices of selectors, or, in the case of bias against people with physical impairments that reduces their mobility, it may be to do with a combination of inaccessible premises and an unwillingness or inability on the part of the organization to make adjustments to premises to make them accessible. This issue of the accessibility of premises cuts across internships of different types: however an internship is distributed and whatever its remuneration arrangements, if it is based in a premises that is inaccessible to people with reduced mobility, those people will not be able to take it up. I return to the issue of accessible premises in section 4.2.3 but (with the foregoing caveat in place) for now I set it to one side in order to concentrate on how the distributive mechanisms and remuneration arrangements of internships interact with background differences to produce inequalities of access to internships.

can be conceived as belonging to a subcategory of competition termed ‘nepotistic competition’.<sup>88</sup>

### 3.1.3.2 Open and Closed Auctions

Internships are also distributed through auctions, which can be either open or closed. During these auctions, the internship is sold to the highest bidder. More precisely, what is sold is the power to decide who will be offered the opportunity to undertake the internship: the winning bidder may undertake the internship herself or, alternatively, offer it to a third party of her choosing. Whether an internship auction is open or closed depends on whether there are any restrictions on who may bid for the internship. Access to open auctions is open in the sense that there are no restrictions on who may bid. Over the last few years, internships in the UK have begun to be sold at online auctions (Danielle Kurtzleben 2013). Anyone with access to the internet may bid for these internships and we can plausibly assume that this includes all, or very nearly all, people looking for internship positions. The distributive mechanism of these internships can therefore be understood as falling into the category of open auction. (Interestingly, the chief executive officer of one company that arranges online internship auctions claims that around half the bidders are parents bidding on behalf of their children (Beth Harpaz 2010).)

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<sup>88</sup> For further discussion of nepotistic competition in the context of job recruitment and promotion, see, for example, Linda Wong and Brian Kleiner (1994).

Access to closed auctions is restricted, normally on the basis of membership of some more or less elite group. That is, bidding is by invitation only. Again, the internship is sold to the highest bidder. Two recent examples of closed internship auctions are worthy of note. First, Conservative Party Members who were invited to the Conservative's annual Black and White Party in 2011 – Cabinet members, other key party members, big party donors, and so on – were able to bid at an internship auction held at the party. Prestigious internships in finance, hedge-fund work, fashion and media sold for an average of £3000 each, raising over £20,000 for the Conservative Party (Simon Walters and Brendan Carlin 2011). Second, parents of pupils at Westminster school – one of the most elite public schools in the country – are regularly invited to bid at internship auctions organized by the school, reportedly raising thousands of pounds for Westminster School every year. Despite some recent bad press, the school is continuing with these closed auctions (Nico Hines 2013).

It might be thought that the distributive mechanisms of open and closed auction are, in fact, subcategories falling within the categories of open and closed competition, respectively. That is, perhaps auctions might be conceived as a form of competition, the competitive selection criteria of which is wholly financial: ability to pay is the sole qualification for the internship. Thus, people compete for the internship and whoever is willing and able to spend the most money on the internship position wins. However, for the purposes of my analysis, it is worth singling out auctions for special attention, precisely because the selection criterion is so singularly financial. Indeed, there are no selectors to make a choice from among a number of applicants: the winner is decided mechanically on the basis of the relative financial worth of each bid. Furthermore, while

the qualifications selected for by competitive selection criteria normally refer (at least in part) to ability to perform internship work, auctions sever the link between possession of relevant abilities and success in gaining an internship position.<sup>89</sup> On my construction of the categories of internship distributive mechanism, auctions are therefore distinguished from competitions.

### 3.1.3.3 Nepotism

The final category of internship distributive mechanism is nepotism. Some people are able to become interns because they happen to be a member of the personal network of an established professional who is in a position to gift them access to an internship position and does so. No competition occurs and no exchange of money takes place. As nepotistic recruitment is likely to go unrecorded (that is, to be ‘off the record’), there is currently scant hard evidence of this practice. However, as the reports of the PFAP (2009) and IPPR (2010) note, there is an abundance of anecdotal evidence of internship positions being gifted to the personal contacts of professionals. As IPPR writes, ‘internships often operate as part of an ‘informal economy’ where opportunities depend on personal contacts rather than proven ability or potential’ (IPPR 2010: 7).

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<sup>89</sup> Of course, the winning bidder *may* offer the internship to someone who possesses relevant abilities, but this is not *required*: who is offered the internship is a matter of the winner’s discretion.

We saw above how nepotism broadly construed might influence the outcomes of competitions for internships. I noted two examples of how application eligibility and competitive selection criteria might reference familial and social networks (where applicants are sourced from within the personal networks of professionals working in an organization but must then compete with each other for the internship, and where applicants who are members of the personal networks of professionals are favoured within competitive selection procedures). However, nepotism as described here is distinct from competition. It is a category of distributive mechanism in its own right because of the singular decisiveness of the nepotistic interest: it does not merely influence a competitive procedure, but wholly determines who is offered the internship. As with auctions, when nepotism is the distributive mechanism of an internship, there is no selection from among a number of applicants and ability to perform internship work does not constitute a qualification for the internship. The sole ‘qualification’ (if it can be termed as such) is knowing the right person.

### **3.1.4 Types of UK Internship**

Distinguishing between internships according to their distributive mechanism and whether or not they are remunerated, internships can be categorized into ten ‘types’.<sup>90</sup>

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<sup>90</sup> This specific construal of what distinguishes the different types of internships suits the analysis offered in section 3.2 below. I distinguish between types of internships on the basis of their distributive mechanism and whether or not they are remunerated because this facilitates identification and clear analysis of the different forms of luck that influence access to

For the purposes of my analysis, I count internships that pay less than the National Minimum Wage as unpaid internships. This is because, first, provision of limited expenses does not constitute payment for internship work and the organizations offering expenses-only internships tend to specify themselves that they are unpaid. Second, and more importantly, the analysis I present below is concerned with how access to internships works and how people are excluded from access. As expenses for travel and lunch do not amount to an income that is sufficient to support an intern throughout a period of internship work, those interns who earn below the National Minimum Wage need additional resources to sustain themselves throughout that period. Those who do not have such resources at their disposal are excluded from access to expenses-only internships, as they are from unpaid internships. In other words, provision of expenses is insufficient to ensure that no one is excluded from access on the basis of an unchosen lack of resources. I should acknowledge, however, that in counting expenses-only internships as unpaid I am making a simplifying assumption that provision of limited expenses has no effect on access. In fact, of course, there may be cases in which such provision does make a difference. Contrary to my simplifying assumption, not all of those who lack the resources needed to undertake unpaid internships also lack the resources needed to undertake an expenses-only internship. Perhaps most notably,

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contemporary UK internships. Of course, internships might be distinguished into (different sorts of) types on alternative bases, such as the sectors in which they are offered, their relative quality, whether they are full- or part-time, and so on.

individuals who have access to free accommodation, breakfast and dinner in London, but who do not have sufficient wealth to cover the travel and lunch expenses that would be incurred on undertaking an internship, would be excluded on the basis of their financial disadvantage from access to unpaid internships in London, but not those that pay travel and lunch expenses. Nonetheless, as discounting consideration of those cases affects nothing substantive about my argument, I simply treat expenses-only internships as if they were unpaid. On that basis, then, the ten types of internship are outlined in the table below.

Table 3: The Types of UK Internship

Distributive mechanism:	Open Competition	Closed Competition	Open Auction	Closed Auction	Nepotism
Remuneration:					
Paid	Open competitive, paid internships	Closed competitive, paid internships	Open auctioned, paid internships	Closed auctioned, paid internships	Nepotistic, paid internships

Unpaid	Open competitive, unpaid internships	Closed competitive, unpaid internships	Open auctioned, unpaid internships	Closed auctioned, unpaid internships	Nepotistic, unpaid internships
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## **3.2 A Luck Egalitarian Analysis of Contemporary UK Internships**

### **3.2.1 Internship Luck**

The luck egalitarian approach to distributive justice holds that the inegalitarian influence of luck on individuals' life outcomes is unjust and should be eliminated. In chapter 2, I argued that, while luck egalitarians might respond to unjust inequalities of outcome resulting from inequalities of opportunity by recommending provision of compensation, they might also recommend levelling, direct regulation, or some combination of strategies to equalize opportunities (or render them more equal) and thereby prevent (to some degree) those inequalities of outcome from arising. In what follows, I analyse how luck influences access to internships, asking the question: what forms of luck influence who can take up the different types of internship? I argue that various aspects of the structure internship schemes function to delineate access to internships on the basis of various forms of luck (that is, various luck-based differences in people's personal resources). These luck-based inequalities of access are, in turn, implicated in the production of unjust inequalities of outcome. This analysis motivates the case for luck

egalitarian regulatory action to tackle the unjust inequalities produced in and through the distribution of internships. Precisely what regulation luck egalitarians might recommend in response to those unjust inequalities is the subject of chapter 4. To briefly anticipate my argument, while a strategy of compensation would seek only to adjust overall levels of advantage post-internship distribution, a levelling strategy would seek to adjust luck-based differences in personal resources to ensure equal access to internships, given the structure of internship schemes. A strategy of direct regulation would seek to adjust relevant aspects of the structure of internship schemes to ensure equal access to internships, given luck-based differences in personal resources. Alternatively, a *combination* of compensatory, levelling and direct structural regulatory strategies might be employed to tackle internship-related injustice.

How, then, does luck influence access to internships? Consider, first, the forms of luck that delineate access to competitive internships. (I examine the forms of luck that application restrictions bring into play below but, for now, focus on competitive selection criteria.) As we saw in section 3.1.3.1, the selection criteria used to determine which applicant is offered a competitive internship are normally similar to those of jobs. Standardly, the criteria select for ability to successfully complete the internship, as job selection criteria select for ability to successfully do the job. The ability to successfully complete an internship includes the competence required to fulfil the duties attached to the internship position, and to ‘suit’ the role and ‘fit in’ with the organization. Competitive selection criteria may also be influenced by the biases of selectors, thereby delineating access to internships on the basis of demographic characteristics such as gender, ethnicity, sexuality, and so on. (As mentioned above, nepotism may also

influence selection from among competing candidates. I will return to ‘nepotistic competitions’ shortly but, for now, focus on ‘ability competitions’ and ‘biased competitions’.) The question that interests me here is whether having these competences and characteristics is a matter of luck. To the extent that inequalities of access to competitive internships track luck, the overall advantages and disadvantages they produce are unjust and luck egalitarians have a reason to recommend regulatory action – whether compensation, levelling, direct regulation, or some combination thereof – to tackle that injustice.

### 3.2.1.1 Demographic Characteristics – ‘What You Are’

The sorts of characteristics that become relevant to competitive selection when selectors are biased include gender, ethnicity, sexuality and (dis)ability. Even given the diversity of approaches to conceptualizing the distinction between luck and choice, there is consensus within the luck egalitarian literature that such demographic characteristics are paradigmatic instances of brute luck: generally speaking, no one chooses to be a cisgender woman or a cisgender man, or to be transgender or intersex or queer, or to be gay or straight or bisexual, or to have or not have physical or cognitive impairments, or to be black or white or Asian, and so on. Certainly, on the metaphysical approach I favour, these demographic characteristics are beyond individuals’ metaphysical control.<sup>91</sup>

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<sup>91</sup> The attributivist approach I rejected in chapter 1 also counts demographic characteristics as matters of luck because they are outside the space of rational agency.

Thus, inequalities of access to internships that track these characteristics are luck-based inequalities of access.

### 3.2.1.2 Abilities – *What You Know'*

But what about the sorts of skills and abilities that count as qualifications for internships distributed by open or closed competition? My view is that an individual's developed abilities are a function of her native talents (or, natural endowments), the influence of her social circumstances, and perhaps also her choices (which are themselves constrained and conditioned by native talents and social circumstances). Luck egalitarians agree that native talents are matters of brute luck: no individual chooses the native talents with which she is born.<sup>92</sup> Indeed, no one chooses them.<sup>93</sup> Moreover, there are, as far as we know, differences between the native talents with which different individuals are born. Some individuals appear to have natural aptitudes for particular skills and abilities, such

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<sup>92</sup> See, for example, Dworkin (1985: 207), Cohen (1989: 932), Arneson (1989: 89), Roemer (1998: 38), and Knight (2009a: 1).

<sup>93</sup> That said, Steiner (2002) raises the interesting point that if and when the ‘revolution’ in genetics affords us choice in the design of the genetic information carried within the cells from which humans develop, individuals’ native talents might no longer be conceived as entirely unchosen. Rather, they would be conceived as unchosen by the individual in question, but chosen by some other party (most likely the individual’s parents). Thus, the distinction between nature and nurture is set to become increasingly blurred ‘as our knowledge of the human genome advances and, with it, our capacity to manipulate its information loads’ (Steiner 2002: 190).

that, given identical social circumstances, they would be able to develop those skills and abilities to a more advanced level than others. The constellation of native talents with which others are born appear to be more constraining. For example, some individuals are born with genetically predetermined mild, moderate or severe learning disabilities, which can make it difficult for them (relative to others and holding all else equal) to learn and develop certain skills and abilities. Thus, it is the case not only that the native talents with which each individual is born are matters of luck, but also that differences in native talent across different individuals are matters of luck.

But native talents are not the only determinant of developed skills and abilities. As Rawls observes, 'The extent to which natural capacities develop and reach fruition is affected by all kinds of social conditions' (Rawls 1999: 64). The same point has been made by a number of luck egalitarians. For example, both Roemer (1998: 54-58, 60-61) and Knight (2009a: 129) emphasize the effect of education on the development of ability. An individual's native talents constitute her *potential* to develop skills and abilities, but how that potential develops is influenced by social circumstances, which are as unchosen by the individual as are her native talents. Perhaps most significantly, an individual's family and schooling provide her with opportunities to develop talents and so orient and set constraints on the development of her talents. Parents and teachers can provide encouragements and inducements to learn and develop particular skills and abilities, but they can also discourage learning or make development difficult. And, as with native talents, these social factors are not held constant across individuals. That is, different families and different schools are differently willing and able to provide children with an environment that encourages development of the sorts of abilities required to undertake

internships. For example, while some parents do little to encourage their children to develop those abilities, others spend thousands of pounds per year on high quality private education or tutoring for their children precisely because they believe doing so will facilitate learning and development. Further, a number of egalitarians have noted that, holding all else equal, parents who read bedtime stories to their children often, in doing so, confer educational advantage on those children.<sup>94</sup> Thus, holding native talent constant across individuals, differences in different individuals' social circumstances provide them with unequal opportunities to develop skills and abilities and, conversely, holding social circumstances constant, differences in different individuals' native talents provide them with unequal opportunities to develop skills and abilities. There is disagreement, even among expert developmental psychologists, over whether native endowments or social circumstances constitute the more significant determinant of how ability develops: this is the 'nature versus nurture' debate that still dominates much of the psychological, medical, and sociological literature on ability.<sup>95</sup> For present purposes, what matters is that both of these factors are beyond the individual's control and are thus (for her) matters of luck for which she should not be held responsible. To the extent that differences in ability are a function of these two factors, then, they are matters

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<sup>94</sup> See, in particular, Mason (2006 and 2011), Olsaretti (2009), Swift (2009) and Segall (2011).

<sup>95</sup> See, for example, Ulric Neisser et al. (1996), Robert Plomin et al. (1997), Robert Plomin and Frank Spinath (2004), and Steven Pinker (2004).

of luck, and inequalities of access to internships that track those differences constitute luck-based inequalities of access.

But is it plausible that people may *also* make choices that affect the development of their abilities? A relevant consideration here is that, from the perspective of luck egalitarian distributive justice, a child's abilities, and differences between different children's abilities, are necessarily matters of luck. As we saw in section 1.1.4, children do not make responsibility-attracting choices: whatever people may do to affect the development of their own abilities, none of their actions can be conceived as chosen (in the sense that matters to luck egalitarianism) until they reach their majority. Thus, ability is unchosen and a matter of luck for all individuals up until the age of majority.<sup>96</sup> But the unchosen abilities people possess as they reach their majority will surely always orient and constrain the choices they make as adults to develop their abilities further. As Steiner explains, 'adults who develop them [abilities] must construct them on some already-present foundational ability which was laid down prior to that construction and prior to their becoming adults' (Steiner 2002: 185). That foundational ability can influence choice: for example, some people may choose to further develop abilities that are already relatively well-developed, precisely because they are already well-developed. And it can constrain

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<sup>96</sup> That is not to say that *others'* choices do not influence the development of children's abilities: as I have just outlined, children's abilities are very much affected by the actions of third parties, including their parents and teachers. But children themselves cannot be (held) responsible for their abilities, which therefore count as matters of luck *for them*.

choice: for example, it may be very difficult for some people to make choices to develop a particular kind of ability unless that ability already happens to be relatively well-developed. That is, given social structures (and, in particular, education systems), differences in individuals' foundational abilities afford them unequal opportunities to develop their abilities further. To illustrate this point, consider that people do not standardly have the opportunity to choose to go to university to further develop certain abilities unless they have the correct qualifications. In the UK, entry into university depends on having particular A level grades (or equivalent qualifications), which grades in turn depend on individuals' foundational abilities prior to their becoming adults. (This consideration is particularly relevant to the discussion given that many internship positions are 'graduate internships', access to which requires possession of a degree.) Thus, while people may, as adults, make choices that affect how their abilities develop, whether or not a person possesses the sort of competence that qualifies her for a competitive internship will *also* ordinarily be influenced, to some more or less significant degree, by luck. Regarding differences in developed ability across individuals, these are a matter of luck to the extent that they are a function of the unequal opportunities to develop ability afforded to individuals by virtue of their different native talents and social circumstances. In sum, while inequalities of access to internships that track differences in ability may be traceable *in part*

to individuals' prior choices and are therefore not wholly matters of luck, there is certainly *some extent* to which they constitute luck-based inequalities of access.<sup>97</sup>

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<sup>97</sup> It might be thought that this discussion of developed ability and skill does not fully capture what I referred to above as the ability to 'fit in' with the organization. That ability seems to depend significantly on the values and norms the candidate endorses. Indeed, the distinction between the ability to, for example, use software and the ability to 'fit in' is reminiscent of the distinction Young (1990) draws between technical competence and cultural competence. Technical competence refers to 'competence at producing specified results' (Young 1990: 201). Cultural competence has to do with:

whether those being evaluated behave according to certain social norms, whether they promote specifically defined organizational goals, and whether they demonstrate generally valued social competences and characteristics. (Young 1990: 204)

This kind of competence appears ambiguous between standard notions of ability and what Dworkin terms personality. As we saw in section 1.2.2.2, Dworkin claims that because, first, we ordinarily identify with aspects of our personalities and expect to take responsibility for their distributive consequences and, second, principles of justice should be continuous with ordinary ethics, there is a reason of justice to insist individuals take responsibility for the distributive consequences of holding particular values or supporting particular norms (see, in particular, Dworkin 2000: 289-296). On the attributivist approach examined in section 1.2, again, it is appropriate to assign consequential responsibility to individuals for preferences such as whether they support organizational goals, as such preferences are within the space of rational agency

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(see, in particular, Mason 2006: 93-94). For Dworkin and Mason, our values count as matters of choice, not luck, regardless of whether we have freely chosen to endorse them. Inequalities of outcome consequent on values-based inequalities of access to internships thus appear unproblematic from these perspectives. On a metaphysical approach, however, whether or not a person's values count as matters of choice depends on the extent to which they are freely chosen and under her ongoing metaphysical control. As Dworkin readily acknowledges, if we have any choice over our values, it is not fully free but necessarily constrained and conditioned (see, for example, Dworkin 2002: 289-290). There is a vast literature on the development of values (much of it from psychology) and I do not attempt to engage with it here, instead bracketing the question of whether 'ability to fit in with an organization' can be subsumed within 'ability to successfully complete internship work' and simply assuming it can. But it is notable that little of the literature mentions the influence of personal choice over the development of values. Indeed, the 'nature versus nurture' debate in relation to the development of ability has its parallel in relation to the development of values, attitudes, personality and temperament, and both sorts of development are often covered in the *same* model. (See, for example, Robert Plomin and Gerald McClearn (1993), W. Andrew Collins et al. (2000) and Gregg Murray and Matthew Mulvaney 2012 for discussion and analysis of various approaches to understanding how values and abilities develop.) The simplifying assumption I make here is not unreasonable if it is the case that the values and attitudes we hold as individuals are, like our developed abilities, a complex function of the interweaving influence of both factors beyond our control and (constrained and conditioned) choice. There may also be a similar argument that the values people hold on reaching their majority (that is, before responsibility-attracting choice is possible) strongly orient and constrain the choices they may make about what values to hold after that

### 3.2.1.3 Personal Social Networks and Wealth – 'Who You Know' and 'What You Have'

In addition to demographic characteristics and abilities, access to internships is also delineated by 'who you know'. Indeed, 'who you know' delineates access to all types of internship other than those distributed by open ability competition and open biased competition. Knowing the right person certainly influences access to many paid and unpaid internships distributed by closed competition. In particular, in order to apply to competitive internships advertised by word of mouth, people need to be in contact with someone who is willing and able to, and who does, inform them of the internship vacancy.<sup>98</sup> Knowing the right person also clearly influences access to paid and unpaid internships distributed by (open or closed) nepotistic competition. In these cases, interns who know someone (that is, who have a contact) in an organization offering an internship who is willing and able to, and who does, influence the recruitment process

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point. The salient point is that (on the metaphysical approach) *to the extent* that values are not matters of individual choice, inequalities of access to internships based on the values candidates hold are unchosen, and the overall inequalities of outcome they produce are unjust. Below, I consider in more depth the related question of whether wanting an internship can be treated as a case of an expensive valuational taste.

<sup>98</sup> A caveat is required here. In fact, closed competitions might restrict applications in ways that do not require applicants to know the right person. For example, the internship might be advertised in a local newspaper, in which case it is location (rather than social networks) that is likely to delineate applications. I return to this issue below.

in their favour are advantaged within selection relative to those who do not know the right person. Regarding access to all internships distributed by closed auction, knowing the right person is crucial. To secure the internship, a person must know someone who is a member of the elite group that is invited to the auction and who is willing and able to, and does, go to place the winning bid. We can assume that this contact is generally likely to be a family member or family friend, but I also consider below the possibility that interns may work to cultivate relationships with elite contacts. Having the right contact is the sole factor determining who has access to internships distributed by nepotism. In these cases, the intern must know a professional who is willing and able to, and who does, gift them an internship position. Again, we can assume that the professional contact is generally likely to be a family member or family friend of the intern, but may sometimes be someone with whom the intern has cultivated a relationship. In addition, access to all auctioned and unpaid internships depends on 'what you have' or, more precisely, it depends on having or being able to acquire sufficient financial resources. Bidding expenses are required in order to buy auctioned internships; living expenses are required in order to be able to undertake unpaid internships; and bidding and living expenses are required in order to buy and undertake auctioned, unpaid internships. Of course, some people may undertake paid employment and save up these expenses in advance of their internship, but it is undoubtedly the case that many interns are simply gifted the necessary expenses by their parents or other close contacts. In other words, they have access because they know the right person: someone who is willing and able to, and who does, gift them the expenses required to buy an internship or work as unpaid intern.

So access to all of these types of internship – unpaid internships and those distributed by closed competition, nepotistic (open or closed) competition, nepotism, closed auction and open auction – is delineated by ‘who you know’. Furthermore, with regard to unpaid internships and those distributed by nepotism, open auction and closed auction, access to these generally requires that *the contact does something for the intern*: they must gift the intern the necessary expenses, or gift her the internship position, or go on her behalf to bid successfully for the internship.<sup>99</sup> In all of these latter cases, I maintain, ‘gift luck’ delineates access to the internship. Lazenby’s work on gifts is relevant here. He notes that, for an action to count as a gift:

It must consist in the bestowing of a benefit upon an individual or group of individuals where, if there are conditions placed upon the bestowing of this benefit, the benefit is greater in value than the cost of the conditions imposed for the recipient(s). (Lazenby 2010: 272)

On this construal, the three types of action I have just mentioned qualify as gifts: they are advantaging in the sense that they secure the intern’s access to the internship. (We can also assume that the intention behind them would ordinarily be to advantage the

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<sup>99</sup> In the case of closed auctions, it is not necessarily the case that the same contact both bids and pays for the internship: one contact may provide the money with which another bids.

intern and that they are not ordinarily undertaken in repayment of a debt.) Lazenby further clarifies the different forms gifts may take:

what can count as a gift is not limited to the material; it includes other non-material transactions that might more commonly be characterised as favours or even simply as kindness. The three main forms of non-material giving examined are gifts of labour, gifts of non-material capital in either its intellectual, social or cultural varieties, and gifts of affection. (Lazenby 2010: 272)

Living and bidding expenses given to interns count as straightforward material gifts. Gifting an internship position is slightly different: here, what is gifted is a role or position, which might be conceived as constituting non-material capital.<sup>100</sup> Finally, taking time to bid for an internship position in order to offer it to a third party can itself be conceived as a gift of non-material labour time. The contact intentionally bestows an advantage on the intern by doing her the favour of going to bid on her behalf at the internship auction. There is a great deal of discussion within the (luck and other) egalitarian literature on gifts and their status with regard to justice, but the questions in which I am interested here concern, firstly, whether it is a matter of luck for any given individual to be given a

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<sup>100</sup> That said, if the gifted internship is paid, that remuneration might count as a material gift. On the other hand, intern remuneration is not gifted from the pocket of the professional contact (or donor), but provided from the budget of the organization offering the internship position.

gift that gains her access to an internship and, relatedly, whether gift-based inequalities of access to internships are matters of luck.

First, consider whether it is a matter of luck for an individual to be gifted expenses, internships or bidding labour time. To illustrate my argument, I will focus on receipt of bidding expenses for open auctioned internships, but the argument applies just as well to receipt of living expenses, gifted internships, and gifted bidding labour time. Imagine that wealthy and generous Alpha has a daughter, Beta, who wants to become an intern but – not unusually for someone at the start of her career – has insufficient personal wealth to buy an auctioned internship position. Simply because Alpha wants the best for her child (and not because Beta has done anything to ‘earn’ the money), she makes Beta an unconditional offer of the bidding expenses required to buy an internship at open auction. Beta gladly accepts and, as a result, has access to the internship, which she would not otherwise have had. Alpha’s financial loss is genuinely chosen by her and so she has no complaint. But Beta’s windfall is not chosen: she did nothing to warrant it and simply received it because her mother was able and willing to help her. In other words, she just happened to have the right mother, which is a matter of brute luck. Lazenby comes to an equivalent conclusion in his discussion of a different Alpha who gifts a different Beta, through no choice of Beta’s. He writes that, because ‘Beta did not act to bring about the gift’, it qualifies as an instance of ‘brute luck giving’, that is, giving

that disturbs the luck egalitarian distribution' (Lazenby 2010: 276).<sup>101</sup> Lazenby writes of brute luck giving that its 'greatest instance occurs between parents and children: it is

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<sup>101</sup> As Lazenby writes, 'because Alpha has chosen the brute luck for Beta, the resulting distribution cannot appear *for Alpha* as a matter of brute luck' (Lazenby 2010: 275, original emphasis). This highlights the paradoxical status of gifts in luck egalitarian theory. As Cohen notes in relation to gifts, 'one man's choice is another man's luck' (Cohen 2009: 143). In Lazenby's terms, gifts are instances of other-affecting choice: choices to give can create brute luck advantages for donees, and brute luck inequalities between donees and non-donees. This raises complex questions regarding how luck egalitarians should respond to gifts. As Otsuka (2004: 51-54) notes, protecting people's choices to give is incompatible with a luck-neutral distribution but, on the other hand, protecting a luck-neutral distribution would require severe constraints on freedom of choice to give. In deciding how to respond, Otsuka argues that, inevitably, 'there is a morally regrettable trade-off to be made' between freedom and equality (Otsuka 2004: 75). When this trade-off must be made, Otsuka argues, we should err on the side of protecting equality: 'strict regulation of gifts and bequests [...] would be necessary to ensure that nobody benefits to a greater degree from such gifts or bequests than anyone else' (Otsuka 2002: 52). Vallentyne (2000) holds that gifts should be taxed to some extent, Van Parijs argues that gifts are 100% taxable (1995: 90, 101), and Lazenby maintains that 'the only way to ensure that giving does not upset the luck egalitarian distribution would be to forbid it *ex ante*' (Lazenby 2010: 284). Ultimately, I think Lazenby is correct to claim that consideration of other-affecting choice, and especially of the inegalitarian implications of gifts, provides 'reasons to revise downwards our view of how 'choice friendly' luck egalitarianism really is' (Lazenby 2010: 285). I consider in the next chapter what regulatory action luck egalitarians might recommend in

simply a matter of luck from the child's perspective whether they happen to be born to parents who are wealthy or poor, miserly or generous' (Lazenby 2010: 276). This echoes Dworkin's earlier statement that it 'is bad luck to be born into a relatively poor family or a family that is selfish or spendthrift' (Dworkin 2000: 347). Rakowski agrees, maintaining that receipt of gifts from family members should normally be treated as a matter of brute luck:

Most generalizations with respect to the role of brute luck in gift-giving are honeycombed with exceptions, but one might be sufficiently solid and important to incorporate in public policies governing redistributive taxation. The material gains [...] that people receive from their parents generally depend more on brute luck than do the friends or spouse someone has and the financial benefits he receives in consequence. To the extent that this relationship holds, there exists a good reason for treating gifts and bequests to children more like one would pure cases of good brute luck than for treating transfers between friends or spouses in this manner. (Rakowski 1991: 159)

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response to inequalities of access to internships and discuss in more detail there how luck egalitarians might respond to gifts of internship expenses, internships, and bidding labour time. For now, the important point is that Beta's receipt of the advantaging gift is unchosen.

It may well be that the single most decisive factor delineating access to open auctioned internships is the wealth and generosity of potential interns' families. That would certainly be the case if one's family wholly determined one's wealth at the start of one's career. But perhaps that is too fast. What if Alpha were not Beta's doting mother but, instead, a friend with whom Beta had made efforts to cultivate a friendship? Might those efforts be sufficient to transform the receipt of the gift of bidding expenses from brute luck to option luck? As Mason notes:

it might be argued that not all gifts and bequests are a matter of good brute luck for their recipients. Some are the result of choices made by the recipient, for example, those that express the gratitude of the gift-giver for something the recipient has done or for the friendship they have enjoyed together. (Mason 2006: 146)

Vallentyne makes a similar point and claims that, even within families, whether or not a gift is received may partly depend on prior choices:

Typically, gifts are made at least in part in response to the prior choices made by the donee. An attentive daughter may receive more gifts from her parents than her neglectful brother. (Vallentyne 1997: 333)

Mason and Vallentyne's point is that it is possible for a donee to receive a gift (say, of bidding expenses) partly due to choices she has previously made to cultivate friendships and relationships. Rather than always being a matter of pure brute luck, receipt of gifts

may sometimes be – to *some* extent – a matter of donees' option luck. Of course, ascertaining to *what* extent it is option luck is not straightforward. As Lazenby writes:

it is unclear exactly when one should consider a recipient's actions sufficient to make a gift the result of option luck rather than brute luck. The pertinent question will be: how close a relationship must there be between an action on the part of a recipient and some corresponding gift to make that gift the result of option luck?  
(Lazenby 2010: 278)

Still, imagine those difficulties have been overcome and we can say with certainty that Beta has acted in such a way that Alpha's gifting Beta is partly Beta's option luck (rather than her pure brute luck). Whether part of Beta's resulting advantage is therefore acceptable to luck egalitarian justice or not depends on which view of option luck is favoured. As we saw in section 1.3.2.3, luck egalitarians disagree over whether option luck inequalities are just. Knight's rejection of the justice of option luck inequality entails that Beta's advantage is objectionable on the grounds that, although she made choices to act in ways that led to Alpha choosing to gift her, she did not directly choose to be given expenses: that choice rested with Alpha and, as such, was not under Beta's metaphysical control. But, as we also saw, other luck egalitarians, including Cohen and Arneson, deem option luck inequality acceptable to justice. On this view, then, it might seem that at least part of the advantage Beta gains on receipt of Alpha's gift of bidding expenses is unproblematic to luck egalitarian distributive justice.

However, Beta's gains cannot be considered in isolation. Brute luck plays a part in who has the opportunity to receive gifts. While particular individuals may make choices

leading to receipt of gifts (such that their advantage is a matter of option luck to some extent), others do not have that option. Thus, while the discussion above concerns the extent to which an individual's post-gift advantage is a matter of luck, it does not fully address the question of whether gift-based inequalities of access to internships are matters of luck. To answer that question, we must consider the opportunities of all to receive the relevant gifts. To illustrate, consider the case of Gamma. Gamma is alike and similarly positioned to Beta in every respect, except that she happens to have no Alpha in her life. Like Beta, she wants to become an intern and would bid for an internship if she could but, unfortunately, she has neither the money to bid nor family or other contacts who could gift her the requisite bidding expenses. Assume, first, that Alpha's gifting Beta is Beta's brute luck. The result of Alpha's choice is not merely that Beta is more advantaged than she was before the gift. It is also that an inequality is created between Beta and Gamma, which neither chose. Beta is advantaged relative to Gamma and not through any choice either made. Assume, second, that Alpha's gifting Beta is – to some considerable extent – Beta's option luck. The result of Alpha's choice is, again, that Beta is more advantaged than she was prior to the gift, and that an inequality is created between Beta and Gamma. Gamma is disadvantaged relative to Beta and, while Beta's relative advantage may be traced in part to her previous choices, Gamma did not choose her relative disadvantage. That is, Gamma is worse off than

Beta through no choice of her own.<sup>102</sup> This brings us to what is, in my view, a crucial consideration: in both cases, Beta and Gamma's opportunities to be gifted bidding expenses were not equal. Regardless of whether it is option luck or brute luck that Beta is advantaged relative to her position pre-gift, it is Gamma's brute luck that she had no Alpha in her life and that the advantage afforded to Beta by Alpha was never available to her. If access to open auctioned (and other) internships depends on receipt of the gift of bidding expenses (and other gifts), inequalities of opportunity to receive that gift result in luck-based inequalities of access to internships. Lazenby expresses the general point as follows: even if we suppose that Beta had acted in such a way as to bring about a gift, 'this would still not be sufficient to transform corresponding gifts into being the result of option luck, as this must also be determined by the value of the opportunity set of givers one had access to' (Lazenby 2010: 278-279). He continues:

it is to some extent a matter of brute luck which potential givers make up one's opportunity set. In short, while we could expect that some will actively search out these generous givers, there will always be an element of brute luck involved in who we meet during the course of our lives and whether or not they are generous. (Lazenby 2010: 279)

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<sup>102</sup> Of course, Alpha's choice does not render Gamma worse off, in absolute terms, relative to her position prior to Alpha's gift to Beta. But it does entail that Gamma is now worse off than Beta, where before the gift was given they both lacked access to open auctioned internships.

Rakowski also acknowledges the point that opportunities to receive gifts – including opportunities to cultivate the sorts of relationships within which gifts are likely to be forthcoming – will always be influenced in part by brute luck:

close relationships are usually bound up with shared experiences.

Those experiences depend on physical proximity and thus are invariably influenced by where and when someone happened to be born and live at a particular time. [...] Brute luck may therefore dominate in the case of interspousal gifts or gifts between friends as well as in the case of gifts from parents to children, particularly given its sizable part in bringing people together. (Rakowski 1993: 160)

Now, if it were the case that everyone had an Alpha in their lives or, at least, had genuine opportunities to cultivate lucrative relationships with people of Alpha's wealth and generosity, there might then be grounds to claim that all had opportunities to acquire the expenses on which access to internships sold at open auction depends. But, I submit, that does not capture the present reality of access to open auctioned (and, indeed, closed auctioned and unpaid) internships. The distribution of wealth in the UK today is such that some young people have access to more wealth than they will ever require, while others struggle to pay for the most basic necessities of life. Those from the poorest families may also be the least likely to have genuine opportunities to cultivate lucrative relationships with wealthy and generous people outside of their families. Thus, whether or not option luck inequalities are acceptable to justice, unequal opportunity sets for gifts of internship expenses from within and without the family entail that the current

expenses-based inequalities of access to internships are to some very considerable extent a matter of brute luck.

Thus far, I have focused on gifts to demonstrate that, to the extent that inequalities of access to unpaid, auctioned and nepotistic internships depend on ‘who you know’ and whether those contacts are able and willing to gift expenses, bidding labour time and the internship itself, those inequalities are in large part matters of luck. But I want also to mention how ‘who you know’ delineates access to internships distributed by closed competition. If the above arguments hold, they demonstrate that ‘who you know’ is to some significant degree a matter of luck. When applications to competitive internships are invited by word of mouth, eligibility to apply depends on the luck of knowing the right person. And, again, it may be the case that the least advantaged in Britain today are the least well-connected, in the sense of having contacts who can inform them of the availability of internship positions.<sup>103</sup>

Perhaps, however, this discussion of gifts is somewhat of a red herring in relation to expenses-based inequalities of access to internships. Certainly, access to internships distributed by closed auction and nepotism requires that the intern knows the right person – someone who is in a position to go to an invitation-only internship auction or

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<sup>103</sup> Moreover, if (as mentioned in footnote 98 above) closed competitive internships are advertised in local newspapers, rather than through word of mouth, such that location delineates who hears of internship positions, this may be no less a matter of luck. As Rakowski notes above, where one happens to live is often very much a matter of brute luck.

to gift the internship outright. But acquisition of bidding or living expenses – or, ‘what you have’ – may not necessarily always or wholly depend on being gifted those expenses. Not everyone enjoys lucrative relationships or opportunities to cultivate them, but some may take up paid employment and save up the expenses required to buy an internship or work as an unpaid intern. In other words, they may make choices to take up opportunities to overcome their financial disadvantage and thereby gain access to open auctioned and unpaid internships. Others may have these opportunities but choose not to take them up and, in these cases, we might think their lack of access is chosen. Indeed, if all had genuine opportunities to earn living and bidding expenses – if there were plentiful well-paid entry level jobs available to young people at the start of their working lives – expenses-based inequalities of access to internships might be conceived as matters of choice.<sup>104</sup> However, while some may have the opportunity to gain paid employment (and choose to take it up), it is one thing to earn a living and quite another to earn so much as to enable accrual of sufficient living and bidding expenses, which often run into the thousands of pounds. Given the current scarcity of (and inequalities of access to) well-paid entry level jobs, working to save up to pay for auctioned and unpaid internships

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<sup>104</sup> Dworkin makes a similar point in his discussion of Adrian and Bruce who, while beginning from a position of equality of opportunity, make different choices and end up unequally placed: Adrian works hard to make money, while Bruce prefers to spend his time playing tennis. Dworkin argues that the resulting inequality of outcome between Adrian and Bruce is just (see Dworkin 1981: 304-305).

is simply not a genuine option available to many young people.<sup>105</sup> Furthermore, access to adequately well-paid jobs may in turn depend on factors that are a matter of luck. Thus, just as there are inequalities of opportunities to receive gifts of expenses, there are also inequalities of opportunities to earn expenses. The crucial point is that, while some people's lack of access to auctioned and unpaid internships on financial grounds may be, to some degree, a matter of their choice, inequalities of access to internships on financial grounds are not fully chosen. If all were similarly placed and had the opportunity to earn sufficient expenses to bid for an internship or work as an unpaid intern, we might say that those who chose not to take up the opportunity chose their lack of access to auctioned and unpaid internships. But all budding interns are not similarly placed.

To illustrate this point, consider the following eight graduates, each of whom wants to buy an internship at open auction. Alpha is given the requisite bidding expenses by her wealthy and generous mother (because her mother wants the best for her child and not because Alpha has done anything to warrant the gift), and so has access to the internship. Beta has no opportunity to be given expenses but, due in large part to an abundance of native talent, supportive parents and high quality education, she is highly qualified and,

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<sup>105</sup> The Office for National Statistics estimates that in the period from February to April 2014, there were 677,000 unemployed 18 to 24 year olds, while the number of jobs vacancies from March to May 2014 was 637,000 (ONS 2014). The number of young unemployed people therefore exceeds the total number of vacancies and, moreover, we can assume that some of these vacancies are not well-paid, entry level jobs.

by virtue of her qualifications, has the opportunity to get such a well-paid job that she could save up expenses from her income. She chooses to work and save up the expenses, and so has access to the internship. Gamma has no opportunity to be given expenses but, like Beta, is fortunate enough to have the opportunity to earn them. She chooses not to save up the expenses and so does not have access to the internship. Delta has no opportunity to be given expenses but, despite the disadvantages of nature and nurture, has chosen against the grain to work hard in developing her native talent and to get a good degree that will qualify her for a well-paid job. She chooses to work and save up the expenses, and so has access to the internship. Epsilon started out similarly placed to Delta and made similar choices to become well qualified, but chooses not to take up available opportunities to earn expenses, and so does not have access to the internship. Zeta has no opportunity to be given expenses, but she does have the opportunity to enter paid employment. The jobs available to her are not, however, paid sufficiently well that she could save up expenses. Despite the advantages of nature and nurture – considerable native talents, a supportive family, and so on – she chose not to work hard and shunned her opportunities to gain a good degree. She chooses to work and earn money, but cannot save up the expenses required to buy an internship. Eta has no opportunity to be given expenses, but does have the opportunity to gain paid employment. She was not advantaged by nature or nurture, but made difficult choices to try hard to develop her talents. Unfortunately, despite her best efforts, she was still unable to get a good degree, and the jobs to which she has access are not paid sufficiently well for her to save up expenses from the income. She chooses to work and earn, but does not have access to the internship. Finally, Theta has no opportunity to be given expenses. She has also recently been compelled to undertake time consuming caring

duties for her disabled mother, as state support is inadequate and no one else is available and willing. She can only work three days a week and so is unable to save up the bidding expenses required to buy the internship.

Considering the individual cases, we can see that an individual's access or lack of access to an internship can be more or less genuinely chosen by that individual. Gamma, Epsilon and Zeta's lack of access to auctioned internships appears a matter of their own choices not to take up the opportunities available to them and so, considered in isolation, might not be too worrying. But Eta and Theta's lack of access is a matter of luck: they cannot make choices to gain access. In the cases of Beta and Delta, they made choices to get themselves into positions from which they have access to the auctioned internship, but those choices were, to borrow Arneson's (2004) terms, differently 'difficult' or 'painful' for each of them. Beta's choices were fairly easy for her to make, but Delta's were more difficult. Further, when we consider inequalities of access between the graduates, we can see that while some had opportunities to make choices to gain access to auctioned internships, others never had equivalent opportunities. Certainly, the inequalities of access between *some* of the graduates (between Beta and Gamma, and between Delta and Epsilon) are the result of their different choices. They had equal opportunities to exercise choices that would result in them having the expenses to access auctioned internships, but chose differently. But Beta and Gamma had better opportunities to earn and save than Delta and Epsilon: the latter's choices were more difficult to make than were the former's. So it may seem that, while Beta and Delta both made choices that led to them gaining access, Beta was luckier than Delta. Zeta also had better opportunities to gain access than Eta, and the former's lack of access therefore

seems more chosen and less a matter of luck than the latter's. We can see, then, that some of the graduates had opportunities to make more or less difficult choices to accrue internship expenses (namely, Beta, Gamma, Delta, Epsilon and Zeta), but equivalent opportunities were unavailable to others (Eta and Theta), and Alpha was simply brute lucky to be given the expenses. These are artificial cases, but I think it likely that they are representative of the situations of many young people in Britain today.

Luck egalitarians disagree over what kind of significance these sorts of background inequalities in people's opportunity sets have. Knight (2009a) argues that, even where opportunity sets are unequal, choice can still legitimate inequalities of outcome, as long as due consideration is given to the circumstances in which choices are made. Knight would, then, judge inequality of outcome between Beta and Gamma to be acceptable if and because they were equivalently positioned (that is, had equal opportunity sets) when they made their different choices. With regard to Beta's advantage relative to Theta, I think Knight would view it as far less acceptable, given the marked inequality in their initial opportunities, but perhaps not *entirely* unjust, given that Beta made responsible choices leading to her internship. Barry, on the other hand, advocates an 'equal footing proviso' according to which choice can only legitimate inequality of outcome given equal opportunity sets (Barry 2008: 139). On this more demanding, more 'radically egalitarian' view, because opportunity sets were not equal across the relevant population (from Alpha to Theta), *any* advantages and disadvantages that result are unjust (Barry 2008: 139). On either view, however, it is certainly true that there are significant luck-based inequalities of access to auctioned internships, which are a function of luck-based differences in the financial resources people have (or can acquire) coupled with the use

of auctions as a distributive mechanism. Similarly, there are significant luck-based inequalities of access to unpaid internships, which are a function of luck-based differences in people's financial resources coupled with the lack of remuneration afforded to unpaid interns.

In sum, access to internships is delineated by a variety of forms of luck. Luck-based differences in personal resources – demographic characteristics, developed abilities, social networks and wealth – combine with aspects of the structure of internship schemes – their distributive mechanism and (lack of) remuneration – to ensure inequalities of access to internships are, to some considerable degree, a matter of luck. *Precisely* how significant a role luck plays is in part an empirical question but, with the foregoing account in mind, it does not seem an unreasonable assumption that its role is significant and weighty.

### **3.2.2 A Comparison of Access to Different Types of Internship**

Thus far, I hope to have demonstrated that there are luck-based inequalities of access to each type of internship available in the UK today. An interesting question arises, then, *how* restricted access to each type is, on the basis of luck-based differences in personal resources. To answer this question accurately would require comprehensive data on precisely what personal resources enable people to gain access to the different available internships, how many people have them and how many do not, and the extent to which their having or not having them is a matter of luck. Unfortunately, such data are currently unavailable. However, it is still possible in their absence to conjecture which of the types of internship have the most restricted access and which the least. By making some empirical assumptions, we can make contingent conjectures regarding which types

of internship are likely to have the most unequal access. Doing so also clarifies how accurate judgements might be made, were the data available.

For the purpose of drawing some contingent conclusions, then, I make one uncontroversial assumption and four simplifying assumptions regarding what the empirical data would tell us were it to be gathered. First, I assume – uncontroversially, given background inequalities of wealth – that the greater the amount of money required to take up an internship, the fewer people will have the requisite amount. My next four assumptions hold a number of independent variables constant for the sake of argumentative simplicity and clarity. So, second, I assume that the amount of money required to fund unpaid interns throughout unpaid internships is held constant. (In actuality, this amount will vary according to the internship's location and duration, and perhaps other relevant factors.) Third, I assume that all internships sold at auction go for the same price. (Again, the actual prices of auctioned internships vary.) Fourth, I assume that all competitions for internships share the same eligibility and selection criteria. (As explained above, in reality competitions may employ a variety of eligibility and selection criteria.) Finally, I make the simplifying assumption that differences in personal resources are entirely a matter of luck, and so do not account for the influence of choice on developed abilities, social networks and wealth. (Of course, if the foregoing arguments hold, they show that, in fact, while those differences are to some considerable degree a matter of luck, they may also sometimes be influenced by choice.) On the basis of these five assumptions, I consider, first, which types of internship have the most restricted access on the basis of wealth (that is, which types require interns to have the most wealth). This generates an ordering of the different types of internship according

to how restricted their access is. Next, I consider the less straightforward matters of how access to the different types of internship is further restricted on other bases and how this affects their ordering.

Perhaps most obviously, when the distributive mechanism is held constant, wealth-based inequalities of access to unpaid internships are more pronounced than access to their paid equivalents. This is because more wealth is required to undertake an unpaid internship than a paid internship distributed by the same mechanism: in the absence of an income from internship work, interns must have an alternative source of wealth to fund their living expenses. Background wealth inequalities entail that the more wealth is required to undertake an internship the fewer people have access to it. Thus, holding the distributive mechanism constant, access to unpaid internships is more restricted on the basis of wealth than access to paid internships.

Looking more closely at access to the different types of internships, we can see that access to paid internships distributed by open competition, closed competition and nepotism is not restricted on the basis of wealth: lack of wealth does not directly prevent interns from being able to take up these types of internships. However, unpaid internships distributed by open competition, closed competition and nepotism require that interns have sufficient living expenses. Access to these is therefore more restricted on the basis of wealth than access to their paid counterparts. Paid internships distributed by open auction and closed auction also each require that interns have bidding expenses. Access to these is therefore more restricted on the basis of wealth than access to paid internships distributed by open competition, closed competition and nepotism. The question of whether access to unpaid internships distributed by open competition,

closed competition and nepotism is more or less restricted on the basis of wealth than access to paid internships distributed by open or closed auction depends on whether the price of an auctioned internship exceeds the amount of money required to fund a period of unpaid internship work (that is, on whether bidding expenses exceed living expenses). If so, paid auctioned internships have the more restricted access and, if not, unpaid internships distributed by open competition, closed competition and nepotism have the more restricted access. Wealth-based inequalities of access to unpaid internships distributed by open or closed auction are the most pronounced of all: whatever the cost of buying an internship at auction and the cost of living throughout a period of unpaid internship work, the cost of buying an internship *and* paying for living expenses for its duration, as a composite of both, exceeds it.

These considerations yield an ordering of the types of internship from those with the least restricted access on the basis of wealth, to those with the most. On the assumption that bidding expenses exceed living expenses, the ordering is as follows: access to paid internships distributed by open competition, closed competition and nepotism is the least restricted; access to unpaid internships distributed by open competition, closed competition and nepotism is more restricted; access to paid internships distributed by open auction and closed auction is even more restricted; and access to unpaid internships distributed by open auction and closed auction is the most restricted on the basis of wealth. On the assumption that living expenses exceed bidding expenses, unpaid internships distributed by open competition, closed competition and nepotism, and paid internships distributed by open auction and closed auction switch position. If bidding

and living expenses are equal, access to these internships is equally restricted on the basis of wealth.

But this ordering will be upset in ways that are not straightforward when we factor in how access to internships is restricted on bases other than wealth. Paid and unpaid internships distributed by closed auction require interns to know the right elite contact. If it is the case that some interns who have the requisite bidding expenses to buy an auctioned paid internship do not have the right elite contact to get into a closed auction, then access to paid internships distributed by closed auction is more restricted than access to paid internships distributed by open auction. Similarly, if it is the case that some interns who have the requisite bidding and living expenses to buy and undertake an auctioned unpaid internship do not have the right elite contact to get into a closed auction, then access to unpaid internships distributed by closed auction is more restricted than access to unpaid internships distributed by open auction. In other words, if only a subset of those with the wealth required to buy an internship at auction have an elite contact with access to closed internship auctions, ‘who you know’ plays a live role in restricting access to these internships. If (less plausibly, I think) all interns who have bidding expenses and all those who have both bidding and living expenses also have an elite contact who can go to bid at auction on their behalf, the fact that an internship auction is closed plays no live role in further restricting access to it. Access to paid and unpaid internships distributed by closed auction would then be no more restricted than access to paid and unpaid internships distributed by open auction, respectively. If (as I would tentatively assume) fewer people have bidding expenses and the right elite contact than have both bidding and living expenses, then access to paid internships distributed

by closed auction is more restricted than access to unpaid internships distributed by open auction (and vice versa).

How restricted access to internships distributed by nepotism is depends on how many people have a professional contact who can gift them an internship position. I suspect that access to nepotistic internships is extremely restricted, but there is no empirical evidence available that could confirm or rebut this suspicion. It is clear, though, that if some interns who do know the right professional do not have living expenses, access to nepotistic unpaid internships is more restricted than access to nepotistic paid internships. If, alternatively, all interns who might be gifted an internship also have access to sufficient living expenses to support a period of unpaid internship work, wealth does not play any live role in restricting access to nepotistic internships, which would have equally restricted access whether or not they were paid. However, without the relevant data, internships distributed by nepotism hold a somewhat ambiguous position in the ordering. That ambiguity extends to internships distributed by competition. Having the ability to successfully complete an internship may well be the most prevalent personal resource, such that more people have that ability than have bidding expenses, living expenses, elite contacts or professional contacts. But, again, such claims would require support from empirical data that, as yet, has not been gathered. We can say with some certainty that, holding application eligibility criteria constant, access to competitively distributed internships that employ discriminatory selection criteria is more restricted than access to competitive internships that employ selection criteria that select only for ability, if it is the case (as seems undeniable) that discrimination excludes people who would be able to successfully complete the internship. Similarly, closed competitions

have more restricted access than their open counterparts, holding selection criteria constant, as application eligibility criteria restrict who can apply (usually on the basis of ‘who you know’).

As acknowledged above, without the necessary empirical data, this analysis is necessarily conjectural. However, it is intended to demonstrate that while access to all types of internships currently available in the UK is delineated on the basis of factors that are, at least in large part, a matter of luck, access to some is likely to be much worse than others. To the extent that internship distribution generates unjust inequalities of outcome, luck egalitarians have reason to consider how those unjust outcomes can be prevented and redressed. When we come to consider internship regulation in the following chapter, we will see that luck egalitarians can recommend bespoke regulatory action to minimize luck-based inequalities of access, in particular by changing those aspects of the structure of internship schemes which function to restrict access the most severely, by advantaging those with the least common personal resources.

### **3.2.3 Internships and Expensive Tastes**

In the discussion above, I have been concerned with how luck-based differences in personal resources on the one hand and internship distributive mechanisms and lack of remuneration on the other function together to produce (more or less pronounced) luck-based inequalities of access to internships. But there is another question relevant to the luck egalitarian considering the justice of contemporary internships. That question concerns the costs of working as an unpaid intern or buying an auctioned internship and, specifically, whether it is fair for interns to bear those costs. Might the preference to buy

an internship at auction or work as an unpaid intern be a case of an ‘expensive taste’ and, if so, is it fair to impose the costs of satisfying that expensive taste on the intern?

On the metaphysical distinction between luck and choice, the costs of an action may count as chosen if they were foreseeable and avoidable. But, following Cohen and on the assumption that welfare is or constitutes part of the correct metric of advantage, it is yet unjust to impose those costs on the chooser if the choice was not *reasonably* avoidable. That is, the cost should be alleviated if the preference from which the choice follows is strongly identified with, such that to have refrained from making that choice would have *unreasonably* entailed ‘alienation from what is deep within them’ (Cohen 2004: 14, see also section 1.3.2.4). Considering individual interns who intern unpaid or buy internships, then, are the living and bidding costs they accrue chosen in the sense of being foreseeable and avoidable? If not, the metaphysical luck egalitarian must deem it unjust to impose those costs on the intern. If so, we must ask whether the costs were reasonably avoidable, without entailing alienation from a deeply identified with preference. If not, again imposition of the costs on the intern is unjust. But if so – if the intern could reasonably have avoided making the choice to intern unpaid or to buy an internship – that might constitute a case in which it is fair to impose the related costs.

First, are the costs of meeting living and bidding expenses foreseeable? I think the fairly straightforward answer to that is yes. At auction, the bidder knows at the time of bidding how much she is bidding for the internship. The costs are explicitly consented to at the time of purchase. Regarding living expenses during a period of unpaid internship work, it is reasonable to expect interns to work out in advance of taking up an unpaid internship what living expenses will amount to. The costs of meeting internship living and bidding

expenses are foreseeable, then. Are the costs avoidable? In the narrow sense of avoidability, absent considerations of the reasonableness of avoidability, it seems they are. No one is forcibly compelled to buy or take up an unpaid internship. Moreover, as long as there is some paid work available (either a paid internship or paid employment) that the intern could have taken up instead, we might be tempted to think the costs are reasonably avoidable. (In the absence of paid opportunities, we might think, however, that the intern could not have avoided accruing living costs by not interning. In this case the intern would have remained unemployed through no choice of her own and so would have needed her cost of living to be covered, perhaps by unemployment benefits. Bidding expenses are avoidable, but the cost of living must always be met.) But this does not take into account interns' preferences, which may render it unreasonable to expect them to take up other work. I assume here that interns undertake internships because they have a more or less deeply held preference to gain experience of what it might be like to work in a sector (that is, a preference to complete the internship itself), or because they have a more or less deeply held preference to gain paid employment in a sector, for which completion of an internship will advantage them (that is, an instrumental preference for an internship as a means to fulfilling their preference for gaining paid employment in a sector). Relatedly, I also assume that, in the standard case, it would be odd if accrual of the costs of interning were itself the subject of the intern's preference. It is the intrinsic or instrumental value of the internship that is the subject of the preference – not its being auctioned or unpaid.

Some preferences to intern may not be deeply held or identified with, such that the intern could reasonably make a different choice to gain paid employment. Some interns may

be able, without alienation, to school themselves out of their preference for internships that happen to be auctioned or unpaid, and to develop a less expensive preference for paid employment. If other paid work is readily available to the intern, we might consider her buying an internship or undertaking an unpaid internship to be a choice, responsibility for the costs of which may justly be imposed on her. But if – for example, in times of high unemployment – alternative paid employment is not readily available, it seems more unreasonable to require her to bear the costs of choosing to undertake internship work. What about when the preference for an internship in itself, for the experience and not merely as a means to a paid job, is deeply identified with? It is relevant here whether there is another paid internship available to the individual at no financial cost, that is otherwise of equivalent benefit to the individual. If so, the costs of interning unpaid or buying an internship are foreseeable and reasonably avoidable without any alienation. If not, the costs were foreseeable but not reasonably avoidable. But it seems highly likely that, were a paid and otherwise equivalent internship available at no financial cost to an individual, she would opt for that, rather than an unpaid or auctioned internship: if a less costly but otherwise just as good option is genuinely accessible, surely most would take it. Where the internship is itself deeply preferred, then, it appears unfair to impose bidding and living expenses on the intern. With regard to cases where the individual has a deeply held preference for a job, to which an auctioned or unpaid internship is the means, it is relevant whether there are equivalently valuable paid internships available at no financial cost, or accessible entry level jobs that would enable the individual to fulfil that preference without accruing bidding or living expenses. If so, the costs are reasonably avoidable without alienation: buying an internship or interning unpaid is not a necessary step to fulfilling the preference. But, if

not, buying or undertaking the internship is necessary to fulfilling the preference and avoiding alienation, and so the costs were not reasonably avoidable. Again, it seems highly unlikely that anyone would choose the more costly but otherwise equivalent option if less costly options were available. Thus, in these cases, it again appears unfair to impose the costs on the intern. Overall, then, assuming that welfare is (part of) the correct metric of advantage, the metaphysical approach will tend to view the imposition of living and bidding costs on interns as unjust: if we find something intuitively objectionable about unpaid and auctioned internships, that tells in its favour.<sup>106</sup>

Non-metaphysical approaches to luck egalitarianism differ in the way they assign responsibility for meeting the costs of expensive tastes. Most notably, Dworkin's identificationist approach assigns responsibility for meeting the costs of expensive tastes when and precisely because they are identified with. Dworkin thinks distributive justice requires people to bear the costs of satisfying reflectively endorsed tastes, because their

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<sup>106</sup> I specified above that interns, on my assumption, want to undertake internship work because they want to gain experience of what it might be like to work in a sector or to gain an advantage in competitions for jobs, and that it would be odd if the object of their preferences were the accrual of internship-related expenses. I suppose, however, that an intern might want to undertake an internship precisely because its expense makes it exclusive. That is, in Cohen's terms, she might want it for its 'snob value' (Cohen 2004: 20). Cohen suggests that such cases 'justify less sympathy' and, as such, 'justice should look less kindly on the proposition that' she be relieved of responsibility for those costs (Cohen 2004: 12, 20).

being reflectively endorsed means they are identified with by and form part of the personality of their bearer. As outlined in section 1.2.2.2, Dworkin holds that people should take consequential responsibility for the costs of choices that flow from their personalities, including the costs of satisfying preferences and fulfilling ambitions with which they identify. (Moreover, it may be the case that, on a Dworkinian approach, non-payment of interns could be conceived as part of the workings of the market and the upshot of others' preferences – namely, the preferences of managers to maximize profit – which should be respected.) These considerations suggest that Dworkin's identificationist approach to luck egalitarianism may permit the living and bidding costs required to undertake unpaid and auctioned internships to be imposed on the intern, when the preference to intern (or to get a job to which such internships are the means) is deep and identified with. If this is correct, and if we find something intuitively objectionable about unpaid and auctioned internships, I think it tells against the identificationist approach.

There is more ambiguity, on my reading, in Mason's attributivist approach with regard to assigning living and bidding costs on interns. On that approach, responsibility should be assigned for meeting the costs of preferences when and precisely because they are inside the space of rational agency. This suggests that bidding and living costs should be assigned to interns when their preference to undertake internships that happen to require these expenses (or to get a job to which such internships are the means) is deeply preferred and identified with. However, as we saw in section 1.2.2.4, Mason claims that he follows Cohen (1989, 2004) in holding that there are cases in which consequential responsibility for the costs of satisfying reflectively endorsed tastes that happen to be

expensive should not be imposed. He writes that ‘it would be unjust to require a person to bear the full costs of his choices when the expensiveness of those choices places a large burden on him and is due in significant part to some feature of his circumstances’ (Mason 2006: 188). Reducing consequential responsibility for such costs is particularly appropriate, Mason argues, whenever it would help to ‘prevent the demise of a cultural community when this would make it difficult or even impossible for its members (or some of them) to lead a life they can find meaningful’ (Mason 2006: 182). Indeed, Mason’s discussion of expensive tastes is very much focused on the imperative to avoid the demise of cultural communities and it is unclear whether he would recommend relieving responsibility for costs when imposing them would *not* put any cultural community at risk (see Mason 2006: 181-182). In other words, if we can take it as given that continuing to impose living and bidding costs on interns does not harm any cultural community, it is unclear (at least, on my reading) whether the attributivist approach would permit or require those costs to be relieved. While I have already rejected that approach for a range of reasons in section 1.2.4, I submit further that, if it does not relieve responsibility for living and bidding costs, it fails to capture the intuitive objectionableness of unpaid and auctioned interns, and that this tells against it.

## **Conclusion**

In sum, there are pronounced luck-based inequalities of access to all types of internship currently on offer in the UK. Competitions for internships select for the ability to successfully complete the internship and to ‘fit in’ with the organization and may also discriminate against applicants on the basis of their unchosen demographic characteristics. Access to internships distributed by nepotism, closed auction, closed

competition (where the internship is ‘advertised’ through word of mouth) and nepotistic competition is restricted on the basis of differences in personal social networks, or, ‘who you know’. Finally, auctioned and unpaid internships are available only to those who have or can acquire the necessary bidding and living expenses. To the extent that the relevant differences in people’s demographic characteristics, personal social networks, wealth and abilities are matters of luck, inequalities of access that track those differences are also matters of luck. On the luck egalitarian account of distributive justice, overall inequalities of outcome resulting from these luck-based inequalities of access to internships are unjust. If compensatory redistribution were the only regulatory strategy of luck egalitarianism, the account would recommend that internship-related inequalities of outcome be redressed *ex post*. However, on the pluralist approach to luck egalitarian regulatory strategies I outlined in chapter 2, luck egalitarians might instead recommend employment of levelling and direct structural regulatory strategies to prevent (*ex ante*) those inequalities of outcome from arising, at least to some extent, and provision of compensation (*ex post*) to redress any remaining inequality. In the next chapter, I consider what regulatory action to tackle internship-related inequality luck egalitarians might endorse.

## Internships:

### Luck Egalitarian Regulatory Proposals

#### Introduction

In the last chapter, I sought to illuminate how luck influences the distribution of contemporary internships in the UK. To the extent that inequalities of outcome are a function of inequalities of opportunity – including luck-based inequalities of access to internships – luck egalitarianism accounts them unjust. On a compensatory approach to luck egalitarian regulation, the regulatory response to this injustice would be to refrain from changing the way it is produced and to redress it *ex post* by providing compensation to offset any unjust disadvantage and imposing tax to offset any unjust advantage. However, if the arguments I presented in chapter 2 hold, luck egalitarians might advocate levelling and direct structural regulatory action to reduce (or prevent) injustice, in addition to (or instead of) redistributive compensation to redress it. In this chapter, I employ the pluralist approach to the regulatory strategies of luck egalitarian distributive justice to frame discussion of the different sorts of regulatory action luck egalitarians

might endorse in response to internship-related injustice, examining what internship regulation might look like in three different societies.<sup>107</sup>

In section 4.1, I consider what internships might look like in a much more ideally just society than our own. In section 4.2, I consider what forms regulation to tackle internship-related injustice might take in a less ideal society that is far more like our own. It is beyond the scope of this thesis to offer an all things considered judgement regarding which action or combination of actions should be taken on the balance of reasons. However, in section 4.3, I draw attention to how consideration of a number of relational egalitarian concerns tells in favour and against the various regulatory actions discussed in section 4.2 and, on the basis of those limited considerations, draw some tentative conclusions regarding the comparative desirability of the various regulatory options from a broadly egalitarian perspective. Finally, in section 4.4, I briefly consider what regulatory actions should be urged by luck egalitarians seeking to minimize internship-related injustice here and now in this non-ideal, decidedly unjust society.

Theoretical proposals for normative regulation must be clear about whether they constitute more or less ideal theory. As I outlined in the introduction of this thesis, I employ the account of more and less ideal theory developed by Stemplowska (2008) and Hamlin and Stemplowska (2012). This account states that the formation of normative

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<sup>107</sup> By ‘internship-related injustice’ I mean unjust advantages and disadvantages that are the result of luck-based inequalities of access to internships.

regulatory rules must take account of the relevant facts and circumstances, but that some of these may be idealized. Non-ideal theories make no idealizing assumptions about the facts but, rather, tell us which regulatory options from among the feasible set are desirable in light of the demands of the plurality of relevant values (Stempowska 2008: 326-329; Hamlin and Stempowska 2012).<sup>108</sup> Non-ideal theories of regulation are therefore (or, at least, should be) immediately feasible in the sense that they (should) set out how to reduce injustice, starting from where we are now. They propose regulation for society as it is. On the other hand, theories of regulation may also be more or less

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<sup>108</sup> As Swift notes, identifying the feasible set is a social scientific rather than a philosophical task. He writes:

Identifying the feasible set requires careful description of existing states of affairs – to judge well where we can realistically hope to get to from here we need to know precisely where we are – and predictions – with probabilities and timescales – about the likely effects of any things we might do, collectively or individually, to change them, which itself requires adequate understanding of social mechanisms and causal processes. (Swift 2008: 370)

Thus, he concludes, ‘it is for social science to tell us which states of affairs are feasible and how to achieve them’ (Swift 2008: 364). I would add that, in addition to social scientific considerations, insights from political science, social psychology, economics and applied law may also be required to identify the feasible options.

ideal, depending on the extent to which they idealize pertinent facts: the more facts are idealized, the more ideal the theory is (Stemplowska 2008: 326-329, Hamlin and Stemplowska 2012: 52-58). Thus, more or less ideal theory may absent certain feasibility constraints. Summarizing these ideas, Hamlin and Stemplowska write:

we conceive of less-ideal theory as aimed at identifying short-term reforms that take seriously the feasibility constraints that bind here and now, while conceiving of more-ideal theory as aimed at identifying long-term reforms that become relevant if feasibility constraints relax (Hamlin and Stemplowska 2012: 59)

I also draw a distinction between deep (or ‘possible worlds’) and sociological (or ‘Panglossian’) feasibility (Hamlin and Stemplowska 2012: 60). Implementation of deeply infeasible proposals would require, in the terms Stemplowska (2008) borrows from Parfit, ‘a major change in the laws of nature, including the laws of human nature’ (Parfit 1984: 388). If a proposal requires the laws of physics to be upturned, or requires ‘us to change into fundamentally different creatures’, it is deeply infeasible (Hamlin and Stemplowska 2012: 57). Sociological feasibility constraints, on the other hand, concern those contingent and at least potentially changeable constraints on what may be practically achieved, starting from where we are now and given the current status quo. In short, ‘this almost-Panglossian approach to feasibility takes very seriously the limitations that may be imposed by individual character and social arrangements’, including, for example, contemporary technological capabilities, even when such contingencies are liable to change (Hamlin and Stemplowska 2012: 56).

## **4.1 Internship Regulation in a More Ideal Society**

First, then, I consider what internships might look like in a much more (though not entirely) ideally just society. It might be thought that internships inevitably produce distributive injustice or that they should have no place in a just society. My aim is to demonstrate that that is not the case and to show how internships could work in accordance with the luck egalitarian ideal. I account for deep but not certain sociological feasibility constraints and make various idealizing assumptions, from which emerges an idealized picture of internships. The proposals therefore fall somewhere on the more ideal end of the spectrum of more to less ideal theory: they are deeply feasible, as they require no change in the laws of nature, but they are not immediately practically achievable or intended for immediate implementation. The utility of regulatory proposals *for internships* seems to me severely diminished if implementation of those proposals is not (even) deeply feasible.<sup>109</sup> In any case, I will not propose here any regulation, the implementation of which would require the laws of physics to be upturned or humans to turn into fundamentally different creatures. Clearly, however, I do not judge sociological feasibility to be a constraint that must always be applied to regulatory proposals. The status quo can change: attitudes can (sometimes quite suddenly) become receptive to once-radical ideas and technology is developing rapidly. Our philosophical imaginations should be free to consider possible worlds in which a

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<sup>109</sup> That is not to claim, however, that there is never any value in developing regulatory proposals that are not deeply feasible (see, for example, Stemplowska 2008: 329).

variety of things are different from how they currently are and this radical capacity should not invariably be constrained by a necessity to know that we could definitely get there from where we are now. In addition to idealizing certain sociological facts, I also absent consideration of the demands of other values. I am interested here in what luck equality demands in relation to internships and therefore do not account for any potential objections to this account of internship regulation that might be raised in light of the demands of other values.

#### **4.1.1 Job Equality**

First, I assume that there would be no difficulties in implementing and securing widespread compliance with the regulatory proposals (or that any difficulties could be overcome). The second central idealizing assumption I make is that what Segall terms ‘justice in jobs’ (and what I will term ‘job equality’) holds (Segall 2012a: 40). Internships are a (contingent) part of working life and, as such, the circumstances and facts that are relevant to the luck egalitarian planner’s decisions regarding how best to implement ideals of equality as they pertain to internships include the configuration, allocation, and pecuniary and non-pecuniary benefits of jobs. Segall claims that in a luck egalitarian society jobs would provide all workers with equal pecuniary and non-pecuniary job benefits. He writes:

Suppose that all jobs pay an equal salary, and [...] that all jobs are equally good, *also* in their non-pecuniary aspects. In fact, this seems to me to be what an egalitarian conception of justice in jobs (to be distinguished from justice in hiring) would, in any case, recommend. (Segall 2012a: 40).

If all jobs were equal in their pecuniary and non-pecuniary benefits, such that what I term job equality holds, the fact of people having different jobs would not itself constitute or create any distributive inequality. As the distribution of jobs would not create any inequality, it would create no unjust, luck-based inequality. I share Segall's judgement that job equality is (or, more precisely, *can* be) recommended by luck egalitarian distributive justice, but I should acknowledge that his account remains only briefly sketched out: he gives only the above concise statement of his interpretation of justice in jobs and does not provide reasoning or justification for it. It is not my intention here to provide a fuller account or justification of that idea. To be sure, it may not be the only possible luck egalitarian account of justice in jobs. But I assume here that it is one plausible account and that it therefore provides one good starting point from which to question what internships would look like (if, indeed, they would exist) in a – that is, in one possible – more ideally just society.

That said, the arguments I presented in chapter 2 do suggest a possible reason to endorse job equality. As I argued, there is no reason of justice necessarily requiring us to privilege what Vallentyne terms 'the pre-coercive-redistribution – or "natural" – payoff structure' and then compensate individuals for the luck-based costs and benefits they accrue (Vallentyne 2002: 550). We might, instead, alter the distribution of benefits and burdens that accrue to people *ex ante* redistributive compensation, so as to make that original distribution insensitive (or less sensitive) to their luck. If it were the case that jobs had unequal pecuniary and non-pecuniary benefits such that their distribution created overall inequalities of outcome, but the distribution of jobs was entirely luck-neutral and choice-sensitive, the inequalities of outcome created by job distribution would be chosen.

However, this possibility seems implausible: if who got what jobs depended in part on people's abilities, and if (as I argued in section 3.2.1.2) differences in ability were inevitably a matter of luck to some degree (particularly in the absence of extensive educational reform), job distribution would be influenced by luck. On a compensatory approach, compensation would be provided to offset any overall luck-based inequalities of outcome, including those resulting from job distribution. However, actually determining the extent to which luck on the one hand and choice on the other influenced the unequal outcomes created by job distribution and other distributive processes – and thus how much compensation would be due – would present what Dworkin terms the 'strategic problem' (Dworkin 2000: 324-325). Even given agreement on a working theory of causality, in the absence of full information regarding the history of luck and choice in an outcome, the luck egalitarian planner will face hefty – and perhaps insurmountable – problems in identifying the precise levels of compensation required to offset luck-based inequality. An alternative regulatory approach that avoids that strategic problem is available to luck egalitarians who embrace the pluralist approach to luck egalitarian regulatory strategies I advocate. On the alternative approach, job benefits might be arranged so that the distribution of jobs had no egalitarian influence on outcomes. If job distribution is inevitably influenced by luck and it is impractical to determine the extent of that influence (and thus the appropriate level of compensation required to fully offset the resulting luck-based inequalities of outcome), another way of ensuring no luck-based inequalities of outcome ensue is to prevent job distribution from creating *any* inequalities of outcome. In other words, to avoid the strategic problem, luck egalitarians might recommend job equality. Further support for this kind of response can be found within Barry's work. He writes:

The effects of luck are so pervasive that, if we are unable to make judgments about individuals on a case-by-case basis, we should adopt a general presumption in favor of equality of outcome.

Absent more detailed information, we should assume that any inequalities in income and wealth are the result of luck rather than genuine individual choice. This may produce some injustice, redistributing resources towards those who are responsible for being worse off than others, but the pervasive nature of luck means that this is the most reliable second-best strategy for implementing the theory. (Barry 2008: 147)

Job equality is, of course, somewhat of a heavy-handed response in the sense that, in neutralizing the inegalitarian influence of luck in the sphere of employment, it also neutralizes the inegalitarian influence of choice. But this is not necessarily *unjust*: it is not a matter of taxing chosen advantage and compensating chosen disadvantage. Rather, it is more accurate to say that implementation of job equality adjusts the consequences of different choices within the sphere of employment, such that those consequences are no longer unequally costly or beneficial. As I argued in chapter 2, while luck egalitarianism imposes responsibility for the consequences of genuine choice, luck egalitarians are not compelled to accept that those consequences should be wholly determined by an unfettered free market. Nonetheless, in the absence of a full justification for equal job benefits, I frame my discussion here in conditional terms. To be precise, therefore, I am asking: *if* it is the case that luck egalitarian distributive justice recommends job equality, what does that mean for internships? Given job equality, would there be any reason for

internship schemes to exist and, if so, what would internships look like and how would they be distributed?

Before responding to those questions, I want to examine in more detail what it means for jobs to be equal in their pecuniary and non-pecuniary benefits. Segall takes a welfarist approach to the currency of distributive justice but, on a resourcist approach, to say that jobs should provide equal pecuniary benefits is to say they should pay equal salaries. With regard to non-pecuniary job benefits, these matter to distributive justice only inasmuch as they influence people's resources. If they do not influence levels of resources, they are not benefits in the sense that matters to distributive justice. So, for example, if the resources that constitute people's outcomes include internal resources such as skills and abilities, the influence on these of non-pecuniary benefits such as training and skill development matters. Inasmuch as non-pecuniary job benefits (including, perhaps most significantly, job satisfaction) do not constitute or influence people's levels of resources, their distribution is not a matter of justice on the resourcist approach. On a welfarist approach, equality of job benefits entails all jobs having an equal beneficial influence on workers' levels of welfare. Segall's welfarist approach, as we saw, recommends equal salaries. I would point out, however, that, as people have different welfare functions, providing them with the same salary may not entail that the pecuniary benefits of jobs have an equal influence on their welfare: different people generate different levels of welfare with the same amount of money. (In other words, some are 'easier to please' with money than others.) Thus, if salaries are to have no inegalitarian influence on welfare, they may require to be unequal. A similar point can be made in relation to non-pecuniary job benefits. Some people may gain welfare from

skill development but not teamwork, others from teamwork but not independent working, and so on. Given that different people will find different things beneficial to their welfare, diversity of job roles seems required for all to be equally benefitted in non-pecuniary terms by their jobs. Moreover, whatever metric of advantage is favoured, if Segall is right that both pecuniary and non-pecuniary job benefits should be equal, this entails that the influence on outcomes of both variables should be held constant. That is, extra pecuniary benefits cannot ‘make up for’ a deficit in non-pecuniary benefits, and *vice versa*. Thus, job equality holds that jobs should have an equal overall influence on outcomes, but that influence breaks down into two parts – the influence on outcomes of pecuniary benefits on the one hand, and the influence of non-pecuniary benefits on the other – *each* of which should be equal.

I mentioned in section 2.1.3 that, although Segall claims that ‘justice requires compensating individuals only for disadvantages for which one cannot be held responsible’, his proposals for luck egalitarian regulation extend beyond *ex post* redistributive compensation as I define it (Segall 2007: 177). His approach to regulating the distribution and benefits of jobs demonstrates this. Implementation of the job equality Segall envisages would undoubtedly require regulatory action falling into the category of direct structural regulation to be undertaken. Ensuring salaries were equal (or, equally beneficial) would require direct structural regulation – legal remuneration requirements – to compel employers to pay the equal salary. Admittedly, *income* equality (or, equally beneficial income) might be achieved through an *ex post* compensatory strategy. This would permit some inequalities of pay (or, inequalities in the benefit people receive from pay), but then tax and compensate to the point of equality. (On any

currency that involves a welfarist element, redistributive compensation would, of course, have to account for any welfare costs – dignitary harm, for example – consequent on receiving compensation rather than pay, should any arise.) But Segall recommends *salary* – not income – equality, which demonstrates his support of the view that direct structural regulatory action can be employed to adjust the original distribution of benefits and burdens *ex ante* redistribution. Arranging jobs so that they provide workers with equal non-pecuniary benefits would also seem to require direct structural regulation: for example, regulatory action targeting the content of job roles, to ensure the non-pecuniary benefits of all jobs have an equal influence on workers' outcomes. As I explain in section 4.2 below, Segall also makes recommendations for direct regulation of job allocation processes to achieve what he terms 'justice in hiring'. Although I do not agree with all of Segall's arguments, I certainly view it as a virtue of his approach to luck egalitarianism that it recommends regulatory action falling outside the category of redistributive compensation.

#### **4.1.2 Internships Given Job Equality**

If job equality held, would there be any reason for internships to exist or would they simply become obsolete? If the latter, the question of their regulation becomes moot. It is clear that undertaking an internship would not improve future opportunities for job-related advantage, as job prospects would in any case be equal. The value of undertaking an internship as a means to secure higher pecuniary and non-pecuniary job benefits in future would thus be eliminated. However, they might yet remain in demand for other reasons. Internships might still be in demand if they enabled people to make more informed choices about what sort of career to pursue and to thereby increase the

likelihood of future job satisfaction. On a welfarist approach, then, internships might even have a role to play in supporting job equality. If luck egalitarian distributive justice requires that jobs provide workers with equal non-pecuniary benefits (such as, for example, job satisfaction) then it seems, as I mentioned above, that it would require job roles to be diverse in order to ensure that different people, with their different welfare functions, could all undertake equally beneficial work. However, if there was a lack of clarity regarding what kind of role would benefit a person up to the level of equality, undertaking an internship might enable a job role appropriate for that person to be identified. (By ‘appropriate’, I mean a job that would be as beneficial to the person, in non-pecuniary terms, as others’ jobs were to them.) Even on a resourcist approach, there might be a reason external to luck egalitarianism for internship schemes to serve this purpose: namely, if there is an independent reason to care about the absolute level of welfare in society, having internship schemes in place that effectively enable people to identify satisfying jobs would be desirable. But would employers have any reason to supply them? Internship schemes might still be useful to employers as a mechanism through which to identify suitable recruits for longer-term employment, which might be valuable, for example, if it served economic efficiency and organizational harmony. Given that the rationales for the supply and demand of internships would be to enable interns to make informed judgements regarding their careers and employers to make informed judgements regarding employee recruitment, internship schemes should be arranged so that those objectives could be met. Thus, there would be a focus on providing interns with experience of a range of tasks to give them an understanding of different roles and to enable employers to form an impression of how well they were doing. This would entail, as with most contemporary internships, that interns would

actively contribute to the core work of the organization. Internships would also be short-term: just long enough to usefully inform interns' and employers' decisions. Thus, two central differences between internships and jobs would standardly be their duration and the focus on task diversity.

If there are, then, reasons to keep internships in a more ideal society exhibiting job equality, what regulation would be required to ensure the distribution of internships did not upset luck egalitarian distributive justice? Luck egalitarianism is concerned with internships as they affect outcomes and opportunities, that is, as they influence current levels of advantage and future opportunities for advantage. As we have seen, undertaking an internship would not improve interns' future opportunities for advantage within the sphere of employment, as equality of job benefits (or job-related advantage) would be guaranteed in any case. But what about their immediate influence on interns' current levels of advantage? Internships would still be relevant to distributive justice in respect of their influence on current outcomes, that is, in respect of the immediate costs and benefits of undertaking them. In a society in which, for reasons of justice, all (non-intern) workers were equally benefitted by their jobs, would there be any egalitarian justification for inequality between interns and workers? I do not see why there should be. If it were desirable for internships to be part of the world of work either for welfarist luck egalitarian reasons or for non-egalitarian reasons to do with the absolute level of welfare, economic efficiency and organizational harmony, there seems no reason of distributive justice to introduce inequality between interns and workers, that is, no clear reason that tells in favour of treating interns and workers unequally for the purposes of distributive justice. Indeed, there seems potentially to be a positive reason of distributive

justice to maintain equality between interns and workers. However, this reason rests on a theoretical premise, and an empirical premise that might not hold under all circumstances. The theoretical premise is as follows. As luck should not have an egalitarian influence on outcomes, if it is a matter of luck that some people become interns while others become workers, there is a reason of distributive justice to equalize benefits to interns and workers: the more it is a matter of luck, the weightier the reason. If interns could reasonably choose to work in a job providing them with benefits equal to those of other workers, becoming an intern appears a matter of reasonably avoidable choice. However, I suggested above that, given job equality, people would become interns due to a lack of clarity regarding what sort of job role would provide them with appropriate non-pecuniary benefits. In which case, we might *not* think of becoming an intern as a *reasonably* avoidable choice. The alternative would be to risk working in an inappropriate job. That said, I acknowledge that if that lack of clarity were the upshot of genuine choices – for example, to shun other available opportunities to become informed about career options – this would weaken the luck egalitarian case for equality of benefits between internships and jobs. Equality of internship and job benefits would thus rest on the empirical premise that people do not tend to make genuine choices to be uncertain – rather than certain – about what kind of work would be beneficial for them to pursue. If that premise were false, the case for equality would be weakened.

Equality of pecuniary benefits between internships and jobs would require interns and workers to be paid equally advantaging salaries. Ensuring equal non-pecuniary benefits might be more complex, particularly on a welfarist approach, given the specification that interns would become interns precisely to find out what kind of role would provide them

with non-pecuniary benefits at the level of equality. In other words, if interns were unsure before beginning their internship what sort of work they might find satisfying, ensuring their internship work was satisfying might not be straightforward. An intern might begin an internship only to find that she did not find the work satisfying. Nevertheless, the design of internship schemes might take this in to account, offering varied and dynamic work designed to be as satisfying and informative as possible. Moreover, if undertaking a short period of inadequately satisfying internship work were, in fact, informative and beneficial in the sense that it enabled the intern to identify work that would be more satisfying, it might perhaps be acceptable.

#### **4.1.3 The Distribution of Internships Given Job Equality**

If the case for equality of internship and job benefits were successful and interns were neither advantaged nor disadvantaged relative to workers, would luck egalitarianism impose any requirements on the distribution of internships? It might be thought that if interns' benefits were equal to workers' benefits, how internships were distributed would not be a question of distributive justice. This is because inequalities of access would entail neither immediate inequalities of outcome nor (given job equality) future inequalities of opportunity. In that case, luck egalitarian distributive justice would impose no regulatory requirements on their distribution. This seems a reasonable conclusion to draw, at least at first glance.

On the other hand, there might be a reason – though perhaps quite a weak one – to regulate the distribution of internships, even if that distribution had no inegalitarian influence on outcomes. Internships are weighty goods in the sense that accrual of internship-related benefits has a significant influence on people's overall levels of

advantage. That is, even where the influence on outcomes of undertaking internships (and jobs) is held constant across individuals, it is still a significant influence. Moreover, on the approach specified above, internships would form important parts of people's life plans: people would want to undertake internship work in order to find appropriate jobs. In section 2.3.3, I suggested that luck egalitarianism may provide a (defeasible) reason in favour of luck-neutral access to such weighty, important goods. If luck egalitarians are committed to enabling a certain kind of self-determination because they hold that relative outcomes should be a function of choice (such that people determine for themselves how *well* their lives go), they might also be concerned with people's ability to be self-determining in the broader sense of choosing *how* their lives go, or, how they accrue advantage. Accordingly, a luck egalitarian concern with self-determination broadly construed might motivate a position according to which access to weighty and important goods should not be influenced by luck because when people are excluded from access to such goods on the basis of luck their self-determination (in the sense of choosing how their lives go) is compromised. Thus, as internships are weighty and important goods, there might perhaps be a reason to regulate their distribution to ensure equal access. However, given that the distribution of internships would create no distributive inequality, that reason appears weaker than it otherwise might. In other words, unequal access to weighty, important goods seems less objectionable on luck egalitarian grounds if no (rather than some) inequality of outcome results, even if it does curtail people's ability to choose how their lives go.

Moreover, it seems reasonable to think that, given job equality, the appropriate mechanism through which to distribute internships should be informed by the rationale

for running internship schemes, which is to enable interns to identify desirable work and employers to identify desirable workers. In other words, the distribution of internships should enable those two goals to be met. This would seem to entail that ability (but not demographic characteristics, personal social networks or wealth) might influence internship distribution, as employers are likely to want to identify able workers. There might also be other reasons external to distributive justice for the distribution of internships to be somewhat sensitive to ability, even if ability is in part a matter of luck, which may trump the weak luck egalitarian reason in favour of a luck-neutral distribution. Perhaps, for example, economic efficiency and sustainability depend on the core work of organizations, to which interns contribute, being done competently. Accordingly, where internship distribution respected the properly balanced demands of the plurality of relevant values, it would not track luck, except inasmuch as a characteristic that was (at least in part) a matter of luck constituted a justified reason to hire an intern, on the balance of relevant considerations. This would entail that access to internships might not be fully luck-neutral, but that the value of luck equality would be given its proper weight, such that any luck-based inequalities of access would be justified on the balance of reasons.

In sum, in a society exhibiting job equality, appropriately designed internship schemes would be useful to and valued by both interns and employers. On a welfarist approach, they may even have a role to play in securing job equality. I think there is a case for equality between interns and workers, and that there may also be a case for minimizing luck-based inequalities of access to internships, though this latter case may be quite weak. In short, I think it valuable to acknowledge that internships could be a good thing in a

more ideal society. But, of course, the question of how to respond to internship-related injustice in today's society is quite another matter. It is to that question that I now turn.

## **4.2 Internship Regulation in a Less Ideal Society**

The society we inhabit is one in which job equality seems somewhat of a distant dream. Pronounced inequalities of pecuniary and non-pecuniary job benefits persist and, in addition, significant inequalities of opportunity for advantage (including job-related advantage) continue to be a feature of contemporary life.<sup>110</sup> The distribution of internships, as we saw in chapter 3, contributes to this inequality of opportunity by restricting access to an important route into employment in many professional sectors on the basis of demographic characteristics, personal social networks, wealth and abilities. In this section, I consider what regulatory action to tackle internship-related injustice luck egalitarians might endorse, given the current configuration and distribution of jobs and contemporary background inequalities. That is, I ask what action a regulatory agency might take in response to the unjust inequalities of outcome that are produced in and through the distribution of internships, starting from where we are now. I treat deep feasibility as a constraint on the regulatory proposals, which is to say that implementation

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<sup>110</sup> Secondary research by The Equality Trust indicates that the 'UK has the 7th most unequal split of incomes out of 34 countries in the developed world' (The Equality Trust 2014), and a report published by the Institute for Fiscal Studies notes that in 2009-10 the Gini coefficient measure of overall income inequality in the UK 'was at its highest level since at least 1961' (Jonathan Cribb et al. 2012: 2).

of the regulatory actions I consider would not require the laws of nature to be broken or humans to turn into fundamentally different creatures. However, I idealize certain facts to do with the practicalities of implementation in order to absent consideration of a number of sociological feasibility constraints: namely, I do not treat as constraints on the proposals those obstacles to implementation that might arise from legal technicalities in changing the law, a lack of political will to implement policy, and issues with gaining compliance with the spirit of the law. I make the idealizing assumption that any such obstacles could be overcome.<sup>111</sup> Thus, the regulatory actions I consider are not necessarily immediately sociologically feasible, but neither are they entirely fantastical: they constitute actions that might well become entirely feasible with sufficient legal ingenuity and political and public support.

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<sup>111</sup> To illustrate, perhaps one of the most significant implications of these idealizing assumptions is that I assume internships can be kept distinct – in law and in practice – from work experience and volunteering. One concern with implementing regulatory action to tackle internship-related injustice is that organizations might simply re-label internships in an attempt to circumvent any new standards applying to their distribution and remuneration, maintaining them unchanged in all but name. That is, there may be technical issues with drawing up legislation to keep the three sorts of placement distinct and problems with ensuring that organizations comply with the spirit of the law. That said, a report from CIPD makes a number of suggestions regarding how these particular obstacles might be overcome (CIPD 2010c: 13).

In chapter 3, I demonstrated that aspects of the structure of internship schemes interact with background differences in demographic characteristics, social networks, wealth and ability to create inequalities of access to internships. Other things equal, to the extent that those differences are a matter of luck, the advantages and disadvantages produced in and through the distribution of internships are unjust. At the level of regulation, luck egalitarians might respond to internship-related injustice by recommending a strategy of *ex post* redistributive compensation. On that approach, internship schemes and background differences, and thus inequalities of access to internships, would remain as they are, but compensation would be provided to offset any unjust overall advantages and disadvantages, including those that are a function of luck-based inequalities of access to internships. Alternatively, on the pluralist approach to regulatory strategies I advocate, luck egalitarians have the option to recommend strategies of prevention in addition to or instead of strategies of redress. That is, they might endorse regulatory actions falling into the categories of levelling and direct structural regulation, which aim to reduce or prevent unjust inequalities of outcome by reducing or removing inequalities of opportunity for internship-related advantage, *ex ante* any compensatory action. Levelling would aim to adjust the relevant differences in people's personal resources (that is, those unchosen differences that, given the structure of internship schemes, yield inequalities of access to internships), while direct structural regulation would aim to change the structure of internships so that those differences no longer counted for anything (or counted for less) in internship distribution. In what follows, I will seek to demonstrate that, in addition to redistributive compensation, a range of luck egalitarian regulatory actions falling into the categories of levelling and direct structural regulation

might be employed in response to internship-related injustice, and to outline what the alternative regulatory actions would consist in.

Before outlining the range of regulatory actions luck egalitarians might recommend in response to internship-related injustice, I will briefly recapitulate how the different forms of luck influence access to internships. I observed in section 3.2.1.1 that competitions for internships may discriminate against applicants on the basis of their demographic characteristics. Thus, access to paid and unpaid internships distributed by open and closed competition may be delineated on the basis of characteristics such as gender, ethnicity, sexuality, and disability, wherever competitive selection criteria are influenced by the conscious or unconscious biases of selectors. I also noted that people with physical impairments that restrict their mobility may not be able to undertake internships (of any type) that are located in inaccessible premises. Moreover, as discussed in section 3.2.1.3, access to internships can also be restricted on the basis of ‘who you know’. That is, given differences in people’s personal social networks, the distributive mechanisms of some types of internship function to create network-based inequalities of access. Most obviously, access to paid and unpaid internships distributed by nepotism – that is, to internships that are gifted outright to an intern by a professional contact – is only open to those who know and who have the right sort of relationship with the right professional contact. In addition, access to paid and unpaid internships distributed by closed auction is only open to those who know someone (an elite contact) who is invited to and who is willing and able to attend and place the winning bid at a closed internship auction. Access to paid and unpaid internships distributed by closed competition is also restricted on the basis of ‘who you know’ wherever applications are ‘advertised’ through word of

mouth. In these cases, only those whose personal social networks include someone who tells them of the available internship position will hear about it and thus be able to apply. Finally, differences in the social networks of applicants to paid and unpaid internships distributed by open competition can also influence access to those internships, where the competition is rigged by a nepotistic interest. That is, where competitive selection criteria favour applicants who are part of the personal networks of professionals within the organization offering the internship over applicants who are not so well-connected, treating the connection as a kind of qualification. Further, as we saw in section 3.2.1.3, when internships are distributed by auction or are unpaid, access is delineated on the basis of wealth. Bidding expenses are required for access to all paid and unpaid internships distributed by open and closed auction, and living expenses are required for access to all unpaid internships, regardless of their distributive mechanism. Indeed, of the ten types of internships I examined, only paid internships distributed by nepotism and paid internships distributed by competition do not have access directly restricted on the basis of wealth. Finally, as discussed in section 3.2.1.2, access to paid and unpaid internships distributed by open and closed competition is restricted on the basis of ability. As competitive selection criteria select for the ability to successfully complete the duties attached to the internship position and to ‘fit in’ with the organization, access to competitive internships is delineated on the basis of such ability. To the extent that the relevant differences in people’s demographic characteristics, personal social networks, wealth and abilities are a matter of luck, inequalities of access that track those differences are also a matter of luck, and so too are the advantages and disadvantages produced by the distribution of internships. In what follows I ask, given that luck egalitarians are concerned to ensure that overall inequalities of outcome are luck-neutral,

what regulatory actions might be recommended in response to unjust advantages and disadvantages that are a function of luck-based inequalities of access to internships?

#### ***4.2.1 The Compensatory Approach***

On a compensatory approach to luck egalitarian regulation, the way that the original distribution of benefits and burdens is produced is left unchanged. The various forms of luck that currently influence internship distribution would continue to be permitted to play out and people would continue to be excluded from access to internships on the basis of demographic characteristics, networks, wealth, and ability. However, any overall disadvantage that results would be compensated. To be precise, any luck-based advantages and disadvantages accruing to people as a result of internship distribution (for example, any disadvantage resulting from missing out on an internship due to discrimination) would be summed with their other luck-based advantages and disadvantages, and any overall luck-based relative disadvantage would be offset through provision of the appropriate amount of money. Similarly, any overall luck-based relative advantage would be taxed away.<sup>112</sup>

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<sup>112</sup> I said in the introductory paragraphs of section 4.2 that I would treat deep feasibility as a constraint on the regulatory proposals I considered. But there may be cases in which internship distribution results in an ‘off the chart’ and thus noncompensable deficit in advantage. Imagine, for example, that as a direct result of racist bias influencing recruitment to competitive internships, someone is excluded from the only available route into her desired career, loses much of her self-respect and becomes inconsolably depressed. On a welfarist approach to the

The standard luck egalitarian view is that the costs of providing such compensation should be covered by the state. There is, however, a plausible reason to think that, in some cases, it is inappropriate for those costs to be socialized. Steiner argues for a left-libertarian view of distributive justice that is similar in many respects to the account of luck egalitarian distributive justice I favour. Both accounts agree that people should be held responsible for the costs of their own choices, but relieved of responsibility for costs that accrue to them through no choice of their own. As we saw in section 1.1.1, Steiner raises the important point that those costs are not always *entirely* unchosen: some are the direct result of choices made by a third party. Thus, Steiner draws a distinction between two different sorts of cost that accrue to a person through no choice of her

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currency of egalitarian justice, there may be no amount of compensation that could enable her to successfully pursue other sources of welfare. For example, Knight's welfarist view takes self-respect to be an element of advantage (Knight 2009a: 132). If Roemer is correct in his assertion that 'income can substitute for self-esteem, as inputs in a person's production of welfare, to only a limited extent' (and if self-respect and self-esteem are, here, synonymous) then it is possible that provision of financial compensation to the discriminatee may be insufficient to neutralize the disadvantage she faces (Roemer 1998: 61). (I noted in section 2.3.1 that employing strategies of prevention – that is, levelling and direct structural regulation – might enable many such non-compensable disadvantages to be avoided.) Nonetheless, it seems reasonable to think there would be many cases in which disadvantage resulting from the distribution of internships could be compensated: if so the policy would be effective in *reducing* unjust inequalities, even if it could not, on its own, eliminate them entirely.

own: those that accrue to her through no choice of anyone's and those that accrue to her a result of the choice or choices of a third party. Once this distinction is acknowledged, it becomes clear that the standard luck egalitarian recommendation that society redress *all* costs accruing to a person through no choice of her own entails, in effect, alleviating responsibility for the costs of choice, where those costs fall on others. This is in tension with the luck egalitarian commitment to 'the requirement that persons be held *responsible* for the adverse consequences of their own actions' (Steiner 1998: 97, original emphasis). Steiner suggests that proper consideration of this *responsibilitarian* commitment in fact motivates the position that when someone's choice creates unchosen costs for another, the chooser (and not society) should be responsible for redressing those costs. Society should redress only those costs accruing to individuals through no one's choice. He writes, 'Society is not held responsible for the injuries that *some* of its members' choices inflict on others' (Steiner 1998: 109, original emphasis). Instead, regulatory arrangements should compel 'harmers alone to bear the full costs of compensation' that is provided to redress the costs to those they harm (Steiner 1998: 103). Steiner's view is grounded in a left-libertarian theory of historic entitlement, but the central insight expressed above is at least compatible with the *responsibilitarian* concern at the core of luck egalitarian theory. Indeed, it seems not merely to be compatible with but to follow from Dworkin's insistence that 'people pay the true costs of the lives they lead' – the true social costs of their choices – that they should pay for the costs their choices impose on others (Dworkin 1981: 295). Thus, the central luck egalitarian claim that people should be held responsible for the consequences of their choices might be clarified to specify that those consequences include not only costs that fall on themselves, but also those that fall on others.

If this point holds, it has implications for who should pay the costs of compensation for disadvantage that is unchosen by the disadvantaged person: namely, rather than paying all costs that accrue to individuals as a matter of luck (for them), a regulatory agency would pay only those that are as a result of no one's choice, while enforcing payment of compensation from those whose choices creates costs for others to those others, to redress the costs. What ramifications does this have for the discussion of internship regulation? First, it raises the possibility that organizations may be responsible for the costs they impose on their interns. The individuals who design internship schemes within an organization might be understood as agents of their principals, that is, of the shareholders of the organization. On this reading, inasmuch as those individuals act with the authority delegated to them by shareholders, shareholders should be held liable for the costs their decisions impose on others. It follows from this that, were *ex post* compensation to be provided to offset disadvantage resulting from, for example, discriminatory recruitment to an internship, the costs of that compensation would not be socialized but, rather, would fall on the organization that engaged in discriminatory practices. A regulatory agency would enforce the transfer. In other words, where people are disadvantaged through no choice of their own and as a direct result of choices made by organizations, those organizations may be held responsible for the costs of compensating that disadvantage.

#### **4.2.2 Levelling Approaches**

Alternatively, luck egalitarians might endorse regulatory action that prevents the unjust advantages and disadvantages that are a function of luck-based inequalities of access to internships from arising in the first place, by removing those inequalities of access. On

a levelling approach, regulatory action would leave the structure of internship schemes intact, but attempt to level those luck-based background differences that, given the structure of internships, give rise to inequalities of access.

How might levelling work as a response to inequalities of access to internships resulting from discrimination on the basis of demographic characteristics? In short, it would level luck-based differences in demographic characteristics that are treated differently in recruitment. But this seems deeply infeasible, at least in the cases of gender, ethnicity and sexuality. Nonetheless, for the sake of completeness, before rejecting it I will briefly outline what a levelling approach would seek to achieve. For present purposes, discrimination is a function of how demographic characteristics are treated within processes of internship recruitment: different characteristics are treated differently (for example, cis female gender may be treated less favourably than cis male gender, and so on). A levelling approach would act on individuals themselves to remove the differences that are taxonomized into categories of gender, categories of ethnicity, and categories of sexuality. By removing those differences that are treated differently within recruitment processes, it would remove the bases on which discrimination operates. Thus, as the relevant demographic characteristics would be held constant across individuals, there would be no basis on which those characteristics could delineate access to internships. However, as I stated in the introductory paragraphs of this chapter, following Hamlin and Stemplowska (2012), if successful implementation of a proposal would require humans to transform into fundamentally different creatures, the proposal is deeply infeasible. Humans exhibit diversity of physiological characteristics, which differences are taxonomized and treated differently by social structures, and are thereby translated

into inequalities. But there seems no way of levelling those differences themselves, of ridding our bodies of the features that constitute our bodies and on which the categories of demographic characteristic are based.<sup>113</sup> If it were somehow possible, we would no longer be the creatures we are.<sup>114</sup> Given that responding to inequalities based on demographic characteristics or, more specifically, to those based on gender, ethnicity and sexuality, with levelling is deeply infeasible (and undesirable), we are left with a choice between compensation and direct structural regulation. The case of disability,

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<sup>113</sup> These personal characteristics – gender, ethnicity and sexuality – therefore differ from transferrable, fungible external assets in the sense that they cannot be given to or taken away from people. And they differ from internal resources, or, cognitive and physical abilities: the development of cognitive abilities may be affected by provision of education resources, while physical abilities may be altered through provision of medical treatment.

<sup>114</sup> Moreover, it would certainly constitute a failure to ‘respect people in their differences’ – a hallmark of relational equality (Wolff 2009a: 113). Indeed, levelling the relevant differences in demographic characteristics aims at removing differences that are crucial to how we understand ourselves and each other, and to the formation of our individual human identities. Responding to, say, inequalities that track differences in sexuality by attempting to expunge diversity in sexuality, rather than by accepting that diversity and attempting to arrange society in such a way as to prevent the differences from being translated into distributive inequalities, strikes me as so gravely offensive to relational equality as to be unconscionable. It seems, then, that the levelling approach to tackling inequalities based on demographic characteristics is both deeply infeasible and highly undesirable.

however, presents an exception. As we saw in section 2.2.3, Wolff's policies of 'personal enhancement' can act on the body to remove at least *some* forms of impairment (Wolff 2009a: 124). Thus, (partial) levelling to tackle some forms of impairment-related disadvantage, in the form of provision of medical treatment, does seem feasible.

How would levelling the relevant luck-based differences in personal social networks work? Again, I would suggest it is deeply infeasible to tackle network-based inequalities of access to internships by levelling networks, as long as the distributive mechanisms of internships remain unchanged. In short, on a levelling approach, a regulatory agency would attempt to ensure that each person's social network included the 'right' people: professional contacts in a position to gift an internship, elite contacts in a position to bid at closed internship auctions, people who can assert their nepotistic interest within competitions for internships, and people who 'advertise' closed competitive internships through word of mouth. It is not easy to see what kinds of policy might achieve this, but perhaps policy might compel people to enter into 'buddy schemes', through which a regulatory agency would match young people with appropriate contacts and facilitate development of their relationships. That might work to widen the pool of those who hear about (and can then compete for) closed competitive internships 'advertised' through word of mouth but, in relation to network-based inequalities of access to internships that are distributed by nepotism, closed auction and nepotistic competition, the levelling proposal is nonsensical – that is, illogical – on two counts. The first is to do with the lack of fit between the number of aspiring interns and the number of available internships. To ensure personal social networks did not delineate access, every aspiring intern would require to have appropriate contacts in their network. But, in the

case of closed auctions for internships, the auctions are by nature exclusive and open only to a narrow pool of people. And each bidder, if successful, can only give the internship to one person. In the cases of nepotistic and nepotistic competitive internships, again, there are a limited number of suitably positioned professionals who are able to gift an internship or rig a competition. In the absence of any changes to distributive mechanisms and as long as internships remain a scarce good, such that demand exceeds supply, it is logically impossible to ensure ‘who you know’ has no influence on their distribution. The second logical fallacy of the levelling approach to tackling network-based inequalities applies to nepotistic internships and is to do with the nature of gifts. In short, if a ‘gift’ is coerced, it is not a gift. It is a coerced transaction. If professionals were required by law to form relationships with young people to whom they were obliged to offer internships, the distributive mechanism could no longer be categorized as ‘nepotism’ as I have specified that category. Nepotism constitutes something like voluntarily showing favourable treatment to someone with whom one has a personal relationship, but bonds of affinity must be endorsed by the parties themselves: if the transaction is imposed by a regulatory agency, it no longer makes sense to characterize it as an instance of favouritism. The levelling approach to tackling network-based inequalities of access to internships is therefore illogical and, as such,

deeply infeasible.<sup>115</sup> Again, the remaining choice is between compensation and direct structural regulation.

Tackling wealth-based inequalities by levelling luck-based differences in wealth seems more promising. The idea here would be to ensure that everyone had sufficient wealth to be able to work as an unpaid intern and was able to bid on a level playing field for internships. Wealth would still be treated as a necessary condition of access to unpaid internships but, as everyone would have enough wealth to cover living expenses, no one would be excluded on the basis of wealth. With regard to auctioned internships, if there were no luck-based differences in the wealth people had at their disposal, they would be able to bid for internships on a level playing field and those bidders who were prepared to spend the most would win. What specific regulatory actions would achieve this kind of levelling? One option, which I discussed in section 2.2.3, would be to level luck-based differences in people's personal financial resources by imposing a ban or a 100% tax on inherited and gifted wealth. Drawing support from Van Parijs (1997), Otsuka (2002 and 2004) and Lazenby (2010), I suggested in section 3.2.1.3 that such a ban could be justified on luck egalitarian grounds, even if it restricts other-affecting choice (that is, the choice to give gifts) and even if some degree of choice may sometimes (that is, in the cases of

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<sup>115</sup> Even if levelling the relevant differences in personal social networks were possible, it would likely be highly undesirable: to permit a regulatory agency to regulate who we have relationships with would doubtless entail an unacceptable and, indeed, dystopian restriction on liberty – specifically that kind of liberty that Rawls terms 'freedom of association' (Rawls 1999: xii).

some recipients) influence the receipt of gifts. On its own, however, the likely result of such a policy would be to further narrow wealth-based access to internships. That is, fewer people would have access to auctioned and unpaid internships, as all those who rely on gifts of wealth to cover bidding and living expenses would no longer have recourse to such gifts and therefore would not have the wealth required to buy and undertake these types of internship. Thus, to ensure that regulatory action to level wealth widens (rather than narrows) access to internships, a ban on gifts might be complemented by the provision of a substantial, universal, unconditional grant at the age of majority or a basic income.<sup>116</sup> As long as the amount of money provided unconditionally to all individuals covered all necessary living expenses and set people on a level playing field at auction, no one would be excluded from auctioned and unpaid internships on the basis of wealth, which is to say that wealth-based inequalities of access to internships would be eliminated.

However, consideration of two issues suggests that such action might be insufficient to meet the demands of luck egalitarian distributive justice. The first issue is that if there are wider inequalities of opportunity to accrue wealth from other sources (for example, inequalities of opportunity for well-paid, entry-level jobs), then those with the best

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<sup>116</sup> For further discussion of the unconditional grant see Ackerman and Alstott (1999) and Pateman (2003). For further discussion of the basic income, see Van Parijs (1992 and 1995), Steiner (1998: 99, 106 and 2002: 189, 193), and Karl Widerquist et al. (2013), particularly those chapters contributed by Van Parijs and Brian Barry.

opportunities may be able to monopolize internship auctions. That is, if some people are (as a matter of luck) better able than others to earn additional funds over and above those provided to all by a regulatory agency, they may use those additional funds to secure the winning bid at auction. Moreover, if the argument I presented in section 3.2.2 holds and wanting to undertake an internship can be conceived as a deeply held preference then, on the metaphysical approach to the distinction between luck and choice that I favour, it would be unjust to impose living and bidding expenses on interns themselves, at least if the correct metric of advantage is or includes welfare. This is because, following Cohen's (2004) understanding of responsibility for expensive preferences, interns should not be held responsible for meeting the relatively high cost of satisfying their preference to undertake internship work, as long as the relatively high cost is incidental to the preference and as long as forgoing satisfaction of that preference would entail 'alienation from what is deep in them' (Cohen 2004: 14). A different sort of levelling policy to tackle wealth-based inequalities of access to internships is, however, available. A regulatory agency might pursue more targeted adjustments to people's financial resources to ensure that no one who wishes to undertake internship work is prevented from doing so by a luck-based lack of wealth. If anyone lacked the required living or bidding expenses through no choice of their own, a regulatory agency might provide those expenses at the point of payment in the form of an 'internship grant', thereby enabling access to the internship. This less thoroughgoing approach to levelling might be pursued in addition to or instead of the more thoroughgoing policies outlined above. Either way, it would level the *relevant* differences in wealth, functioning to ensure no one was excluded from access to internships due to unchosen financial disadvantage.

With regard to inequalities of access to internships based on ability, a regulatory agency might attempt to level the relevant luck-based differences in ability by providing everyone with opportunities to develop the abilities that are selected for in internship distribution. What sorts of policies might be implemented in pursuit of such a goal? Perhaps most obviously, educational reform might be implemented to require the education system (as far as possible) to enable individuals to develop the relevant abilities. In other words, education policy might set out to counteract the egalitarian influence of luck-based differences in native endowments and social circumstances on the development of ability. Educational resources might be targeted to those whose abilities are relatively less developed due to their native endowments and socialization, to encourage further development of ability. Indeed, Roemer (1998) suggests the possibility of a similar policy. He argues that, in the absence of redistributive compensation:

equality of opportunity for advantage, where advantage depends on income, would surely require spending educational resources on all children, and, indeed, spending more resources on children who, by virtue of their circumstances, were less efficient at transforming those resources into future economic productivity.

(Roemer 1998: 54-55)<sup>117</sup>

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<sup>117</sup> Roemer also notes, however, that where redistributive compensation is in place, educational resources might instead be targeted at those who are most efficient at transforming such

The idea here would be to ensure that no one was set at a disadvantage in the competition for internships due to having had worse opportunities than others to realize their potential. If, due to disadvantageous circumstances, some faced greater difficulties than others in developing their abilities, their education would attempt to counterbalance the negative effect of those circumstances by providing ‘extra’ help. In principle, any differentials in the relevant abilities would then be a function of people’s different choices. (If, as I suggested in section 1.1.4, children do not make the sort of choices for which luck egalitarians are prepared to impose consequential responsibility, the education system should ensure all children have equal educational outcomes – or, equally valuable sets of abilities – as they reach their majority. This would, I submit, go a considerable way to ensuring any subsequent ability differentials were a matter of choice.) Of course, given no change in the distributive mechanism of competitively distributed internships, access would remain delineated by ability. However, if the policy of educational reform were successful in ensuring that ability differentials were entirely a matter of choice, ability-based inequalities of outcome would be the result of choices against a background of equality of opportunity for ability.<sup>118</sup>

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resources into future productivity (that is, those with relatively advantageous native endowments and social circumstances). The resulting luck-based inequalities might then be offset through compensation (Roemer 1998: 54).

<sup>118</sup> One concern here is that it may be deeply infeasible to ensure everyone has equal opportunities to develop ability. To illustrate, consider the case of an individual with genetically

### **4.2.3 Direct Structural Regulatory Approaches**

Turning now to the final category of luck egalitarian regulatory strategy, what direct structural regulatory action to tackle inequalities based on demographic characteristics, personal social networks, wealth and ability might luck egalitarians endorse?

I argued in section 2.2.4 that luck egalitarians might endorse a ban on discrimination in job recruitment to prevent inequalities of access to jobs based on demographic characteristics such as gender, ethnicity, sexuality, and disability. It follows that luck egalitarians might also recommend such a ban be applied to internship recruitment.

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determined multiple and profound learning disabilities that prevent her from developing the sorts of ability selected for in competitive internship distribution, no matter what level of educational resources are targeted toward her. In Roemer's terms, she might be described as 'extremely inefficient at transforming educational resources into future economic productivity' (Roemer 1998: 54). It might perhaps be thought that, in her case, successful implementation of levelling would require a fundamental change in who she is – that it would require her not to have a learning disability, in the absence of which she would no longer be herself (cf. Steiner 2002: 187-188). I would urge, however, that even if that were true, such that it is deeply infeasible to level *all* luck-based ability differentials, implementing educational reform along the lines indicated above would nonetheless be effective in improving the opportunities available to a great many people. While 'full' levelling of ability may, in this regard, be deeply infeasible, 'partial' levelling is certainly possible and, if successfully implemented, would at least render ability differentials less a matter of luck than they are at present.

Laws such as the Sex Discrimination Act (1975), the Race Relations Act (1976), the Disability Discrimination Act (2005) and the Equality Act (2010) have made discriminatory hiring practices illegal in the UK. Roemer argues that precisely this kind of direct structural regulation should apply to competitive recruitment, proposing that ‘the nondiscrimination principle be applied in the competition for specific positions in society’ (Roemer 1998: 87).<sup>119</sup> We might plausibly think these ‘positions’, access to which should in Roemer’s view be non-discriminatory, include internships. A progress report from the Panel on Fair Access to the Professions (2012) notes that, to enable internships to be directly regulated, they would first require a legal definition to bring them into the formal economy. At that point, a regulatory agency could extend non-discrimination

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<sup>119</sup> Roemer defines his version of the non-discrimination principle as follows:

the nondiscrimination principle, states that, in the competition for positions in society, all individuals who possess the attributes relevant for the performance of the duties of the position in question be included in the pool of eligible candidates, and that an individual’s possible occupancy of the position be judged only with respect to those relevant attributes. (Roemer 1998: 1)

For further discussion of discrimination by luck egalitarians, see, for example, Knight (2013c) and Segall (2012b).

legislation to cover recruitment to internships as well as jobs.<sup>120</sup> This non-discrimination legislation would include a requirement for organizations to make any adjustments required to ensure people with physical impairments that affect their mobility have access to their physical premises. (The existing Disability Discrimination Act (2005) places a less exacting requirement on employers to make ‘reasonable’ adjustments to the physical premises of their organizations.) In other words, direct structural regulation would target both the distributive mechanism of internships and the material space in which internship work is undertaken, to ensure no one was excluded from access in virtue of her gender, ethnicity, sexuality or disability.

What kind of direct structural regulation might a regulatory agency implement in order to prevent network-based inequalities of access to internships? Such regulation would directly target and impose legal requirements on the distributive mechanism of internship schemes. Again, internships would be given a legal definition to bring them

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<sup>120</sup> I specified above that throughout this discussion I would absent consideration of the difficulties a regulatory agency might face in achieving compliance with the spirit of the law and make the idealizing assumption that any such difficulties could be overcome. However, in practice, as I emphasized in section 2.2.4, laws against discrimination may be insufficient to prevent the more or less unconscious biases of decision-makers from resulting in more or less unintentional discrimination in recruitment. Thus, reform of sexist, racist, ableist, heteronormative and cisnormative social norms may be required before compliance with the spirit of the law is, in fact, possible.

into the formal economy, at which point legislation could be applied. A legal ban on internship auctions – including closed internship auctions – would (in addition to rendering bidding expenses obsolete) remove inequalities of access to internships that are based on whether or not people’s social networks include elite contacts who are invited to the sorts of events at which closed internship auctions currently take place. In addition to a ban on closed internship auctions, direct structural regulation to tackle network-based inequalities of access to internships would also include regulatory action imposing legal standards on internship distribution to prevent nepotistic gifts of internships and to prevent competitions from being rigged by nepotistic interest. As anti-discrimination legislation makes it illegal to treat demographic characteristics (such as being cis male, white, straight, and so on) as ‘qualifications’ for a job, once internships are brought into the formal economy, anti-nepotism legislation might be drawn up to make it similarly illegal to treat ‘knowing the right person’ as such. That is, the law might require intern recruitment to conform to certain standards or criteria prohibiting the distribution of internships by nepotism and nepotistic competition. (I examine in more detail the precise form such criteria might take in section 4.2.4 below.) Finally, legislation might be enacted that requires open advertisement of internship positions and thereby legally proscribes recruitment by word of mouth alone. For example, a law might be introduced requiring that all internship positions are advertised on a freely accessible website such as the one run by the Department for Business, Innovation and Skills to which I drew attention in section 3.1.1. Such a requirement need not prevent anyone from informing others of internship vacancies but, rather, would ensure that such informal messages were not the only means through which vacancies could be discovered. As long as vacancies were visible to anyone looking for them (due to being

openly advertised on the internet), applications would not be restricted on the basis of potential applicant's personal social networks.<sup>121</sup>

What regulatory action to tackle wealth-based inequalities of access to internships might luck egalitarians recommend should be applied to the structure of internship schemes? Luck egalitarians might endorse regulatory action that directly targets the distributive mechanism and remuneration arrangements of internships to ensure that wealth no longer constitutes a precondition of access. In terms of policies, this would entail a legal ban on the auctioning of internships and a legal requirement to pay interns at a rate that covers their living expenses. Internships might be given a legal definition to bring them into the formal economy and to enable them to be directly regulated. Were a legal ban on internship auctions then enacted, the effect would be to eliminate bidding expenses as a precondition of access to internships. As internship bidding expenses would no longer arise, neither a regulatory agency nor interns themselves would be required to cover them. In the case of a legal requirement to pay interns, interns' living expenses would obviously still have to be met, but these would be covered by the organizations

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<sup>121</sup> It might be thought that a requirement to advertise internship positions openly would be insufficient to prevent differences in networks and, more broadly, family background from influencing who applies to internships. If so, to tackle that wider issue, a regulatory agency might also, perhaps in collaboration with organizations and educational institutions, engage in outreach work to encourage more children of non-professional parents to consider applying to internship work.

that benefit from interns' work, rather than being provided by the state or paid by interns themselves.<sup>122</sup> As long as interns were paid sufficiently well to cover their living expenses, the simultaneous implementation of these two policies would result in the removal of wealth-based inequalities of access to internships: no one would be excluded from taking up an internship on the basis of a lack of wealth.

Finally, to ensure luck-based differences in ability are not transformed into unjust inequalities of outcome, regulatory action might be applied directly to the distributive mechanism of internships in order to prevent ability from counting for anything in the

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<sup>122</sup> In fact, as I explain in section 4.3 below, National Minimum Wage legislation already applies to internships in the UK and organizations that use interns are thus legally obliged to pay them at least the National Minimum Wage. Given that direct structural regulatory action to tackle wealth-based inequalities of access – in this case, a requirement to pay interns – should ensure that wealth is not a precondition of access, luck egalitarianism might recommend that the National Minimum Wage should be paid to interns, on the condition that such remuneration covers necessary living expenses. If it does not, the direct structural regulatory action that luck egalitarianism might recommend would of course be a requirement to pay interns at a higher rate: a rate that does cover living expenses. As a number of organizations (including the Living Wage Foundation, The Resolution Foundation and the Institute for Public Policy Research) have sought to demonstrate, there is evidence that throws into doubt the idea that the National Minimum Wage is always sufficient to cover living expenses, particularly in London where, as we saw in section 3.1.1, it is estimated over half of internships are located (see, for example, Jane Wills and Brian Linneker 2012, and Kayte Lawton and Matthew Pennycook 2013).

distributive process. I suggest in the discussion below that there are, after all, strong grounds for permitting ability to influence the distribution of internships, but it would nonetheless be possible at least in principle to directly regulate internship distributive mechanisms to prevent ability from being treated as relevant to access. Policy similar to the anti-discrimination policy outlined above might be drawn up and, in place of banning discrimination on the basis of characteristics such as gender and ethnicity, ban ‘discrimination’ (or selection) on the basis of ability. (Of course, distribution would then require to be based on some other attribute or attributes. I discuss below what kinds of consideration in accordance with luck egalitarian values might instead be brought into play in internship distribution.)

In sum, I hope to have shown that there is a range of regulatory actions luck egalitarians might endorse in response to unjust inequalities of outcome consequent on inequalities of access to internships. I turn now to the question of the comparative desirability of the various alternatives.

### **4.3 An Analysis of the Approaches**

Reaching an all things considered judgement regarding which action or combination of actions should be taken on the balance of reasons (absenting the sociological feasibility constraints I outlined in the introductory paragraphs of section 4.2) is beyond the scope of this thesis. Such an enterprise would require a determination of the demands of all relevant values and of how those demands should be balanced against each other, as well as of how well each possible set of regulatory actions would meet the properly balanced demands of all relevant values. However, in what follows I seek to make some initiatory

contributions to that enterprise by exploring how a number of relational egalitarian concerns might tell in favour or against the alternative regulatory actions. In particular, I draw on Schemmel's (2011) work on domination and oppression, and Wolff's (2009a and 2009b) work on marginalization, exclusion, snobbery, stigma and dignity. On the basis of those limited considerations, I draw some tentative conclusions regarding the comparative desirability of the various regulatory options from a broadly egalitarian perspective (that is, from a perspective that views both relational and distributive equality as valuable).<sup>123</sup>

#### **4.3.1 The Desirability of Compensation**

Is it better to allow luck to play out in the distribution of internships (such that some people will be excluded from access to internships on the basis of factors that are, to some more or less significant degree, a matter of luck) and then implement a policy of redistributive compensation to redress overall advantage and disadvantage, or to take action against luck-based inequalities of access to internships?

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<sup>123</sup> Of course, a range of other values (including, for example, liberty and economic efficiency) may bear on the judgement of which regulatory actions are most desirable all things considered, the implications of which I do not consider here. Hence, my conclusions regarding the comparative desirability of the alternative regulatory approaches are tentative in the sense that consideration of the demands of other values may tell in favour of actions that seem undesirable in light of relational egalitarian concerns, or against actions that seem desirable in light of those concerns.

Before looking in more detail at how relational egalitarian concerns bear on the answer to that question, I first want to return to a point I raised in section 2.3.3 and in section 4.1.3. If that point has force, it tells against the compensatory approach to tackling inequalities of outcome consequent on internship distribution. I suggested that, as luck egalitarianism is concerned with self-determination in the sense that it requires that how *well* people's lives go (or, how advantaged they are) is matter of their own choice, it might also be concerned with people's ability to be self-determining in the sense of choosing *how* their lives go (or, how they accrue advantage). A luck egalitarian concern with self-determination (broadly construed) might, then, motivate a position according to which access to goods that have a weighty influence on current outcomes and future opportunities and which are integral to people's qualitative life plans should not be influenced by matters of luck. The weightier the good, the weightier the reason of luck egalitarian distributive justice to ensure that access to that good is not delineated by luck. This is because, when people are excluded from access to such goods on the basis of luck, their self-determination (in the sense of choosing *how* their lives go) is compromised. In the present context, we can recognize that people do not tend to aspire merely to, say, a particular level of income, but also to earn an income from particular sorts of work or work within particular sectors. In many cases, entry to such work depends in large part on successful completion of a relevant internship. As such, internships are weighty and important goods: they not only have a significant influence on current outcomes and future opportunities, but are also significant in the sense that they are integral to people's qualitative life plans.

The compensatory approach denies people a crucial route of entry into the work they want on the basis of factors that are more or less matters of luck. On that approach, people are prevented through no choice of their own from doing the work they aspire to do: as internships are a crucial route into employment in many professional sectors, denying people access to internships on the basis of, for example, their lack of connections or wealth limits their possible career choices. If we care about enabling people to determine the course of their own lives – to choose how they accrue advantage, as well as how much advantage they accrue – there are reasons to prevent luck from influencing the original distribution of important goods such as internships. In short, giving people access to internships may be better than denying them access and providing compensation: because internships have a weighty influence on life outcomes and future opportunities, and because they form part of people's qualitative life plans, rendering access insensitive (or, less sensitive) to luck improves people's opportunities for self-determination in the broader sense. If this point has force, it tells against compensating internship-related injustice and in favour of regulation of that prevents luck-based differences in demographic characteristics, networks, wealth and abilities from having any egalitarian influence on the distribution of internships. That said, I acknowledge that staunch currency-monists may reject the notion that self-determination, in any sense other than choosing how *well* life goes, is a relevant luck egalitarian concern. On the currency-monist view, what matters to luck egalitarian distributive justice is that overall levels of advantage are luck-neutral and choice-sensitive. Hence, luck egalitarianism is (in itself) indifferent between the alternative regulatory strategies that would bring about just outcomes, as long as each is equally effective. If that view is, after all, more plausible than the one I have suggested, then

luck egalitarianism provides no reason to prefer levelling or direct structural regulation over compensation as a response to internship-related injustice. Even if it is not, I would not claim that the luck egalitarian concern with self-determination in the broader sense is weightier or lexically prior to all other considerations: luck equality is not the only value worth pursuing in our social arrangements and its demands may sometimes be trumped by the demands of other values. Thus, whether or not luck egalitarianism (in itself) gives a reason to disprefer provision of compensation over instigation of more choice-sensitive access to internships, consideration of other values is still required in order to reach an all things considered judgement of which regulatory actions should, on the balance of reason, be implemented. Let us turn, then, to the value of relational equality.

Relational equality, as we saw in section 2.3.5, is the value of equality as it applies to social relations. Relational egalitarians hold that all people have, in a fundamental sense, equal status and should therefore view and treat each other as equals. For Wolff, this involves (among other things) accepting people in their differences. Wolff writes that a central concern of relational egalitarianism is that 'if people are not accepted in their differences from each other they will be marginalized and excluded' (Wolff 2009a: 122). Such marginalization and exclusion is incompatible with and hinders progression toward the relational egalitarian goal of 'a society of equals' (Wolff 2009a: 113). This consideration should be brought to bear on regulatory design and, most obviously, tells against permitting recruitment to internships to discriminate against people on the basis of demographic characteristics. As this is precisely what the compensatory approach entails, the value of relational equality thus seems to tell against that approach and in

favour of alternative strategies that would undermine discrimination.<sup>124</sup> Discriminatory recruitment practices manifest a failure to accept people in their differences and function to exclude people from positions on the basis of differences in demographic characteristics – differences that relational equality urges us to accept. For example, if discrimination in internship recruitment occurs on the basis of gender and ethnicity, this is a contributory factor in the marginalization and exclusion of women and people of colour, entailing that internships and the professions to which they lead will continue to be (or, will become) disproportionately dominated by white men. Rather than treating people as equals, the compensatory approach ensures the door to the professions remains shut on those people who are (given the discrimination against them) most likely to also have been marginalized and excluded in other areas of social life. That is, namely, women and minorities. And it benefits those – namely, straight, white, able-bodied, cis men – most likely to have been the beneficiaries of inegalitarian relations. Conversely, a regulatory agency that clearly prohibits such discrimination manifests authoritative condemnation of sexism, racism, ableism, homophobia and transphobia as unacceptable. If it is desirable for a regulatory agency to attempt to bring about a society of equals and

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<sup>124</sup> That is, it seems to tell in favour of either levelling, or direct structural regulation, or a combination of the two. In fact, as we saw above, levelling differences in gender, ethnicity and sexuality characteristics is deeply infeasible and, if it were possible, it would itself certainly be gravely offensive to the value of relational equality. Of the two strategies of prevention, then, relational equality tells in favour of direct structural regulation to ban discrimination on the basis of gender, ethnicity and sexuality.

if non-discriminatory access to internships is more likely to contribute to the achievement of this goal than a regulatory approach that permits inequalities of outcome to arise as a result of discriminatory access to internships and then provides compensation to offset any overall outcome inequalities, there is a reason of relational equality that tells against redistributive compensation.

For similar reasons, relational egalitarian concerns also seem to tell against permitting but compensating for inequalities of access to internships that track wealth and networks. Such a response, again, marginalizes and excludes the less wealthy and the less ‘well-connected’, paying them off for their lack of access to the professions. This kind of exclusion may also contribute to the maintenance of relations of dominance and oppression. At the core of this insight is the fact that the distribution of wealth and connections is far from random (as well as far from chosen). How wealthy and ‘well-connected’ people in the UK currently are is, at least in large part, bound up with the UK’s pronounced social status hierarchy (that is, the British class system). In traditional terms, those from working class backgrounds are less likely than those from middle class backgrounds to be wealthy and ‘well-connected’. They are also the least likely, along with women and minorities, to have been the beneficiaries of relations of domination and oppression. Another relevant consideration here is that internships provide important access routes into professions involving the exercise of considerable political

power and social influence: politics and the media.<sup>125</sup> As a number of theorists have argued, when access to political power and social influence depends on wealth and having the right connections, we risk not only the corruption of democracy, but also the kind of domination and abuse of power that relational equality condemns. Thus, where undertaking an internship provides an advantage in subsequent competitions for jobs that involve exercise of political power and social influence, there may be additional reasons of relational equality to ensure access is not delineated on the basis of wealth or personal networks. Schemmel, for example, presents an argument according to which fair access to decision-making power is necessary ‘to avoid risk of domination’ (Schemmel 2011: 387). In particular, access to positions in ‘in politics and the bureaucracy, in influential media, and in the economic sphere’ should not be delineated in the basis of wealth and personal networks (Schemmel 2011: 387). Schemmel therefore advocates ‘stringent measures against nepotism and corruption’ to avert the emergence of ‘a body of privileged people in positions of power [...] who are neither sincerely willing nor able to properly take into account the interests of the people affected by their

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<sup>125</sup> As we saw in section 3.1.2, research suggests that around five out of every six new entrants into journalism undertook internship work before getting their first job in journalism. The research also suggests that almost half of parliamentary interns receive no expenses, while around half of media internships are unpaid. As the nepotistic distribution of internships tends to happen on an informal basis there is little hard evidence of it, but it does not seem entirely unlikely that nepotism might be a factor influencing internship distribution in Westminster and Fleet Street.

decisions' (Schemmel 2011: 386, 387). Michael Walzer proposes an alternative approach to justice according to which political 'power and influence cannot be bought and sold': the exchange of money for political power must be 'blocked' (Walzer 1983: 100). With regard to nepotism in the political sphere, Walzer writes that state officials cannot 'use their power to advance the interests of their families or distribute government offices to relatives or "cronies"' (Walzer 1983: 283). The wealthy and 'well-connected' must not dominate political power, as such dominance 'makes for the dominance of people' (Walzer 1983: 19). Internships may not confer quite as much power and influence as top positions in government, the media and the economic sphere, but to the extent that they confer advantage in subsequent competitions for these top positions, the arguments Schemmel and Walzer raise against nepotism and plutocracy might be extended to motivate the choice of regulatory options that act to remove or reduce inequalities of access to internships on the basis of wealth and personal networks. In other words, the arguments tell against leaving those inequalities of access intact, even if compensation is provided to offset the resulting inequalities of outcome.

A final consideration here is that relational equality involves a strong 'opposition to snobbery' (Wolff 2009a: 122). If it were the case that a disproportionate lack of women, minorities and people from working class backgrounds within those professions toward which internship work is a vital step contributed to circumstances conducive to the development or maintenance of snobbery or bias among professionals, that would provide another reason of relational equality against the compensatory option. That is because, where alternative strategies seek to improve access to internships and, so, also to the professions among women, minorities and people from working class

backgrounds and might, perhaps, thereby result in or contribute to a disturbance of patterns of snobbery or bias, the compensatory approach simply pays them off for their exclusion and leaves circumstances in the professions undisturbed. On the basis of these considerations, then, it does not seem desirable from a relational egalitarian perspective to respond to inequalities of access to internships based on demographic characteristics, wealth and personal social networks by leaving them in place and redressing overall inequalities of outcome through provision of *ex post* redistributive compensation.<sup>126</sup>

#### **4.3.2 The Desirability of Levelling and Direct Structural Regulation**

I demonstrated above that a number of relational egalitarian concerns tell against providing compensation in response to inequalities of outcome consequent on inequalities of access to internships based on demographic characteristics, networks and wealth, and in favour of removing those inequalities of access. That is, they tell in favour of strategies of prevention. We also saw above, however, that improving access to internships by levelling differences in both demographic characteristics (or, more precisely, gender, ethnicity and sexuality) and networks is (for different reasons) deeply infeasible. If these arguments hold, consideration of the demands of relational equality suggest that a regulatory agency should directly regulate the structure of internships to prevent those demographic characteristics and networks from counting for anything in

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<sup>126</sup> I examine the question of whether relational equality is compatible with distributing internships on the basis of ability in section 4.3.3 below.

distributive processes. The direct structural regulatory actions I discussed above (namely, anti-discrimination legislation, a ban on auctions, and anti-nepotism legislation) work to ensure access to internships does not depend on having the ‘right’ demographic characteristics or connections.<sup>127</sup> Thus, they work against the kind of marginalization, exclusion and snobbery Wolff (2099a and 2009b) condemns, and the kind of domination and oppression Schemmel (2011) is concerned to avoid. Moreover, in more positive terms, they seem likely to serve progression toward a society of equals because they clearly signal acceptance of people in their differences.

With regard to disability, however, we saw that (partial) levelling is also a feasible option, at least in those cases where medical treatment can be provided to remove impairment or reduce it to the point at which it is no longer disabling, given the structure of society. Thus, the regulatory options for tackling disability-related inequalities of access to internships include levelling (in the form of provision of medical treatment) *and* direct structural regulation (in the form of anti-discrimination legislation, including building regulations). In section 2.3.5.1, I discussed at some length whether provision of medical treatment to remove or reduce impairment is compatible with the value of relational equality. My discussion concluded that, although provision of medical treatment may not always constitute a failure to accept people in their differences, it may be harmful to

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<sup>127</sup> As we saw, to ensure people with impaired mobility gain access to internships, anti-discrimination legislation should include requirements for organizations’ physical premises to be accessible.

relational equality if it functions to undermine the status of people who remain disabled.<sup>128</sup> Direct structural regulatory responses, on the other hand, seem far more promising. Wolff argues that responding to disability-related disadvantage with structural change will often serve relational equality because:

First, it is non-stigmatizing; individuals do not have to be identified in order to be helped. Second, it is inclusive, welcoming people in their differences, rather than attempting to impose a single mould. Third it benefits everyone by reducing risk. (Wolff 2009a: 135)<sup>129</sup>

That said, as Wolff points out, the issue of stigma is not necessarily straightforward. In particular, implementation of policies requiring organizations to make *and* pay for adjustments to their premises may induce a backlash effect:

The costs of making material accommodations for disabled people, such as installing stair-lifts, very often fall on individuals or companies, rather than the tax payer. Those who find

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<sup>128</sup> See also Shakespeare (2006) and Wolff (2009a and 2009b).

<sup>129</sup> It reduces risk for everyone because any able-bodied person might, at some point, acquire a physical impairment. A society that already limits the extent to which impairment translates into disability therefore reduces the risks of disadvantage faced by able-bodied people as well as those with physical impairments.

themselves out of pocket as a result may strongly resent those individuals for whose benefit the changes were made, and this could be evident through their behaviour. (Wolff 2009b: 53)

Thus, the direct structural regulatory action I have canvassed seems to carry the risk of *undermining* the status of disabled people, even if it is designed with the intention of promoting equality of status and of opportunity. Now, it might be thought that this is a matter of non-compliance with the spirit of the regulation, which I said I would set to one side in this discussion. But, in any case, I think there are options available that would reduce this risk. I mentioned in section 2.2.4 that, where a regulatory agency imposes accessibility requirements on organizations' premises, the costs of meeting those requirements might fall to the owners of the premises or they might be provided or at least subsidized by the state. The question of who should meet the costs is complex: I suspect there are arguments that cut both ways and I do not attempt to determine the answer here. But I think it can be said that, were the costs socialized, the risk of backlash would be reduced. In sum, then, with regard to the case of disability, relational egalitarian concerns seem to tell against a compensatory approach. Whether levelling in the form of provision of medical treatment is desirable or undesirable on relational egalitarian grounds seems much more ambiguous: undoubtedly, it reduces the disadvantage faced by those whose impairments it targets, but it fails to help and may even work to undermine the status of those who remain disabled. Relational egalitarian concerns do, however, seem to tell in favour of applying anti-discrimination legislation to hiring processes and imposing accessibility requirements on physical premises, with the caveat

that a regulatory agency may be required to (partially) fund material adjustments in order to reduce the risk of backlash.

With regard to tackling wealth-based inequalities of access to internships, both levelling action and direct structural regulatory action to remove those inequalities are deeply feasible. So which is to be preferred?<sup>130</sup> Is it better for a regulatory agency to foot the bill for living and bidding expenses, or for it to impose a requirement on organizations to pay their interns and ban internship auctions? Before examining whether relational egalitarian concerns might favour one approach over the other, I want first to consider

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<sup>130</sup> I suggested above that a regulatory agency might engage in thoroughgoing levelling by banning gifts and bequests and providing a universal grant or income, as well as paying internship expenses, or it might engage in less thoroughgoing levelling by paying expenses but otherwise leaving background inequalities of wealth as they are. I suspect that the more thoroughgoing option would bring additional benefits to relational equality, particularly if, for example, some status inequality *follows from* wealth inequality. However, given that the less thoroughgoing option would be effective in removing wealth-based inequalities of access to internships, such that implementation of the more thoroughgoing option is not strictly necessary in order to prevent wealth from delineating access to internships, I focus in what follows on the less thoroughgoing policy, on which a regulatory agency provides an ‘internship grant’ to fund the bidding and living expenses of interns who, through no choice of their own, cannot cover them themselves.

an argument from within egalitarian distributive justice that I think tells in favour of direct structural regulation in this case.

In section 4.2.1, I discussed Steiner's view that when a choice creates unchosen costs for some third party, the chooser (and not society) should be responsible for redressing those costs. If that point holds, it has relevant implications for the present discussion. Consider that the costs of responding to wealth-based inequalities of access to internships should not fall on the state, inasmuch as they are a result of choices by decision-makers within an organization offering internships to withhold payment from interns (rather than paying them or not using them) and to auction internships (rather than distributing them in a way that does not track wealth). When we compare levelling and direct structural regulatory responses to wealth-based inequalities of access in light of this consideration, the levelling option I considered above is shown to be an inappropriate response: it entails socialization of the costs of meeting living and bidding expenses. Organizations would continue with impunity to make choices that impose significant costs on interns, without being held responsible for meeting the true social costs of those choices. Society would effectively be subsidizing organizations' costly choices. Conversely, holding organizations responsible for the costs of their choices may suggest something like the direct structural regulatory action I outlined above. Instead of providing *ex post* compensation to those who they have chosen to exclude on the basis of wealth, organizations might instead be required to pay their interns a living wage to cover their living expenses and ensure no one is excluded on the basis of wealth. Requiring organizations to pay bidding costs does not quite amount to a ban on internship auctions. Rather, it amounts to a ban on any internship auctions wherein

organizations do *not* pay living costs. Instead of a ban *per se*, then, the appropriate direct structural regulatory action might be amended to a legal requirement that organizations pay bidding expenses. The two policies seem likely, however, to have a similar effect: if organizations had to pay bidding costs, it seems doubtful they would see any point in continuing to auction internships.<sup>131</sup> It seems, then, that the *responsibilitarian* component of luck egalitarian distributive justice may provide its own reason in favour of direct structural regulation to remove wealth-based inequalities of access to internships.

Returning now to consideration of relational egalitarian concerns, how do those concerns bear on the choice between levelling and direct structural regulatory action in response to wealth-based inequalities of access to internships? As either approach would

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<sup>131</sup> It might be objected against this view that interns freely choose to undertake unpaid internship work or to buy internships at auction, and that the living and bidding costs they thereby accrue are therefore a matter of their own choices. However, if the arguments I made in section 3.2.3 hold, that objection is not available, at least if welfare is or constitutes part of the metric of advantage. The object of interns' choices is *not* the expense attached to gaining access to an internship, but the internship itself or the job to which it is hoped the internship will lead. With regard to those for whom undertaking internship work is a deeply held preference, such that to forgo it would entail 'alienation from what is deep within them' – for example, because it is a necessary step toward their desired career – it is therefore inappropriate to impose the *unchosen* and relatively high costs of satisfying that preference on the intern herself (Cohen 2004: 14).

be effective in removing inequalities of access that directly track wealth, neither entails excluding anyone from internship work on the basis that they lack wealth. The relational egalitarian imperative to avoid engendering wealth-based marginalization and domination is, then, met equally well by both approaches. But another relational egalitarian concern is to do with dignity or self-respect. In particular, Wolff (1998 and 2010) has argued that implementation of luck egalitarian regulation should avoid demeaning, shaming, humiliating or insulting individuals. If the two approaches fare differently with respect to their effect on interns' dignity, this concern would tell in favour of the approach that is least harmful (or, most beneficial) to interns' dignity. It is not clear to me that there would necessarily be any significant difference between the two approaches in this respect. Nonetheless, perhaps it is the case (at least for some interns) that it would be less dignified or dignifying for interns to receive living expenses from a regulatory agency than for them to earn an income paid by the organizations for which they work, and that relational equality therefore favours direct structural regulation in this case. On the other hand, if that were the case, a regulatory agency might take it into account when setting the level of payment it provides. In other words, it might be possible to increase the level of payment to the point at which no relative dignitary harm ensues.<sup>132</sup> Thus, on the (contested) assumption that there is such a point,

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<sup>132</sup> For this to be effective, it would have to be the case that, although receiving payment from a regulatory agency is less dignified than receiving it from an employer, keeping the source of income constant it is more dignifying to receive more income than less. As we saw in section

the relational egalitarian concern with dignity appears impartial between levelling and direct structural regulatory responses to wealth-based inequalities of access to internships.

On the basis of the above considerations, then, although the value of relational equality does not seem to tell *decisively* in favour of or against either regulatory approach, there does appear to be a *luck* egalitarian presumption in favour of direct structural regulation to compel organizations to pay their interns and to ban internship auctions wherein organizations do not pay bidding expenses (or, to require organizations to pay any bidding expenses accrued through buying the internships they sell at auction).

#### **4.3.3 The Desirability of Regulatory Responses to Ability-Based Inequality**

I noted in the discussion of compensation in section 4.2.4.1 that I would return to the question of what relational egalitarian concerns might suggest regarding the comparative desirability of the various regulatory responses to inequalities resulting from ability-based inequalities of access to internships. In short, I think relational equality tells in favour of a combination of regulatory actions, spanning all three of the categories of strategy. That is, compensation for ability-based inequality seems compatible with the demands of relational equality, on the condition that levelling and direct structural regulation are also in place. Levelling and direct structural regulation should be implemented to reduce

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4.2.1, however, Roemer (1998:61) suggests this may not always be the case, which casts some doubt on the efficacy of such an approach.

inequalities of access to internships that track luck-based differences in ability, as far as possible and desirable on the balance of reasons, and (given that this would not entirely eradicate ability-based access inequalities) compensation should be provided to offset the remaining luck-based inequalities of outcome that are produced.

Let us consider first whether relational equality would tell in favour of or against compensation for ability-based inequalities, were levelling and direct structural regulation not also in place. Would provision of compensation to those who, as a matter of luck, lack the ability required to successfully complete an internship be harmful to relational equality? Anderson raises an objection against compensation for lack of marketable talent on the basis that it would be insulting, humiliating and stigmatizing for recipients, and curtail progress toward a society of equals. She imagines the sort of letter that might be sent to recipients of compensation to explain the reason for their entitlement:

To the stupid and untalented: Unfortunately, other people don't value what little you have to offer in the system of production. Your talents are too meager to command much market value. Because of the misfortune that you were born so poorly endowed with talents, we productive ones will make it up to you: we'll let you share in the bounty of what we have produced with our vastly superior and highly valued abilities. (Anderson 1999: 305)

Of course, the letter she imagines is indeed highly disrespectful. But a luck egalitarian policy of compensation for ability-based inequalities produced by the labour market (that is, by job and internship distribution) need not be. Consider this alternative letter:

‘As you know, our society arranges its labour market in a way that leads to people with certain abilities having access to a broader range of positions and higher wages than do others with other abilities. Of course, we do not arrange things in this way because we think that anyone is superior to anyone else, or that particular abilities are superior to others, but because, for various reasons, that is the most beneficial way of arranging things we can currently think of. That said, we recognize that these arrangements do result in some objectionable inequality. Because it is unjust for anyone to be worse off than anyone else through no choice of their own, our society has also implemented a policy of redistribution to redress the unfair inequalities that are produced by our labour market.’<sup>133</sup>

It is my view that, on two conditions, compensation accompanied by such a letter would not be insulting, humiliating or stigmatizing to recipients. First, it must be true that any ability-based inequalities within the labour market are indeed justified on the balance of reasons. Second, it must be true that a regulatory agency is doing as much as is possible and desirable on the balance of reasons to provide people with equal opportunities to develop advantaging abilities.

Consider the second condition. Assuming for now that some ability-based inequalities of access to advantaging positions in the labour market are justified on the balance of

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<sup>133</sup> The idea that sending a letter along these lines would not offend the value of relational equality was suggested to me by Adam Swift in private correspondence.

reasons, very unequal opportunities to develop the relevant abilities will tend to result in those with lesser educational opportunities being excluded from those advantaging positions, while those with better educational opportunities come to dominate them. Currently, of course, the education system in the UK affords people extremely unequal opportunities to develop advantaging abilities: some are given excellent opportunities due to having parents who are willing and able to buy them high quality schooling, while others are given relatively limited educational opportunities due to happening to grow up in the catchment area of a poorly performing school, or happening to have parents who are not in a position to (or simply do not) aid their educational development. In short, the system permits children's educational opportunities – and, thus, their subsequent opportunities in the labour market – to be delineated according to differences in their parents' wealth and abilities (or interests). This raises concerns similar to those expressed by Schemmel and Walzer regarding the exclusion of people from less advantaged backgrounds from the professions and from positions of power in politics and the media, which exclusion, as Schemmel argues, contributes to the maintenance of harmful relations of domination. Thus, the letter I suggested above would ring hollow in the absence of any attempt at educational reform to improve the educational opportunities of those from disadvantaged backgrounds and to thereby reduce the risk of exclusion and domination. That some people will be excluded from certain advantaging positions within the labour market due to a lack of ability may be inevitable (in the sense of being justified and desirable on the balance of reasons), but it is not inevitable that, in general, the poorest educational opportunities are afforded to the least advantaged. Affording equal respect to all thus seems to suggest that, if there must be ability-based inequalities of opportunity within the labour market, there must

also be efforts made to ensure that opportunities to develop the relevant abilities are equal. Conversely, failure to make those efforts manifests a failure to respect all those whose labour market opportunities (and, thus, opportunities for self-determination) could otherwise have been significantly improved.

Returning to the first condition, in order for compensation for ability-related disadvantage and the letter that accompanies it to be inoffensive to relational equality, it must be true that whatever ability-based inequalities of opportunity within the labour market we retain are justifiable to the recipient of compensation without offense to their dignity. In order to be justifiable, they must (as the letter claims) actually be justified on the balance of reasons. Are there good reasons to hire the most able workers and interns? I would suggest that, with regard to jobs, less competent workers will, in general, work less efficiently than more competent workers. As an important element of economic sustainability, efficiency is desirable, and this consideration therefore tells in favour of recruiting workers by ability. Moreover, hiring by ability will also tend to promote the total level of welfare (or advantage) in a society. For example, as a number of egalitarians, including Segall (2012a: 41) and Roemer (1998: 85), have observed, we want surgeons to be those who are most competent at surgery because we have a concern for the welfare of their patients. Assuming that the relevant considerations (which include the above but also, perhaps, others) tell, on balance, in favour of hiring the most able workers, such hiring practices can be justified. As such, compensation could be provided to those disadvantaged by hiring practices, along with a letter (perhaps explaining in detail the reasons for compensation), without any disrespect to recipients.

But what about internships? Are there good reasons for internship recruitment to take account of ability? First, because internships are valued by interns as a means of improving future opportunities for particular jobs and because jobs currently recruit by ability, internships would lose that aspect of their instrumental value if they were distributed to people who lack the potential to develop the abilities required to compete successfully for those particular jobs. Second, it seems, at least at first glance, that if there are decisive reasons for workers to be competent (in order, among other things, to avoid inefficiency and to promote the absolute level of welfare), there are similar reasons for interns to be competent. Interns contribute to the core work of the organization. If it is desirable for that work to be done efficiently and for the welfare of those affected by it to be protected, there are reasons to hire interns by ability. But the reasons seem less decisive than in the case of hiring workers. That is because internships also involve elements of learning and training: opportunities are provided to interns to acquire and develop, throughout the duration of their internships, the abilities necessary to pursue a related career. A ‘rule of thumb’ distinction drawn by Roemer is relevant here:

I propose that the EOOp [equality of opportunity] principle be applied when the advantage in question is the acquisition of an attribute required to compete for a position (a job or career). But I propose that the nondiscrimination principle be applied in the competition for specific positions in society. (Roemer 1998: 86-87)

Roemer suggests that hiring for jobs should accord with a principle of non-discrimination. That is, access to jobs should be insensitive to demographic

characteristics but, although ability can be a matter of luck to some degree, it should be taken into account in hiring decisions because there are good reasons (including the need to protect the welfare of those who are served and affected by workers) to try to ensure jobs are done competently. But Roemer advocates a more thoroughgoing principle of equality of opportunity for training, where the purpose of such training is to aid development of abilities required to pursue a career. That is, access to opportunities to develop the sorts of abilities that are selected for in job distribution should not be delineated by luck, as the benefits to both the individual and society of training tend to outweigh any ‘immediate social costs’ incurred as a result of ensuring luck-neutral access (Roemer 1998: 89). Further, it may also be the case that, in general, performance in training is not so crucial to the welfare of others. Internships, as we have seen, involve a mixture of both doing and learning: interns contribute to core work of organizations but there is also a focus on providing interns with training opportunities. Thus, where it is important for that core work to be done at or above a certain level of competence, there is a reason to take ability into account in hiring interns. But the fact that internships also provide opportunities to develop the abilities required to pursue a related career suggests room for a greater focus on *potential* to develop, throughout the course of the internship, the sorts of abilities that jobs select for. Thus, it may not be the case that the *most* able should be selected for internships. Instead, taking seriously the role internships play in training people for future careers, we might think internship work should be done sufficiently well by someone who is able to develop their abilities as they progress throughout the internship. In other words, internship recruitment might select for

sufficient ability and potential to develop ability, with the level of sufficiency informed by consideration of how much ability is required, all things considered.<sup>134</sup>

#### ***4.3.4 Toward a Regulatory Regime***

Thus far, then, the considerations I have examined suggest a regulatory regime involving: a requirement to advertise openly for applicants (and possibly also to engage in outreach work to widen the pool of applicants); a requirement to pay interns a living wage; a ban on closed internship auctions; either a ban on open internship auctions or a requirement that organizations pay all bidding expenses; a ban on discriminatory and nepotistic recruitment (including a requirement to ensure organizations' premises are accessible); a requirement to recruit by sufficient ability and potential; reform of the education system; and compensation for any remaining ability-based inequalities of outcome.<sup>135</sup> However,

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<sup>134</sup> In other words, the level of ability required would be that at which there were, say, no unacceptable cost to efficiency or harm to the welfare of those affected by interns' work. The level of sufficiency – that is, the 'cut-off point' between sufficiently and insufficiently able that is actually employed in hiring decisions – may be somewhat arbitrary, but it would be informed by these fundamental considerations and acceptable at the level of regulation. As Segall writes, we 'may fuse arbitrary cut-offs with fundamental principles [...] to form rules of regulations' to employ in our social arrangements (Segall 2012a: 38).

<sup>135</sup> Two of these regulatory actions are quite wide-ranging in the sense that their implementation would not *only* affect access to internships: it would function to equalize opportunities for advantage in the sphere of employment more broadly. Action to level ability would work to

even if such regulation were successfully implemented, internships would likely remain a scarce good. Assuming that demand for internships among the sufficiently able outstrips supply, some additional basis on which to select interns from among sufficiently able applicants is required. What criterion might luck egalitarians recommend? I take inspiration here from Segall's discussion of what he terms 'justice in hiring', in which he suggests a luck egalitarian criterion for job recruitment: 'need'. Segall writes:

very simply, luck egalitarian justice allocates jobs [...] according to need. (By 'need' I do not mean 'need for the particular job,' but rather the more general 'being worse off.') (Segall 2012a: 39)

I disagree with Segall's account of 'justice in hiring' in several respects, but I agree that luck egalitarian distributive justice can motivate hiring (and hiring interns) on the basis of need.<sup>136</sup> However, I would add the following clarification. In order for the account

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reduce ability-based inequalities of access to jobs, while action to ensure buildings are accessible would work to reduce mobility-based inequalities of access to jobs (assuming that the buildings in which interns work also house non-intern workers). It seems plausible, at least at first glance, that these considerations may further count in their favour. That would be the case if it were desirable that ability-based and mobility-based inequalities of access to jobs are *also* tackled through educational reform and building accessibility requirements.

<sup>136</sup> The lines of disagreement are, briefly, as follows. Segall is a currency-monist and disagrees that luck egalitarianism provides any reason for access to weighty goods such as jobs and

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internships to be insensitive to luck. On the currency-monist view, there is no luck egalitarian reason that tells against discrimination in recruitment as long as adequate compensation is provided. Segall therefore advocates a non-discrimination clause, which he argues does not follow from luck egalitarian distributive justice but is, rather, part of a ‘prior’ account of what should not be done in hiring (Segall 2012a: 46). Moreover, Segall’s currency-monism entails that jobs can be allocated to offset overall disadvantage: all jobs should be ranked according to their advantaging qualities, and the most advantaging jobs allocated to the most disadvantaged in society. However, there are considerations additional to need that are relevant to hiring: Segall writes that relevant reasons to hire people ‘comprise qualifications but also efficiency, need, and social benefit’ (Segall 2012a: 47). If jobs are allocated on these bases, he argues, justice in hiring is achieved. That is, he claims his account of hiring is an account of ‘what justice, pure and simple, requires’ (Segall 2012a: 38). On my view, jobs and internships are special to distributive justice in the sense that they are weighty goods with a significant influence on both current outcomes and future opportunities, and because they constitute important elements of people’s qualitative life plans. The luck egalitarian concern with self-determination, on my view, provides a (defeasible) luck egalitarian reason that tells against discrimination in recruitment, which reason also tells against inequalities of access based on luck-based differences in wealth, networks and ability. Given my concern with self-determination and my view that positions such as jobs and internships are special in this particular sense, I reject that jobs should be ranked and the most advantaging simply allocated to the least advantaged. Such a practice would curtail people’s self-determination in the sense of choosing *how* their lives go: they would no longer choose which organizations to apply to work or intern for. On my view, people should determine for themselves which organizations to apply to. Under the regulatory regime I

to be genuinely luck egalitarian (rather than simply egalitarian), there must be reference to the extent to which being worse off is a matter of luck. That is, the neediest should be understood as the worst off *through no choice of her own*. Where need is understood in terms of being badly off, with no reference to luck or choice, recruiting according to need advantages the disadvantaged regardless of their history of luck and choice, and the criterion then serves equality rather than luck equality. With that amendment, the criterion of need could work in combination with the criterion of sufficient ability to determine the selection of interns. In other words, from among the applicants to an internship position, selectors should select for sufficient ability and potential, with the level of sufficiency being set at whatever point is desirable and justifiable on the balance of reasons. Then, from among that subset of applicants, the neediest applicant should be selected. Thus, the distribution of internships would function to offset unjust

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outlined above, the luck egalitarian criterion of need should, then, be employed to choose between (sufficiently able) applicants: people would choose which organizations to apply to, but applicants' being badly off through no choice of their own would work to advantage them relative to (unjustly) better off applicants. Finally, I do not view this account of internship hiring criteria, comprising need on the one hand and ability on the other (as far as ability is required on the balance of reasons, including reasons to do with efficiency, absolute levels of welfare, and perhaps other things, too) as an account of what egalitarian distributive justice 'pure and simple' requires. In my view, need is the luck egalitarian criterion and the reasons for hiring on the basis of ability extend beyond reasons of justice. Thus, the internship hiring criteria I suggested above respect the demands of a plurality of values and *not* only justice.

disadvantage, as far as that is compatible with the properly balanced demands of other relevant values.

In sum, the regulatory regime I have outlined comprises a range of regulatory actions falling into the categories of redistributive compensation, levelling and direct structural regulation, and functions to prevent most forms of luck-based inequalities of access to internships. Some ability-based inequalities of access – those that are justified on the balance of reasons – remain, and so levelling (in the form of educational reform) is implemented to ensure, as far as is possible and desirable all things considered, that any differences in ability are chosen. Finally, compensation is provided to redress the inequalities of outcome resulting from inequalities of access to internships that track any remaining unchosen differences in ability. Of course, while this regulatory regime is, I think, desirable on broadly egalitarian grounds, it may be subject to objections I have not examined here. I do not claim to have provided an all things considered justification for it and so I acknowledge there may, after all, be weighty reasons that tell against its implementation. But it nonetheless strikes me as an appealing response to the unjust inequalities produced by the distribution of internships and one that seems not unlikely to be justified on the balance of reasons.

#### **4.4 Internship Regulation in a Non-Ideal Society**

In this final section, I want to consider what regulatory action to tackle the unjust, luck-based inequalities of outcome produced in and through the distribution of contemporary UK internships luck egalitarians might support here and now in the world exactly as we find it. The discussion in the previous two sections absented consideration of a number

of sociological feasibility constraints in order to focus on the regulatory action luck egalitarians might recommend if it were given that their recommendations would be successfully implemented. However, regardless of how attractive the picture of fairly regulated internship schemes was, it is unlikely – given the sociological feasibility constraints I absented – to become a reality any time soon. In the meantime, internships continue to play a significant role in producing unjust outcomes, functioning to exclude many of those without wealth and connections from the careers they wish to pursue. But, although *bona fide* luck egalitarian regulation of internship schemes may not be a realistic option in the short term, there remains regulatory action that could well be pursued – and, indeed, *is* being called for by various groups and organizations – implementation of which would at least mitigate some internship-related distributive injustice. In what follows, I enumerate a number of policies that have been recommended by groups and organizations with an interest in alleviating what they perceive to be the unfairness of contemporary UK internships. My aim is not to provide any thoroughgoing philosophical justification for the policies but, rather, to draw attention to these calls for policies that would go *some* way to mitigating objectionable (and, of course, currently uncompensated) luck-based inequalities of access to internships. If luck egalitarians care about tackling distributive injustice here and now, they have reason to endorse these calls to action.<sup>137</sup>

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<sup>137</sup> I assume (except where otherwise stated) that implementation of the actions enumerated below would not hinder progression to an even more just state of affairs. That is, I assume

Firstly, as a number of individuals and organizations (including the Panel on Fair Access to the Professions (PFAP), the Institute for Public Policy Research (IPPR), the Low Pay Commission and government lawyers) have identified, when and because interns actively contribute to the core work of an organization, they are legally entitled to the National Minimum Wage (Milburn 2009, IPPR 2010, Low Pay Commission 2010, Malik and Ball 2011). As we saw in section 3.1.2, around half of all internships are unpaid, but (unless interns do nothing more than work shadowing, which as we also saw is not generally the case) organizations that fail to pay their interns are breaking the law. Put differently, Her Majesty's Revenue and Customs (HMRC) is failing to enforce existing legislation that, if properly enforced, would significantly reduce wealth-based inequalities of access to internships. IPPR (2010) has called for HMRC to get on with enforcing the law and with prosecuting those who persist in breaking it. Moreover, as we saw in section 3.1.2, the British government itself uses unpaid interns in parliament, constituency offices, and a range of publically funded institutions (Unite 2009). As IPPR note, 'Government has

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these actions to curtail injustice now would not render less feasible even greater abatement of injustice later. Of course, social scientists, political scientists, legal scholars and economists might make tentative predictions regarding the possible wider consequences of these policies and counterfactual futures, but to prove or disprove my assumption would require a certainty about those consequences that I cannot claim to have. I can acknowledge, however, that if there were indeed reason to think any of these policies would render even greater improvements in access to internships less likely in future, or work to undermine distributive justice in other ways, that should be balanced against the reasons to support them.

the power to phase out unpaid internships in all publicly-funded institutions – and it should get on with doing so’ (IPPR 2010: 11). (The action IPPR has urged the government to take is not, then, a matter of creating new regulation, but of enforcing and complying with existing legislation.) Further, IPPR have called for the Department of Business, Innovation and Skills (BIS) to proactively ensure clear, tailored legal guidance is provided to employers ‘particularly from trusted organizations within the sectors where interns are more common’ (IPPR 2010: 12). In 2011, the Arts Council issued a very clear and informative guide to arts organizations, reminding them of their legal obligations to interns and providing advice on how to arrange high quality, paid internships. BIS might take action to ensure similar sector-specific guides are issued across a range of different sectors. If any employers fail to pay their interns due to ignorance – rather than willful disobedience – of the law, this action might well prompt them to provide remuneration. Moreover, in the face of widespread noncompliance with National Minimum Wage legislation, a change in the law has been called for by Hazel Blears MP, as well as by the largest job-boards on the internet: Monster, Milkround, and Totaljobs. A loophole in advertising legislation entails that, while unpaid internships are illegal, it is not illegal to advertise them. Blears recently proposed a private bill to close the loophole, in order to stymie organizations’ attempts to attract people to unpaid internship positions and thereby encourage organizations to pay their interns (Shiv Malik 2012).<sup>138</sup> Next, a 2012 progress report from PFAP issued calls for

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<sup>138</sup> In fact, a ban on public advertisements for unpaid internships might carry a risk: it is possible that it would have the negative unintended consequence of causing employers to ‘advertise’

internships to be given a legal definition to bring them into the formal economy and to formally distinguish them from volunteering and work experience. Once they have such a definition, existing employment and equality legislation, including the Sex Discrimination Act (1975), the Race Relations Amendment Act (2000), the Disability Discrimination Act (2005) and the Equality Act (2010) could be applied to internship recruitment processes. The report states:

Given their centrality to young people's career prospects, internships should no longer be treated as part of the informal economy. They should be subject to similar rules to other parts of the labour market. That means introducing proper, transparent and fair processes for selection (Milburn 2012: 5)

Clearly, this would do nothing to rule out recruitment by ability (although, as suggested in section 4.2.4, this may be justified to some extent all things considered and would, I think, be justified if appropriate educational reform and compensation for unchosen ability-related inequality were forthcoming). But it would prevent the distribution of internships by auction and nepotism, and would certainly make discrimination in intern

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unpaid internships through word of mouth, ensuring that, in addition to wealth, access to unpaid internships would depend on 'who you know'. Indeed, this was the reason Nick Clegg MP provided for his rejection of Blears' proposal (Malik 2013c). On the other hand, if, in addition to the loophole being closed, internships were brought into the formal economy, as suggested below, that undesirable consequence might be averted.

selection illegal. Finally, once these regulatory actions have been undertaken, the next step, the PFAP and IPPR have argued, would be for governments to work to raise awareness of internships among a wider audience. Formally open recruitment practices are likely to be insufficient to prevent family background from delineating who applies to internships. Government might, then, fund or conduct outreach programmes with organizations, charities and the careers services of educational institutions, ‘to ensure that students from all backgrounds give due consideration to undertaking an internship’ (Milburn 2009: 108, see also IPPR 2010: 5).<sup>139</sup>

The groups and organizations making these regulatory recommendations clearly judge the proposals to be both deeply and sociologically feasible in the sense that their implementation simply requires the government to decide to act on them. Sociological feasibility is, of course, a matter to be determined by social and political scientists,

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<sup>139</sup> IPPR have argued that the first priority should be to ensure internships are paid and that recruitment is open, *before* conducting extensive outreach:

It would be incredibly difficult to embark on an outreach programme which got less affluent young people excited about internships – and then told them they would have to work for free, probably in London, for three, six or nine months and they might have to rely on personal contacts to even hear about vacancies. So the priority should be for organizations to put in place a basic framework of paid internships backed up with an open recruitment process. (IPPR 2010: 15)

economists and legal experts, rather than by philosophers. But if it is the case that the experts at IPPR, BIS and PFAP are correct, then the only ‘constraint’ on implementation is a lack of political support and, in publishing their proposals, they seek to raise this support. If the proposals were implemented, inequalities of access to internships based on luck-based differences in wealth and social networks, and perhaps also demographic characteristics, would be significantly reduced. Of course, significant luck-based inequalities of access – particularly those based on ability – would persist. Indeed, ability would likely become all the more pertinent (and wider reform of education systems would remain as desperately urgent as ever, if not more so). Admittedly, then, the regulatory actions suggested above are insufficient to eradicate *all* unjust inequalities of outcome produced in and through the distribution of internships. But if luck egalitarians are concerned with equality of opportunity here and now and if, in particular, they condemn the fact of people without wealth and connections being locked out of so many of the professions, they have reason to endorse these calls to action.

## **Conclusion**

In chapter 2 of this thesis, I argued that all luck egalitarian regulatory action can be conceived as falling into three categories: redistributive compensation, levelling and direct structural regulation. In chapter 3, I examined how inequalities of access to internships are delineated on the basis of several forms of luck: unchosen demographic characteristics, personal social networks, wealth and ability. In this final chapter, I have attempted to demonstrate that luck egalitarian responses to contemporary injustice, including that which follows from the distribution of internships, are not exhausted by compensatory redistribution but may include a broad range of regulatory actions to

equalize or reduce luck-based inequalities of opportunity. In particular, I hope to have illustrated how the pluralist approach to luck egalitarianism regulatory strategies might be employed to frame discussion of alternative responses to the injustice resulting from luck-based inequalities of access to internships (and, by implication, other important goods) and to have shown that consideration of weighty values other than distributive justice may sometimes suggest that levelling and direct regulatory responses should be pursued. The ways in which contemporary injustice is produced are many and varied: the pluralist approach to the regulatory strategies of luck egalitarian distributive justice provides a useful and clear framework within which to identify and evaluate the many and varied ways in which we might respond.

## **Conclusion**

The central aim of this thesis has been to provide a contribution to our understanding of what kind of luck egalitarian distributive justice is worth pursuing, and how it can be pursued. I first questioned how luck should be conceived within theories of distributive justice that condemn its inequalitarian influence on outcomes, arguing that the attributivist interpretation should be rejected. I then turned to the question of how the inequalitarian influence of luck can be neutralized. Discussion of regulation within much of the luck egalitarian literature to date focuses on redistributive compensation and lacks a clear framework for examining alternative regulatory strategies. I hope to have presented a useful and conceptually clear framework that focuses attention on the full range of luck egalitarian regulatory strategies. Further, I sought to demonstrate how that framework can be applied through an original case study of internships. I hope to have shown both that internships have now become a significant factor in the production of distributive injustice in the UK and that luck egalitarians might endorse levelling and direct structural regulatory action to prevent that injustice from arising (at least to some degree), as well as compensation to redress any injustice that is not prevented.

## **Thesis Summary**

In chapter 1, I offered a critique of the attributivist approach to drawing the distinction between luck and choice, arguing that the principle of consequential responsibility to

which that distinction gives substance should be rejected by luck egalitarians. The attributivist approach holds that the principle consequential responsibility should reflect and be grounded in our ordinary moral experience and practice of assigning attributive responsibility (that is, of blaming, praising, and excusing a person for an action). Further, it claims that our ordinary moral experience and practice of assigning attributive responsibility is best explained by Scanlon's conception of attributive responsibility: we assign attributive responsibility for an action when it is appropriately responsive to reason and none of Scanlon's three excusing conditions apply. Thus, on that view, Scanlonian attributive responsibility is the necessary condition for consequential responsibility. However, were it to be a sufficient condition, that would have unattractive implications in three respects (for reasons to do with socialization, unjust social norms, and reflectively endorsed expensive tastes). Three additional excusing conditions for consequential responsibility are therefore included.

I raised a number of objections against that view, which I hope constitute convincing grounds for its rejection. First, I rejected the notion that there is such a thing as our ordinary moral experience of assigning attributive responsibility, which is sufficiently homogenous, coherent and stable to ground a principle of consequential responsibility and, accordingly, also the notion that it is Scanlonian. Although philosophers' claims regarding the content of ordinary moral experience and practice are essentially empirical claims, they are usually unaccompanied by any empirical evidence. But in the absence of supporting evidence these claims are necessarily speculative rather than authoritative. In fact, the empirical evidence I examined suggested that people's experiences and practices of assigning attributive responsibility are diverse: different people appear to

assign attributive responsibility on different bases and some appear, at least some of the time, to make incompatibilist (and thus non-Scanlonian) judgements. Moreover, the ways in which individuals assign attributive responsibility appear to be internally incoherent: the same person can make compatibilist judgements at one time and incompatibilist judgements at another. Next, I rejected the claim that Scanlonian attributive responsibility should ground the principle of consequential responsibility (whether or not it reflects ordinary moral experience of attributive responsibility). I highlighted Scanlon's own entreaties not to treat his conception of attributive responsibility as grounds for consequential responsibility and demonstrated the different moral roots of the two conceptions. I also cited concerns raised in the wider literature that, given the weakness of Scanlon's conditions of attributive responsibility, treating it as grounds for consequential responsibility would produce worrying results. Finally, I rejected the claim that the principle of consequential responsibility should be continuous with ordinary moral experience of attributive responsibility whether or not it is Scanlonian. If it is not Scanlonian, the continuity requirement risks predicating justice on moral experience and practice that may be mean-spirited, prejudicial, self-serving, or misinformed. In any case, I share Cohen's view that ordinary ways of thinking hold no justificatory power by virtue of being ordinary. I also worry that the continuity requirement may constrain the radical capacity of theories of justice: it serves to entrench aspects of the moral status quo within theories that might instead play a role in informing, challenging and invigorating contemporary morality. For all of these reasons, the attributivist approach to the distinction between luck and choice should be rejected.

In chapter 2, I attempted to outline and defend a conceptual framework for thinking about the different forms of luck egalitarian regulation. I argued that those luck egalitarians and critics of luck egalitarianism who treat redistributive compensation as the primary or sole regulatory strategy of luck egalitarian distributive justice should recognize the availability and potential efficacy of additional strategies. Redistributive compensation can be provided to offset unjust inequalities of outcome, but unjust outcomes that are a function of inequalities of opportunity might also be prevented or reduced by regulatory action that equalizes opportunities. Furthermore, within more ideal theoretical discussions that assume equality of opportunity holds, the necessary implication is that regulation to equalize opportunities is in place. Accordingly, I introduced two additional categories of luck egalitarian regulatory strategy: levelling and direct structural regulation. Following Wolff, I suggested that a person's opportunities are a function of her personal resources and characteristics on the one hand and the social and material structures of society on the other. Regulatory action to adjust opportunities can, therefore, target people's resources and it can target structures. Levelling regulatory action targets the resources with which people face their opportunities, adjusting them in order to alter the opportunities they afford, given the social and materials structures of society. Direct structural regulation targets the social and material structures of society, adjusting them so that they offer more equal opportunities, given differences in people's resources.

This approach to the regulatory strategies of luck egalitarian distributive justice brings a number of benefits. First, it is a useful framework for discussion of regulation, prompting consideration of the range of regulatory options and enabling clear distinctions to be drawn between the different targets and rationales of different

regulatory actions. Further, employment of levelling and direct structural regulation in addition to redistributive compensation may help to reduce ‘off the chart’ deficits in advantage, thereby enhancing the feasibility of luck neutralization. Relatedly, employment of all three strategies may increase the extent to which luck can be mitigated on the balance of reasons. Luck egalitarian outcomes can only be pursued as far as is permitted in light of the properly balanced demands of all relevant values, but if those demands tell against provision of compensation, they may yet permit some degree of levelling or direct structural regulation. The focus on prevention as well as redress of unjust outcomes also allows for – and, indeed, encourages – examination of how inequalities are produced. This enables luck egalitarians to obviate the objection that their approach refrains from criticism of the distributive system and fails to address the causes of injustice. The approach can also accommodate arguments that people should have more equal access to important social goods such as jobs, places on educational or training courses, and internships. Finally, the pluralist approach emphasizes the social construction of ‘good’ and ‘bad’ luck. Luck egalitarianism has been criticized for implying that inequalities that are a function of how socially designed social and material structures treat individuals’ circumstances are wholly serendipitous, but the approach I endorse has no such implication. And, unlike much luck egalitarian theory, it emphasizes that essentialist evaluative judgements of attributes such as disability can and should be avoided: for the purposes of a theory of distributive justice, being disabled is a matter of luck, but it is not, in itself, good or bad. Rather, it may have unjust (positive or negative) distributive consequences.

In chapter 3, I presented a luck egalitarian critique of internships in the UK. Internships have, in recent years, become an increasingly prevalent precondition of access to employment within many professional sectors. As such, inequalities of access to internships contribute to overall inequalities of opportunity for advantage and, so, are implicated in the production of unjust advantage and disadvantage. I reviewed current data on internships in the UK to identify five types of distributive mechanism and suggested a typology of internships, distinguishing between different types according to their distributive mechanism and whether or not they are paid. I then offered an analysis of how various forms of luck delineate access to the different types of internship. I sought to demonstrate that differences in the levels of wealth that people have at their disposal delineate access to unpaid and auctioned internships. Drawing support from the luck egalitarian literature on gifts and bequests, I then argued that those differences in wealth are, at least in large part, matters of luck and that auctioning internships and failing to provide interns with adequate remuneration thus functions to exclude many of those who are already disadvantaged through no choice of their own from an important route into the professions. I also tried to show that differences in personal social networks (or ‘who you know’) delineate access to internships distributed by nepotism, nepotistic competition and closed auction, as well as those that are advertised through ‘word of mouth’. Again, I argued that ‘who you know’ is, in very large part, a matter of luck and that, although individuals may make choices to develop relationships, opportunity sets for developing advantageous relationships are far from equal. Next, I noted that demographic characteristics – gender, ethnicity, sexuality, and disability – are paradigmatic forms of luck and argued that processes of competitive intern selection that discriminate against applicants on the basis of their demographic characteristics thus

function to exclude people through no choice of their own. Finally, I examined how differences in ability delineate access to competitive internships and, drawing support from the wider literature, argued that, while individuals may sometimes make choices that affect the development of their abilities, stark inequalities of opportunity to develop ability entail that overall differences in ability are, in large part, matters of luck. Thus, I concluded that access to all types of internships is unequal and delineated on the basis of various forms of luck, though access to some is more restricted than others. This analysis provided the starting point for an examination of the various regulatory actions that might be undertaken in order to tackle the unjust inequalities of outcome produced in and through the distribution of contemporary internships.

In the fourth and final chapter, I explored the various regulatory actions that luck egalitarians might endorse in response to internship-related injustice. First, I examined what internships might look like in a society that is much more ideally just than our own, namely, one in which there are no inequalities of job-related benefits. I asked whether, given job equality, internships would still have any valuable role to play and concluded that they would, argued the case for equality between interns and workers, and also suggested that there may be a (weak) case for minimizing luck-based inequalities of access to internships. Next, I considered what regulatory action might be undertaken in response to inequalities of access to internships here and now, absent consideration of certain implementational feasibility constraints. I framed the discussion within the pluralist approach to luck egalitarian regulatory strategies, considering in turn compensatory, levelling and direct structural regulatory responses, which I hope usefully demonstrated how the pluralist approach can be applied to address the causes of injustice

in contemporary life. Reaching an all things considered judgement regarding which action or combination of actions should be taken on the balance of all relevant considerations was beyond the scope of my arguments, but I sought to make some initiatory contributions to that enterprise by exploring how the demands of relational equality tell in favour and against the alternative regulatory actions I canvassed. On the basis of those considerations, I drew some tentative conclusions regarding the comparative desirability of the various regulatory options, outlining a regulatory regime that could be characterized as broadly egalitarian in the sense that it is desirable in light of both distributive and relational egalitarian concerns. The regime I suggested included: a requirement that organizations advertise openly for applicants; a requirement that organizations pay interns a living wage; a ban on closed internship auctions; either a ban on open internship auctions or a requirement that organizations pay all bidding expenses; a ban on discriminatory and nepotistic recruitment; a requirement that organizations recruit by need, sufficient ability and potential; reform of the education system; and compensation for any remaining ability-based inequalities of outcome. Finally, I reviewed the calls for various regulatory changes that have been voiced by a number of organizations that are currently campaigning for ‘fairer’ internships and argued that, inasmuch as these changes would mitigate the influence of luck on access to internships, luck egalitarians have reason to endorse the campaigns. While it may seem that much of the luck egalitarian literature is disconnected from the struggles for justice taking place outside the academe, I hope to have demonstrated that at least some of it need not be. If luck egalitarians embrace the regulatory approach I have sought to defend, which both encourages critical examination of the ways in which unjust inequalities are produced and allows that systemic change may sometimes be appropriate, we may find ourselves

reconnecting with – and also, perhaps, able to make a contribution to – more of these active struggles.

## **Further Philosophical Research on Internships**

I want to end by drawing attention to a number of issues that were, unfortunately, beyond the scope of this thesis, but which would, I think, present interesting avenues for further philosophical enquiry. In particular, I would like to highlight that, as internships are now an established feature of working life but have yet to receive much critical attention, they afford various opportunities for further applied philosophical research. In this thesis, I have considered issues to do with access to internships, but there are a number of other respects in which internships relate to key philosophical concerns.

### **Internships and Exploitation**

The critique I presented in chapter 3 focused on luck-based inequalities of access to internships, but alternative approaches might have considered different objections to contemporary internships. Perhaps most notably, there is certainly significant scope for further enquiry into the question of whether unpaid internships can be characterized as exploitative. In addition to the objection that unpaid internships contribute to unfair inequalities of opportunity for professional employment, the objection that they are

exploitative is the most frequently raised in public discussions of internships.<sup>140</sup> Given the voluminous philosophical literature on exploitation, research to determine whether unpaid internships are exploitative in any sense that matters to philosophers would certainly be interesting and, I think, worthwhile. Of course, there are competing definitions of exploitation within the literature, but unpaid internships might be considered exploitative on at least some of these conceptions. Roemer (1996), for example, proposes a view of capitalist exploitation that bears some of the hallmarks of luck egalitarianism. It might follow from this view that interns (as a group) are exploited by their employers (as a group) if interns would benefit and employers would suffer if ownership of the means of production were redistributed such that each person owned her per capita share (Roemer 1996: 97). Some Marxist perspectives might also view the relationship between employers and unpaid interns working in the private sector as exploitative in the technical sense that the intern receives less value than she creates, with the remaining value going to employers (see Theodore Burczak 2001: 163, Stephen Resnick and Richard Wolff 1987: 167-168 and, for critical discussion, Cohen 1979 and 1983). Alternatively, other Marxist perspectives might hold that interns are de facto

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<sup>140</sup> For example, Gus Baker, who co-founded the campaign group Intern Aware, has been cited in multiple articles in the Guardian arguing that companies that fail to pay interns are exploitative (see, for example, Malik 2013a, Malik 2013b, Owen Gibson and Peter Walker 2013). Labour MP Hazel Blears agrees, stating in the House of Commons that unpaid internships are a ‘modern day scandal’ that enable ‘unscrupulous employers to exploit [...] young people desperate to get a foothold on the career ladder’ (Libby Page 2012).

exploited if they expend in production more hours of labour than are embodied in the goods they can purchase with their income from internship work (for further discussion of this view, see Roemer 1996: chapter 4, and Wolff 1999). Further, whether unpaid interns are harmed or benefited and whether they are coerced into internship work or enter into it voluntarily may also be relevant to the judgement of whether they are exploited. On some views, the claim that an intern is exploited would require the intern to be harmed by the internship (Buchanan 1985: 87, Munzer 1990: 171), and on others it would require her to have been coerced to work as an intern (Jeffrey Reiman 1987: 3-4, Nancy Holmstrom 1977: 357). On some readings, then, it might be stretching the term beyond its proper limits to account unpaid internships exploitative, at least in the cases of those interns who are uncoerced, drawn from relatively advantaged backgrounds (or, in Marxist terms, the dominant class), financially supported by their wealthy families for the duration of the internship, and further advantaged in terms of their future career opportunities as a result of undertaking the internship. Other views, however, allow that the exploited party may benefit (Andrew Levine 1988: 66-67), or that an exploitative relationship may be entered into voluntarily (Joel Feinberg 1988: 176-179). Wertheimer proposes a liberal approach on which unpaid internships would, I think, count as exploitative: according to his approach, exploitation can be both mutually advantageous and mutually consensual, though he suggests that this sort of exploitation is less morally wrong than exploitation that is harmful to the exploited party, or coercive, or both (Wertheimer 1996; for discussion see Sample 2003). Providing answers to the question of whether, on these (and other) perspectives, unpaid interns would be conceived as being exploited would constitute a significant project in itself.

### **Internships in the Charity Sector**

Furthermore, my initiatory contributions to the enterprise of determining a regulatory regime that would be desirable to implement on the balance of all relevant considerations might be extended through investigation of what the demands of other values imply for internship regulation. Does the regulatory regime I suggested have unacceptable ramifications for the value of liberty, given that it constrains the freedom to arrange unpaid internships and to distribute internships in particular ways? Would it be sufficiently economically efficient and sustainable? Is the requirement that *charities* pay their interns a step too far? In what remains, I outline just some of the issues that would be relevant to an investigation of the last of these questions.

First, there are certainly issues of organizational ethics that might be explored. Few would deny that many (or, at least, some) charities do extremely valuable work in a terribly unjust world. Indeed, much charitable work involves not only protecting liberty and promoting community solidarity, but also mitigating the kind of unjust disadvantage luck egalitarians condemn. But it might be argued that there is an objectionable kind of hypocrisy manifested by charities that claim to champion the causes of the disadvantaged while implicating themselves in the perpetuation of unchosen advantage and disadvantage. Unite and Intern Aware, reporting on their research into unpaid internships within the charity sector, warn that the sector ‘puts itself at danger of looking hypocritical and juxtaposed: charities, which are perceived as leading in ethical activity, are actually exacerbating existing socio-economic inequalities’ (Gerada 2013: 8). The research findings suggest that ‘unpaid internships are at odds with perceptions of the third sector being the ‘ethical sector’’ (Gerada 2013: 10). In other words, respondents

tended to view charities that offer unpaid internships as pharisaic and lacking in probity, with some going so far as to explicitly claim that the practice is ‘inexcusable’ (Gerada 2013: 10). It does seem plausible that when these sorts of organizations publicly affirm the value of equality of opportunity but run internship schemes that directly undermine that value, they demonstrate, at best, a kind of cognitive dissonance and, at worst, a lack of integrity. There is, then, a sense in which failing to pay interns is inconsistent with the values many charities espouse.

Second, and perhaps more significantly, unpaid internships are widespread in the charity sector and this raises the unwelcome possibility that requiring charities to pay their interns might result in less of their much-needed work getting done. Consider that, if a charity had to increase its staffing budget in order to pay its interns, this may reduce the budget available to fund its activities. It might even be the case that luck egalitarianism itself provides a reason against requiring charities to pay interns if any improvements to equality of access to employment in the charity sector were accompanied by a sizable increase in unjust disadvantage following a contraction of charitable work. The question arises, then, how these considerations should be balanced. If the work of unpaid interns in the charity sector serves important values including liberty, community solidarity and even luck equality, but interns’ lack of remuneration also functions to undermine luck equality, how should this conflict of values be resolved? Are there reasons to exempt (at least some) charities from the requirement to pay interns, and do they trump the luck egalitarian reason in favour of paying them? Perhaps, however, much of the conflict might be avoided. Is it the case that charities should re-address their fundraising strategies and attempt to raise the additional funds required to pay interns? Alternatively,

should charities adjust their business models? Many charities that currently use unpaid interns are very large, with turnovers in the millions of pounds and Chief Executives on six figure salaries (Gerada 2013). Perhaps these charities should find the money to pay interns from within their staffing budgets, without increasing that budget and without reducing their work outputs, by adjusting their staff pay ratio. In other words, is it the case that intern's wages should be paid for by reducing the salaries of the most highly paid staff? On the other hand, perhaps there is an argument that high levels of pay are required to incentivize certain staff to work productively in service of the values charities serve – even if, as Cohen (1991) argues, such incentives are not justifiable on grounds of justice. (And even if Cohen's critique of the Rawlsian notion that high levels of pay are required to incentivize productivity applies especially well in the charity sector, given charities' reputations as supposedly ethical bodies.) Moreover, while the option of adjusting pay ratios may be open to wealthier charities, it may be unavailable to charities with far smaller turnovers and staffing budgets, in which case the remuneration requirement may well result in less charitable work being achieved by these smaller charities. But perhaps there is a further option: smaller charities might avoid lost working hours by successfully recruiting volunteers. Would such an approach enable the conflict of values to be avoided? First, some smaller charities may be unsuccessful in recruiting volunteers. But also, and more importantly, given that volunteers by definition have no contractual obligations, charities would not be able to rely on volunteers to work set hours, to complete set tasks on deadline, or to contribute to their core work. Thus, the imposition of a requirement on all charities to pay interns seems likely to come at a cost, resulting in less valuable work being accomplished by smaller charities at the very least. If so, the question arises whether those costs are justified in

light of the properly balanced demands of all relevant values, or whether (some or all) charities should be exempt from the requirement to pay their interns. Even if it is appropriate on the balance of reasons to impose a requirement to pay interns on wealthier charities, the argument may not extent to smaller charities. There is, then, considerable scope for further analysis of the implications of the arguments I have presented throughout this thesis. An applied philosophical investigation of the issues I have just raised would not only be intellectually interesting but might even hold practical significance if it were to shed much-needed light on the ongoing public debates over what should be done about unpaid internships in the charity sector.

In this thesis, I have tried to show how the normative ideal of luck equality can be pursued in our social arrangements. Ultimately, the work has been driven by a stubborn desire to work out how a better world might be brought about. The world as we find it is brimming with injustice and if there is any hope that this injustice it may one day wane, it rests on a belief that the world can be changed. Injustice will not atrophy: it must be fought. And, while that fight cannot be directed by philosophical edict, philosophical ideas have a role to play in the struggles for a better world: they can inform, they can inspire, and they can help sustain the momentum that makes change possible.

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