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## **When Bad Things Happen to Good People**

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# When bad things happen to good people: luck egalitarianism and costly rescues

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## **Abstract**

*According to luck egalitarianism it is not unfair when people are disadvantaged by choices they are responsible for. This implies that those who are disadvantaged by choices that prevent disadvantage to others are not eligible for compensation. This is counter-intuitive. We argue that the problem such cases pose for luck egalitarianism reveals an important distinction between responsibility for creating disadvantage and responsibility for distributing disadvantage which has hitherto been overlooked. We develop and defend a version of luck egalitarianism which only holds people responsible for creating disadvantage. This revision enables luck egalitarianism to offer compensation to those who are disadvantaged by preventing disadvantage to others, like dependent caretakers, without compromising the responsibility-sensitivity at the heart of luck egalitarianism.*

## **Keywords**

Luck Egalitarianism, Distributive Justice, Morally Good Actions, Vulnerability of Dependent Caretakers, Elizabeth Anderson, Innocent Choice, Supererogatory

## I. Introduction

Luck egalitarianism is an influential theory of distributive justice (Knight and Stemplowska 2011; Lippert-Rasmussen 2009). According to *standard luck egalitarianism*:

A distribution is just if, and only if, people's comparable positions reflect nothing but their comparable exercises of responsibility (Lippert-Rasmussen 1999).

By holding inequalities to be just if, and only if, they reflect differential exercises of responsibility luck egalitarianism reconciles a commitment to egalitarianism with a concern for personal responsibility. Elizabeth Anderson has criticized luck egalitarianism for leading to the *vulnerability of dependent caretakers* (Anderson 1999, 297–300), because luck egalitarians must refuse to compensate those who are responsible for choosing to care for dependents rather than working a wage-earning job full time. It is in this criticism that we take our starting point.

Taking care of dependents is an example of a *costly rescue*, where an agent incurs a disadvantage (*cost*) by preventing disadvantage to others (*rescue*), for surely the dependent would be disadvantaged if the caretaker chose to work a wage-earning job full time rather than care for her. Call an agent who engages in a costly rescue *Benefactor*, and an agent, who would have been disadvantaged through no fault of her own if Benefactor had not acted, *Victim*. The general challenge posed by Anderson's

critique is that the dependent caretaker is akin to Benefactor, and luck egalitarianism cannot compensate Benefactor for the cost of her costly rescues.<sup>1</sup> This verdict is counterintuitive and reflects badly on luck egalitarianism as a theory of distributive justice. It is simply not *fair* that Benefactor is worse off because she engaged in a costly rescue.<sup>2</sup>

This paper argues that the problem of costly rescues reveals how standard luck egalitarianism overlooks a morally relevant distinction between *responsibility for creating and responsibility for distributing* (dis)advantage, and that luck egalitarianism should only be sensitive to the former. An agent is responsible for creating a (dis)advantage if, and only if, she is responsible for behaving in such a way that *somebody* was (dis)advantaged. An agent is responsible for distributing a (dis)advantage if, and only if, she is responsible for behaving in such a way *that X, rather than Y*, was (dis)advantaged. Accordingly, we propose the following revision of luck egalitarianism:

*The revised principle.* A distribution is just if, and only if, people's comparable positions reflect nothing but their comparable *responsibility for creating advantages and disadvantages*.<sup>3</sup>

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<sup>1</sup> This is not to say that this is the only problem illustrated by the example.

<sup>2</sup> The discussion might also be relevant for firefighters, police officers and doctors, who have arguably chosen to work in professions where there is an increased risk of incurring disadvantage while trying to prevent disadvantage to others and which luck egalitarians may also be unable to offer compensation on account of their responsibility for choosing a dangerous line of work. Thus the discussion might also be relevant to the problem of 'occupational discrimination' (Anderson 1999, 296–297).

<sup>3</sup> We offer a complete statement of a revised luck egalitarian principle only to illustrate our proposed revision. We defend only the viability of the italicized part of the principle which narrows the luck egalitarian focus from

We shall argue that the revised principle is able accommodate the intuition that it is unfair that Benefactor is worse off because of rescuing Victim, because Benefactor is not responsible for creating the disadvantage she incurs by rescuing Victim but only for redistributing the disadvantage from Victim to herself. The revised principle can be rooted in a thin underlying moral principle<sup>4</sup> according to which *ceteris paribus* deserved advantage is good and undeserved disadvantage is bad.<sup>5</sup> Far from being an ad hoc revision in the face of difficult cases the revised principle offers compensation to Benefactor while preserving the *responsibility-sensitivity* which is the defining trait of luck egalitarianism.

This paper treats luck egalitarianism as an axiological account of *distributive justice*. A more just distribution is always in one way better than a less just distribution. There is a *pro tanto* reason to bring about a more just distribution. The value of distributive justice is grounded in the value of fairness (Cohen 2008, 6–8). However, fairness is but one moral value among others.<sup>6</sup> Therefore, the reason to promote

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responsibility *tout court* to responsibility for *creating advantages and disadvantages*. We acknowledge that some might find other parts of the statement controversial (i.e. that it is luck egalitarian, rather than all-luck egalitarian (Knight 2013) or that the statement implies that equalities can be unjust (cf. Albertsen and Midtgaard 2014; Segall 2013). If however, the reader objects to the revised version of luck egalitarianism on grounds unrelated to our proposed revision, we invite the reader to imagine a revised version of her favorite version of luck egalitarianism instead.

<sup>4</sup> Cf. (Knight 2009, 171–175).

<sup>5</sup> This is compatible with, but not committed to, a view that advantage should be maximized.

<sup>6</sup> We thus endorse Cohen’s pluralism about moral value (Cohen 2008, 2–3; Cohen 1989, 910–912; Cohen 2011, 125), and disagree with Dworkin’s monism (Dworkin 2011).

distributive justice is not always a decisive reason for action (Cohen 2008, 381). Importantly the problem of compensating costly rescues is an *egalitarian objection to luck egalitarianism*.<sup>7</sup> The *prima facie* badness of Benefactor being disadvantaged by rescuing Victim is that it is *unfair*. It is not that the fairness of Benefactor being disadvantaged by rescuing Victim conflicts with some other value. Thus, this objection strikes at the heart of luck egalitarianism as a theory of distributive justice.

One may worry that this axiological approach misses the point of Anderson's objection insofar as her point is not only that luck egalitarianism has counter-intuitive implications, but also that an axiological account of luck egalitarianism fails to capture what distributive justice should be about. According to Anderson just distributions arise from individuals acting '*in accordance with principles that express, embody, and sustain relations of social equality*' (Anderson 2010, 2). While we acknowledge that the case of the dependent caretaker presses several points against luck egalitarianism, we cannot address them all. We do, however, consider it a fair interpretation that it is also meant to raise the point that luck egalitarians must consider some intuitively problematic distributions as just. Indeed this seems to be Anderson's main motivation. Her remark that the disadvantages incurred by dependent caretakers are '*by choice and therefore generates no claims of justice on others*' (Anderson 1999, 297), is precisely criticizing luck egalitarianism for wrongly assessing the resulting distribution as just.

We proceed as follows. Section II argues that luck egalitarianism can offer compensation for disadvantages stemming from costly rescues while remaining responsibility-sensitive by drawing a distinction between responsibility for creating

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<sup>7</sup> Cohen explores the concept of egalitarian objections (Cohen 1989, 908–912).

disadvantage and responsibility for distributing disadvantage.<sup>8</sup> Section III compares the revised principle with other luck egalitarian proposals which may justify compensating those who are disadvantaged by engaging in costly rescues. Section IV defends the revised principle against some objections.

## II. Responsibility, luck egalitarianism, and costly rescues

When assessing whether it is just that one person is disadvantaged compared to another standard luck egalitarianism focuses on whether the difference between them reflects their comparable exercises of responsibility. It is not considered important whether the person who is disadvantaged is responsible for creating the disadvantage she suffers such that nobody would be worse off if not for her exercise of responsibility, or merely for distributing the disadvantage she suffers to herself, such that someone else would have been disadvantaged if not for her exercise of responsibility. Much of the time agents who are (not) responsible for creating disadvantage are also (not) responsible for distributing disadvantage to themselves. A person who is injured by a meteorite is neither responsible for the fact that somebody, rather than nobody, was hit by the meteorite responsible, nor is she responsible for the fact that she, rather than somebody else, was hit.<sup>9</sup>

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<sup>8</sup> While we focus on luck egalitarianism, our proposed revision is relevant to other responsibility-sensitive theories, such as luck prioritarianism.

<sup>9</sup> An agent can be responsible for *creating* a disadvantage even though she is not responsible for major causal components in how the disadvantage was brought about. If an agent builds her house atop an active volcano, she is responsible for *creating* the disadvantage she suffers when the volcano erupts even though she is not responsible for the eruption of the volcano. For if she had not build her house atop an active volcano nobody would have been disadvantaged (in this way) by the eruption of the volcano instead of her.

However, cases of costly rescues illustrate that agents *can* be responsible for distributing a disadvantage to themselves without being responsible for creating it. Consider:

*Brick.* A brick is falling towards a crowded street. If no one does anything Victim will be hit by the brick. Victim is not responsible for being about to be hit by the brick, and she cannot do anything to avoid being hit by the brick. However, it is possible to give Victim a push so that she avoids the brick, but anyone doing so will be hit by the brick herself. Knowing this Benefactor pushes Victim out of the way and is hit by the brick herself.<sup>10</sup>

In *Brick* Benefactor is clearly responsible for being hit by the falling brick. For if she had done nothing she would not have been hit. Thus, standard luck egalitarianism yield the verdict that Benefactor is not entitled to compensation. However, Benefactor is not responsible for creating the disadvantage but only for distributing it from Victim to herself. If Benefactor had done nothing this would not have eliminated the disadvantage, but only caused it to fall on Victim instead. Therefore, Benefactor's exercise of responsibility did not cause *someone*, rather than *no one*, to be disadvantaged. It only affected the distribution of the disadvantage such that *Benefactor*, rather than *Victim*,

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<sup>10</sup> Suppose for simplicity that Benefactor suffers the exact same disadvantage that Victim would otherwise have suffered. When Benefactor does not suffer the same disadvantage Victim would have suffered the disadvantages are to be compared according to how much Benefactor's amount of the currency of justice (e.g. resources, welfare) is set back compared to how much Victim's amount of the currency of justice would have been set back. Our argument is not dependent on a position in the debate over the currency of justice is preferable, and we ask the reader to imagine her own favorite account.



was disadvantaged. Thus, the revised principle yields the verdict that Benefactor is entitled to compensation. What enables the revised principle to compensate Benefactor is attaching moral relevance to the distinction between responsibility for creating disadvantage and responsibility for distributing disadvantage and focusing only on the former kind of responsibility.

Benefactor incurs disadvantage because she prevents Victim from being disadvantaged. Benefactor is engaging in a costly rescue in *Brick*.<sup>11</sup> It is intuitively compelling that Benefactor is entitled to compensation. Two features of costly rescues jointly ground the intuition that Benefactor ought to be compensated. First, costly rescues are always *pro tanto* morally good, and often morally obligatory all-things-considered.<sup>12</sup> Second, the core luck egalitarian desideratum of non-exploitation<sup>13</sup> is not threatened by compensating disadvantages incurred as a result of costly rescues since Victim would have been eligible for compensation on luck-egalitarian grounds if Benefactor had not engaged in the costly rescue. Therefore offering compensation to Benefactor does not impose net-costs on third parties.

We aim to show that it is Benefactor's lack of responsibility for creating the disadvantage she incurs which makes compensating Benefactor required, and that the

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<sup>11</sup> *Brick* thus mirrors Anderson's criticism since the dependent caretaker is also engaging in a costly rescue.

<sup>12</sup> Note that Anderson attaches importance to the fact that caring for dependents is often morally obligatory in her discussion of why it is problematic that luck egalitarianism cannot offer compensation to dependent caretakers (Anderson 1999, 309). When costly rescues are not morally obligatory this is either because the cost becomes so high that the costly rescue becomes supererogatory, or because the rescue has morally bad consequence, which outweighs the moral goodness (e.g. Benefactor knows Victim plans to commit a murder tonight).

<sup>13</sup> cf. (Bou-Habib 2006, 247; Stemplowska 2009, 249; Knight 2015, 122–124; Voigt 2007, 405)

revised principle thus not only yields the right judgment in *Brick*, but will also do so generally, and provides an accurate explanation of *why* some disadvantages ought to be compensated and others do not. Thus, rather than indicating that distributive justice is not sensitive to exercises of responsibility *Brick* reveals that there is a morally relevant distinction between responsibility for creating and responsibility for distributing disadvantage and that distributive justice should only be sensitive to the former.

To show this it first needs to be argued that costly rescues possess the features, which make it intuitively compelling that Benefactor ought to be compensated *because* those who are disadvantaged by engaging in costly rescues are not responsible for creating the disadvantage they incur. Indeed it is precisely for this reason that offering compensation for costly rescues does not exploit third parties. For the fact that Benefactor is no more disadvantaged by rescuing Victim than Victim would have been had Benefactor done nothing, is both the reason that Benefactor is not responsible for creating the disadvantage she incurs and the reason that compensating Benefactor is no more expensive than it would have been to compensate Victim.. Similarly, it is precisely because Benefactor choose to incur disadvantage she is not responsible for creating by distributing it from Victim to herself that it is morally good for Benefactor to engage in costly rescues.

In addition to showing that Benefactor's lack of responsibility for creating the disadvantage she incurs tracks the features that make compensating Benefactor required in *Brick*. It also needs to be shown that it is generally true, and not just true of costly rescues, that when an agent is responsible for creating (dis)advantage but not responsible for distributing (dis)advantage or vice versa it is only her responsibility for creating (dis)advantage matters. To this end we discuss two cases calibrated to show that the distinction remains morally relevant in contexts different from those of *Brick*.

*Incurring advantage one is not responsible for creating*

*Brick* illustrated the relevance of the distinction between being responsible for creating and responsible distributing disadvantages. Luck egalitarianism is supposed to treat responsibility for incurring disadvantage and advantage symmetrically. If it is correct that Benefactor should be compensated for the disadvantage she incurred by rescuing Victim because she was not responsible for creating the disadvantage, it must also be correct that responsibility for not distributing an *advantage* to oneself is not relevant to one's distributive entitlement to that advantage, and that in this case too it is responsibility for creating the advantage that matters. Consider:

*Money.* A bag of unowned money is lying on the ground. Nobody is responsible for creating the advantage represented by the money. Robert and John are the two only persons in the world. If John does not pick up the bag then a robot will automatically transfer the money to Robert's bank account. John is responsible for not picking up the money.

In *Money* somebody will be advantaged regardless of what John does. If John is not advantaged by the bag of money then Robert is. Neither is responsible for creating the advantage, but John is responsible for its distribution insofar as he is responsible for not distributing the advantage to himself when given the chance. Robert is not responsible for the distribution of the advantage.

Like in *Brick* our revised principle yields a different judgment than standard luck egalitarianism. According to standard luck egalitarianism Robert is entitled to keep all the money. This is so since John's claim to the money is undermined by his choice not

to pick up the money which makes him for the distribution not favoring him. This contrasts with Robert who, unlike John, is not responsible for the distribution. According to our revised principle the money should be distributed equally between John and Robert since their entitlements should not be affected by their differential responsibility for the distribution of this advantage. Their entitlements should only be affected by responsibility for creating the advantage, and in that respect their exercises of responsibility has been equal.

Because of the symmetry between how we should treat advantage and disadvantage, one cannot agree with our verdict in *Brick* without agreeing with our verdict in *Money* (or vice versa). In both cases the verdict follows from focusing only on responsibility for creating advantage. Thus, *Money* both serves to test the distinction between creating and distributing advantage and the robustness of our intuitions about *Brick*. Fortunately, it seems to us that the verdict of the revised principle has significant intuitive plausibility in *Money*, when we keep in mind that the money is only to be distributed equally between Robert and John because the bag of money would advantage someone no matter what anyone had done. If the money would have advantaged no one unless either John or Robert picked it up, then John would have been responsible for not *creating* advantage and Robert would have been entitled to keep all the money.

Another way to see the intuitive plausibility of the judgment in *Money* is to see how the revised principle yields intuitively plausible judgments about the redistribution of profits from extracting natural resources. Profits from extractive industries are impure variations of *Money*. *Ex hypothesi* the bag of money was an advantage that neither Robert nor John was responsible for creating. Unlike the bag of money most natural resources advantage no one unless they are extracted. Therefore,

had Robert been a gold miner who strikes upon the mother lode, he would be responsible for creating some advantage. However, like in *Money* no one is responsible for the existence of natural resources. When Robert strikes the mother lode this advantages him in excess of the advantage he is responsible for creating. Thus, Robert is partially, but not fully, responsible for the creating the advantage he incurs. According to our revised principle Robert is entitled to keep the profits to the extent that he is responsible for creating the advantage. To the extent that Robert profits far in excess of the advantage he *creates* by mining the gold, this advantage should be redistributed, and it is no argument against redistribution that others could have mined the gold earlier but did not, and that Robert is responsible for distributing that part of the advantage to himself. Thus the judgment of our revised principle strikes an intuitively reasonable balance between the equally correct insights that natural resources are literally manna from heaven, and that this manna from heaven benefits no one unless someone extracts them.

Note also how this feature of the revised principle has the attractive aspects of a Lockean theory of acquisition, but avoids its notorious problems. Insofar as one becomes responsible for creating advantage through one's labor, our principle implies that one becomes entitled to advantages in virtue of one's labor.<sup>14</sup> However, this does not presuppose controversial ideas of self-ownership and one does *not* come to own the ocean by pouring a can of tomato juice into it<sup>15</sup> since this does not create advantage.<sup>16</sup>

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<sup>14</sup> Cf. (Locke 2005, 80). Locke thought we have a duty to use natural resources to create advantage (Locke 2005, 79–87). The revised principle is compatible with, but not dependent on, the truth of this claim.

<sup>15</sup> Cf. (Nozick 1974, 175)

<sup>16</sup> Even if it did, one would not own the totality of the ocean but only have a claim to a certain advantage, which corresponds to the advantage one creates by pouring a can of tomato juice into the ocean.

Thereby our proposed revision further amplifies what Cohen emphasized as an important strength of luck egalitarianism, in that it employs some of the most powerful ideas of the anti-egalitarian right in the service of egalitarianism (Cohen 1989, 933).

Thus, it is plausible that the correct judgment in *Money* is equal redistribution. This indicates that distributive justice should not be sensitive to responsibility for distributing a (dis)advantage in the absence of responsibility for creating it in cases of incurring advantage as well as cases of incurring disadvantage. It strengthens the case for compensating Benefactor in *Brick* on grounds of her lack of responsibility for creating the disadvantage she incurs.

*Responsibility for creating disadvantage without responsibility for its distribution*

*Brick* and *Money* illustrates that responsibility for distributing (dis)advantage is not important in the absence responsibility for its creation. But it also follows from the revised principle that responsibility for creating (dis)advantage is important in the absence of responsibility for its distribution. Consider:

*Redirection.* Culpable is a construction-worker who is responsible for constructing a building in such a sloppy way that a brick is now falling towards a crowded street. The brick will hit Victim unless Benefactor pushes Culpable into Victim which will cause the Brick to hit Culpable instead. Knowing this Benefactor pushes Culpable into Victim.

On our intuitions Culpable it is not unjust that Culpable is disadvantage and she should not be compensated for the disadvantage she suffers, because she is clearly responsible for the disadvantage. However, Culpable is *not* responsible for *distributing* the

disadvantage to herself. If we are right that distributive justice requires that Culpable is not compensated because she is responsible, this must be because she is responsible for *creating* the disadvantage. While it could very well be that Benefactor should not be permitted to act so the brick hits Culpable instead of Victim, this question is separate from the question of whether Culpable ought to be compensated. Certainly, we have weighty reasons against permitting citizens to disadvantage other citizens directly in order to promote distributive justice. Just as it is morally wrong for a vigilante to exact her own punishment on criminals, even when the punishment itself is just, *distributive vigilantism* can be morally wrong even though it promotes distributive justice. There is no contradiction in saying that as a matter of distributive justice, Culpable should not be compensated, while maintaining that Benefactor should not be legally permitted to redirect the brick from Victim to Culpable, and be punished for doing so as a matter of retributive justice.<sup>17</sup>

The verdict in *Redirection* supports the claim that it is the creation, rather than the distribution, of disadvantage that people should be held responsible for as a matter of distributive justice. This holds in cases of responsibility for creation without responsibility for distribution, as well as cases of responsibility for distribution without responsibility for creation. Thus, the verdicts of *Brick*, *Money*, and *Redirection* mutually support each other and the claim that distributive justice is sensitive to responsibility for creating (dis)advantage, but insensitive to responsibility for distributing them.

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<sup>17</sup> Similarly it does not follow from the fact that redirecting the falling brick from Victim to another person, who, just like Victim, is not responsible for creating the disadvantage will not make the distribution any more unjust that Benefactor should be permitted to do so. She most certainly should not. All that follows is that the reason this is not morally permitted (and should not be legally permitted) is unrelated to concerns about distributive justice.

*Partial responsibility, the amount of compensation, and supererogatory rescues*

If what has been argued so far is correct, Benefactor is entitled to compensation when she is disadvantaged by preventing Victim from being disadvantaged because she is not responsible for creating the disadvantage she incurs. We now turn to the question of *how much* compensation Benefactor should be offered on those grounds. First, Benefactor cannot be compensated in excess of the disadvantage she actually suffers. A transfer that makes Benefactor better off than she was before rescuing Victim is not compensation but reward. Second, Benefactor can be responsible for creating some, but not all, of the disadvantage she incurs.<sup>18</sup> These cases arise when she is disadvantaged by engaging in costly rescues, which are *inefficient* in one of the following three ways:

- A) *Absolutely inefficient*: Benefactor incurs more disadvantage than she prevents by rescuing Victim.<sup>19</sup>
- B) *Intra-personally inefficient*: Benefactor rescues Victim in a way which causes her to incur more disadvantage than she would have if she had rescued Victim in the way that disadvantaged her the least
- C) *Inter-personally inefficient*: Benefactor incurs more disadvantage than the person who would have rescued Victim while incurring the least disadvantage would have incurred by rescuing Victim.<sup>20</sup>

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<sup>18</sup> While discussing *Money* we already touched upon the idea that a person could be partly responsible for creating an advantage she incurs while merely being responsible for the distribution of the remainder of the advantage.

<sup>19</sup> A special case of this are *failed* costly rescues where Benefactor prevents *no* disadvantage at all.



If it was *reasonably foreseeable* that rescuing Victim would be inefficient,<sup>21</sup> Benefactor is responsible for creating the disadvantage she incurs in excess of the efficient amount. Though somebody would have been disadvantaged no matter what Benefactor did,<sup>22</sup> Benefactor is responsible for acting in such a way that somebody is disadvantaged *to this extent*. According to the revised principle, Benefactor is not eligible for compensation for the part of the disadvantage she is responsible for creating. If, on the other hand, it was not reasonably foreseeable that Benefactor's rescue would be inefficient, Benefactor is not responsible for creating any of the disadvantage she incurs. Though her action did create disadvantage, this was an unforeseeable stroke of bad luck and she is entitled to full compensation. The relevance of what Benefactor could have reasonably foreseen cuts both ways. Suppose Benefactor is responsible for being hit by a falling brick, which would otherwise have hit no one. The blow makes her cry out in pain. This startles Victim causing her to stop dead in her tracks, just before she takes a step which would have caused another falling brick to hit her. While Benefactor's incursion of a disadvantage prevented disadvantage to Victim, this was not reasonably foreseeable to Benefactor. Benefactor is not responsible for the fact that no one, rather than Victim,

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<sup>20</sup> E.g. Benefactor rushes into a burning house to rescue a baby and is badly burned, even though the firemen have already arrived and are willing and able to save the baby without being disadvantaged. It is necessary that the person *actually would have* rescued Victim, not merely that she could have.

<sup>21</sup> Very often it will not be reasonably foreseeable that Benefactor's rescue is inefficient, this is especially true of inter-personally inefficient rescues, where Victim will often have to make a snap judgement about whether someone else will rescue Victim and is able to do so while suffering less disadvantage than Benefactor would have.

<sup>22</sup> The exception being cases where Benefactor could have rescued Victim without suffering any disadvantage.

was hit by the second brick. Since *ex hypothesi* Benefactor is responsible for creating the disadvantage she incurs by being hit by the first brick herself, she is not eligible for compensation.

Apart from being relevant for how much Benefactor should be compensated, it is also worth dwelling on the possibility of being partially responsible for creating the disadvantage one incurs because of its implications for how the revised principle deals with supererogatory costly rescues. According to the revised principle, the distinction between obligatory and supererogatory costly rescues is not relevant to whether Benefactor is entitled to compensation. Some will find this counter-intuitive.<sup>23</sup> However, arguably the distinction only *seems* to matter because it, to some extent, coincides with *absolutely inefficient* costly rescues for which it is indeed counter-intuitive to (fully) compensate Benefactor. For while engaging in *absolutely inefficient* costly rescues is sometimes supererogatory, it is never morally obligatory, unless Benefactor is responsible for Victim being in need of rescue in the first place (in which case Benefactor is generally responsible for creating the disadvantage she incurs independently of the absolute inefficiency of the rescue). Once implicit assumptions about inefficiency are purged from the intuitions about supererogatory costly rescues it seems that compensating Benefactor for disadvantages incurred through supererogatory costly rescues is no different from compensating Benefactor for disadvantages incurred through morally obligatory costly rescues in terms of not imposing net costs on third parties, and it is certainly no less true that Benefactor has done something morally good by rescuing Victim when doing so was supererogatory.

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<sup>23</sup> As shall be argued, the most plausible readings of Arneson and Dworkin both imply that Benefactor can be compensated for disadvantages incurred through obligatory costly rescues but not supererogatory ones.

Insofar as it is these two features of costly rescues which makes compensating Benefactor for the disadvantage she incurs by engaging in a costly rescue of Victim intuitively compelling, Benefactor has just as much of a claim to compensation for supererogatory costly rescues as she has for morally obligatory costly rescues.

This concludes our explication of the revised principle and the main argument for its plausibility. It is important to note that what has been offered is not an objection to luck egalitarianism. The key emphasis is still on holding agents responsible for the consequences of their exercises of responsibility. We have merely pointed to a morally relevant distinction between responsibility for creating (dis)advantage and responsibility for distributing (dis)advantage, and argued that distributive justice should only be sensitive to the former. The revised principle we propose retains the core luck egalitarian emphasis on responsibility-sensitivity. It represents no departure from the claim that a just distribution reflects individual exercises of responsibility. Our development of the revised principle was motivated by, and defended on the background of, the problems posed by those who are disadvantaged as a result of costly rescues. Thus, it is relevant to examine other luck egalitarian proposals which can justify compensating such disadvantages and compare them to our revised principle.

### **III. Comparison with other accounts**

Section II argued that luck egalitarianism can compensate disadvantages incurred as a result of costly rescues while remaining responsibility-sensitive because those who incur such disadvantages are not responsible for creating them. In this section we will argue that the revised principle is preferable to other luck egalitarian proposals which can justify compensating disadvantages incurred by engaging in costly rescues. We

discuss proposals inspired by<sup>24</sup> Arneson, Dworkin, Cohen, Temkin and Eyal.<sup>25</sup> We shall argue that every other account is either subject to objections about compensating *inefficient* costly rescues or cannot justify compensating supererogatory costly rescues.

*Arneson: Duties undermine responsibility.* Arneson considers whether it is true that ‘*if doing this [an action] were morally required, we might then view her choice as forced*’ (Arneson 2011, 35). This is the claim that we are not responsible, in the relevant sense, for doing what is morally obligatory. Disadvantages stemming from choices we are not responsible for are clearly eligible for luck egalitarian compensation. Unlike the revised principle Arneson’s suggestion<sup>26</sup> cannot justify compensation for supererogatory costly rescues. As argued above this seems somewhat counter-intuitive, and at any rate it constitutes a difference between the revised principle and Arneson’s suggestion. Apart from defending the idea of not compensating supererogatory costly rescues Arneson

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<sup>24</sup> Most of the proposals focus on morally good acts and are only relevant to costly rescues due to their *pro tanto* moral goodness. Furthermore, it is not always clear that the authors would interpret their proposal in a way that made it relevant for disadvantages incurred as a result of costly rescues. This is most notably true of Arneson, Cohen and Dworkin.

<sup>25</sup> We do not discuss Schlomi Segall’s idea that brute luck should be interpreted as ‘*the outcome of actions (including omissions) that it would have been unreasonable to expect the agent to avoid (or not avoid, in the case of omissions)*’ (Segall 2010, 20) because it is somewhat underdeveloped in its content. It may be compatible with our proposal in which case the revised principle can be seen as a fleshing out of Segall’s account.

<sup>26</sup> As Arneson merely suggests this the above is not a criticism of Arneson. We merely use his remarks as a guide to how the view might look.

could argue that there are just no supererogatory actions,<sup>27</sup> but then every morally good action would count as forced, since this is how Arneson suggests we should view morally required choices. Since it does not make sense to praise people for doing what they were forced to do, this implies that moral praise would never be appropriate. This conflicts with our existing practice of praising good deeds. By contrast the revised principle is compatible with compensating Benefactor because she is not responsible for creating the disadvantage she incurs, while praising Benefactor for her exercise of responsibility involved in distributing the disadvantage from Victim to herself.

*Cohen: Price luck.* According to Cohen distributive justice requires equalizing *price luck* which is the bad (good) luck that one's tastes are expensive (cheap) to satisfy (Cohen 2004, 10–11; 16–18). Perhaps standard luck egalitarianism could see it as bad price luck that Benefactor's 'taste' for rescuing Victim can only be satisfied by incurring disadvantage.<sup>28</sup> If the cost of costly rescues is bad price luck then Benefactor is entitled to full compensation for the disadvantage she incurs by rescuing Victim. As such the price luck argument allows for compensation for costly rescues. However, it also requires full compensation for *absolutely inefficient costly rescues* since the fact that the disadvantage Benefactor incurs by rescuing Victim is foreseeably larger than the disadvantage Victim would have incurred had Benefactor done nothing is irrelevant to whether it is bad price luck that Benefactor incurs the disadvantage. It also requires full compensation for *inter-personally inefficient* costly rescues. If Benefactor has a taste for

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<sup>27</sup> Cf. (Kagan 1991)

<sup>28</sup> Here we set aside the significant misgivings we have about assimilating the performance of morally good actions to the category of 'tastes' (cf. (Anderson 1999, 300).

rescuing Victim this taste will not be satisfied if someone else rescues Victim, and the disadvantage suffered by Benefactor is bad price luck whether or not someone else could have rescued Victim while suffering less disadvantage. Thus, considering the cost of costly rescues as bad price luck allows Benefactor to impose significant costs on third parties.

*Dworkin: The Envy Test.*<sup>29</sup> One might think that Dworkin could offer compensation to Benefactor because she satisfies the envy test in that she *'would prefer someone else's bundle of resources'* to her own (Dworkin 2002, 67). After all Benefactor would prefer *not* being hit by a brick. At first it seems that Dworkin cannot compensate Benefactor because there is no unfair inequality between Benefactor and *Indifferent*, who is not hit by the falling brick because she leaves Victim to her fate. The fact that Benefactor prefers Indifferent's unharmed skull to her own is insufficient to make Benefactor envy Indifferent's bundle of resources because Benefactor is not willing to lead the life of Indifferent, which involves callous indifference to the suffering of Victim, required to avoid such head injuries.<sup>30</sup> However, as Dworkin points out *'a background or baseline liberty/constraint system [... which] will specify whether parties do or do not begin the auction with any particular liberty in hand'* (Dworkin 2002, 143) must be assumed when conducting the envy-test. It seems plausible that the "principle of security" which mandates *'constraints on liberty necessary to provide people with enough physical security*

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<sup>29</sup> We are grateful to Rasmus Sommer Hansen for insightful comments on this section

<sup>30</sup> Compare with Dworkin's remark that a person who prefers *'Adrian's stock [of goods] to his own; but [would not] have been willing to lead his life so as to produce them'* cannot be said to envy Adrian's bundle of resources (Dworkin 2002, 83)

[...] to allow them to make and carry out plans and projects' (Dworkin 2002, 149) and which is part of any plausible baseline liberty/constraint system according to Dworkin implies that people should not be at liberty to refrain from carrying out morally obligatory costly rescues. Thus, if rescuing Victim is morally obligatory Indifferent is not at liberty not to rescue Victim, and Benefactor seems to be eligible for compensation on the grounds that she can envy the bundle of resources of those who were not hit by a brick, because they were never in a position to rescue Victim and thus were not hit by a brick.

However, a constraint on the freedom to refrain from *supererogatory* costly rescues would be so demanding that it would itself impede people's ability to make and carry out plans and projects. Far from following from the principle of security such a constraint would conflict with that principle and could not be part of any plausible background liberty/constraint system. Thus, the fact that Benefactor would not be willing to lead the life of *Normal*, who did not engage in a supererogatory rescue of Victim because of the disadvantage she would incur by doing so, *does* mean that Benefactor does not envy Normal's bundle of resources even though she prefer Normal's unharmed skull. This makes it difficult for Dworkin to justify compensation for disadvantages incurred as a result of *supererogatory* costly rescues. This is unlike the revised principle which justifies compensating disadvantages incurred as a result of *efficient* supererogatory costly rescues.<sup>31</sup>

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<sup>31</sup> This issue cannot be side-stepped by denying that there are any supererogatory actions, since considering these *prima facie* supererogatory rescues obligatory would do nothing to make imposing a constraint on the liberty to refrain from them less demanding.

*Temkin: Comparative fairness.* Call the circumstances where Benefactor can conduct a costly rescue a *rescue-situation*. Perhaps Benefactor is entitled to compensation because she is not being responsible for the rescue-situation. Temkin suggests that compensation is warranted '*when the worse-off are so because they chose to do their duty, or perhaps acted supererogatorily, in adverse circumstances not of their making*' (L. Temkin 2011a, 63).

Thus, lack of responsibility for the rescue-situation makes it unfair that Benefactor is worse off for performing the costly rescue (L. S. Temkin 2008, 143–145). As Temkin recognizes Benefactor is still very much free to leave Victim to her fate in rescue-situations, and is thus still responsible for incurring disadvantage by rescuing Victim regardless of whether she is responsible for the rescue-situation itself (L. S. Temkin 2008, 143). Temkin points out that insofar as Benefactor is not responsible for the rescue-situation, she is not responsible for being worse off than *those who would also have rescued Victim but did not encounter the rescue-situation*. This is correct, but does not answer the charge that Benefactor *is* responsible for being worse off *than those who also encountered the rescue-situation but did not rescue Victim*. In that case, where two persons face the same rescue-situation and choose differently, Temkin's suggestions offers little in terms of why compensation is required.

In order to maintain that it is unfair that Benefactor is worse off than those who faced the same rescue situation but did not rescue Victim Temkin must ultimately rely on his claim that moral desert is relevant to distributive entitlements which he makes as part of his broader theory of *comparative fairness* (L. Temkin 2011b, 67) and argue that compensation is warranted because of the moral goodness of rescuing Victim rather than Benefactor's lack of responsibility for the rescue-situation. This line of reasoning comes with several difficulties. First, it offers full compensation of *intra-*



*personally inefficient costly rescues*. If there are two ways to save Victim, and Benefactor chooses the one that disadvantages Benefactor more, Benefactor is worse off for her good act all the same, and should thus be fully compensated. This allows Benefactor impose costs on third parties. Second, *comparative fairness* faces a dilemma regarding supererogatory actions.<sup>32</sup> As we have argued it is fair that Benefactor is worse off as a result of inefficient supererogatory costly rescues and unfair that she is worse off as a result of efficient supererogatory costly rescues. *Comparative fairness* cannot strike this middle ground. It either implies that it is *never* unfair that Benefactor is worse off as a result of a supererogatory rescue or that it is *always* unfair. Neither implication is plausible.

*Eyal: Innocent choice*. Eyal argues that luck egalitarianism should be revised in the following manner:

*That someone incurs a disadvantage without having chosen culpably to risk incurring it is, in a central respect, unjust. If, however, that disadvantage results from that person's own culpable choice to take that risk, then (barring prioritarian considerations) that disadvantage can remain perfectly just. "Culpable" choice is understood as a free and at least somewhat morally wrong choice (Eyal 2006, 6)*

According to Eyal disadvantages resulting from morally permissible as well as morally good choices are eligible for compensation. Thus, only disadvantages stemming from culpable choices are not eligible for compensation According to us Benefactor is entitled to compensation for disadvantages, which she is not responsible for creating. Though

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<sup>32</sup> Temkin recognizes these as 'tricky' (L. S. Temkin 2008, 144).

many disadvantages stemming from morally good acts are disadvantages, which those who incur them are not responsible for creating, it is not true of all morally good acts, and it is certainly not true of all morally permissible acts. Thus, the revised principle would deny compensation of many disadvantages for which Eyal would offer compensation.

Since costly rescues are typically not rendered culpable by being inefficient in any of the three ways outlined.<sup>33</sup> Eyal's position justifies full compensation for disadvantages incurred by engaging in all types of inefficient costly rescues. However, there are other problematic elements in Eyal's account. Unless Eyal wants to expand luck egalitarianism to be a theory of retributive as well as distributive justice, only denying compensation for disadvantages stemming from culpable choices is an unacceptable reduction of the scope of luck egalitarianism. Even though Eyal considers this (Eyal 2006, 17), we would maintain that a large proportion of criminal choices should be treated differently than culpable, non-criminal choices. Instead of just refusing to compensate criminals for any disadvantages incurred as a result of their criminal acts society *imposes* further disadvantages. This is problematic for Eyal, because it is unclear how luck egalitarianism can play any role in guiding our judgments about which further disadvantages should be imposed, and if luck egalitarianism cannot play a role here, then the scope of Eyal's modified theory is reduced to culpable, but legal choices, which is a rather small range of cases. Furthermore, while both we and Eyal's rely on intuitive arguments for our positions, the intuitions we offer are meant to elucidate the moral relevance of the distinction between responsibility for creating and responsibility for

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<sup>33</sup> Whereas the *interpersonally* or *absolute inefficiency* of a costly rescue will typically mean that it is not morally obligatory.

distributing (dis)advantage in order to show that luck egalitarianism should only be sensitive to the former kind of responsibility. The revised principle remains unambiguously luck egalitarian in that it maintains the core commitment responsibility-sensitivity. By contrast Eyal fails to show that his position which compensates disadvantages stemming from permissible choices is compatible with the core luck egalitarian concern of responsibility-sensitivity, rather than an ad-hoc revision of luck egalitarianism in the face of hard cases.

#### **IV. Objections**

In this section we discuss two hard cases for our principle: Costly rescues of people who are responsible for creating the disadvantage they are about to incur and the justice of distributions influenced by gambles proper. Subsequently we deal with a worry about whether the revised principle is action-guiding in an interesting sense.

##### *Rescuing Imprudent*

A case where Benefactor rescues someone who, unlike Victim, would have been responsible for creating the disadvantage she would have incurred had Benefactor done nothing may seem like a hard case for the revised principle. Consider:

*Imprudent.* A brick is falling towards an almost empty street. Imprudent sees the brick falling, but foolishly walks under it anyway. Unless Benefactor pushes Imprudent out of the way Imprudent will be hit by the brick. If Benefactor pushes Imprudent out of the way Benefactor will be hit by the brick. Knowing this Benefactor pushes Imprudent out of the way.

Benefactor is no more responsible for creating the disadvantage she incurs in *Imprudent* than she was in *Brick* and thus equally entitled to compensation, since Imprudent would not be eligible for compensation had she suffered the disadvantage, this may give rise to worries that the revised principle allows Benefactor to impose net-costs on third parties after all. However, whereas no one is responsible for creating the disadvantage Benefactor incurs in *Brick*, Imprudent is responsible for creating the disadvantage Benefactor incurs in *Imprudent*. Therefore, it is not the community but Imprudent that should carry the cost of compensating Benefactor for the disadvantage she incurs. If Imprudent does not cover the cost of compensating Benefactor, then Imprudent's distributive share will not match her responsibility for creating disadvantage. Therefore, the revised principle does not commit us to indirectly subsidizing imprudence by compensating Benefactor for rescuing Imprudent,<sup>34</sup> and does not allow Benefactor to impose net-costs on third parties.

The second thing to note is that Benefactor's rescue of imprudent is an example of an action which promotes distributive injustice and is therefore pro tanto impermissible, but which is not impermissible all-things-considered. On the one hand Benefactor does something unjust by preventing the distribution from reflecting Imprudent's responsibility for creating disadvantage. On the other hand, no one can complain that the distribution does not favor them when it is unjust in this particular way (Cohen 2011, 125). This is so since the only person who is unfairly worse off than

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<sup>34</sup> In some cases Imprudent will be unable to compensate Benefactor (e.g. because she cannot afford it) and therefore the community will have to pick up the tab. However, this does not mean that the state thereby subsidizes imprudence any more than a state would subsidize criminal assault by compensating victims of criminal assault when the attacker is unable to do so.

she would be under a just distribution is Benefactor herself. Insofar as Benefactor knowingly brought this distribution around she cannot complain that the distribution is unfair to her.<sup>35</sup> Therefore, the distribution is *legitimate*, though unjust. Benefactor's rescue of Imprudent can be seen as an exercise of a *personal prerogative* to sometimes pursue other ends than distributive justice (Cohen 2008, 10; Scheffler 1995) which can make it all-things-considered permissible for her to act in ways which promotes distributive injustice, in cases where the resulting distribution does not thereby become illegitimate. Much the same is true of cases where Benefactor does not wish to be compensated at the expense of Imprudent. It remains unjust that Benefactor is disadvantaged and Imprudent is not regardless of Benefactor's wishes, but the only one who is unjustly worse off is Benefactor, and she cannot complain. Therefore, Benefactor is free to exercise her personal prerogative and refuse compensation.<sup>36</sup>

### *The problem of gambles*

Gambling may also be thought to create problems for the revised principle. Consider:

*The celebrated gamble.* Immanuel and Gottfried agree to bet on the outcome of a coin-toss. Immanuel bets his majestic wig that the coin will land heads up. Gottfried bets his equally magnificent wig that the coin will land tails up. The coin land tails up. Gottfried now owns both wigs.

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<sup>35</sup> And if Benefactor did not bring the distribution about *knowingly* she is not responsible for the distribution.

<sup>36</sup> Luck egalitarianism must also concede the existence of cases, where the moral value of respecting the wishes of the disadvantaged to *not* be compensated outweighs the pro tanto reason to further distributive justice (e.g. compensating people for being physically unattractive) (Cf. (Anderson 1999, 305–306) (Knight 2005)).

The celebrated gamble does not create advantage. It only redistributes advantage from Immanuel to Gottfried. Even if it creates advantage, because Immanuel and Gottfried enjoy gambling, this would be an advantage, which Immanuel and Gottfried are equally responsible for creating. Either way the only just outcome of the gamble is for Gottfried and Immanuel to keep their original stakes according to the revised principle. Thus, the revised principle condemns the distribution resulting from the Celebrated Gamble as unjust, and as far as distributive justice is concerned the result of the gamble ought to be undone. Though some take this view of gambles (Eyal 2006, 14; Cohen 2011; Lippert-Rasmussen 2001; Knight 2013) others have suggested that this is implausible (Williams 2013).

However, it is highly questionable whether the value of distributive justice could ground an all-things-considered reason to undo the outcome of the *Celebrated Gamble*. For, having voluntarily agreed to the gamble, Immanuel has no just grievance against Gottfried on account of his lost wig. Furthermore, since the expected value for Immanuel and Gottfried was keeping their own wig, they must both have preferred '*facing the gamble to having its expected value*' (Lippert-Rasmussen 2001, 555). Thus, both would have been worse off if they could not have gambled, which is in practice the case when the results of gambles are undone. Therefore, the verdict that gambling creates distributive injustice does not imply that the results of gambles ought to be undone all-things-considered. In the absence of this implication, the verdict that gambling creates distributive injustice seems intuitive.

*Is the revised principle properly action-guiding?*

The revised principle is action-guiding in the sense that it is a principle of distributive justice and there is a pro tanto reason to promote distributive justice. However, our discussion of *Imprudent* and *the celebrated gamble* revealed the existence of cases where the reason to promote distributive justice is not decisive. This explained away the *prima facie* counter-intuitive implications of the revised principle in those cases.

However, dodging the Scylla of counter-intuitive implications in this way may take us too close to the Charybdis of practical irrelevance. One might worry that the connection between the revised principle and decisive reasons for action becomes so loose that the principle fails to be properly action-guiding. After all neither the reason to compensate Benefactor against her will in *Imprudent* nor the reason to undo the results of *the celebrated gamble* was decisive.

If this objection is motivated by a general worry that luck egalitarianism fails to be properly action-guiding then our revision will not save luck egalitarianism. However, our proposed revision will not make luck egalitarianism *less* action-guiding either. The pro tanto reason to compensate Benefactor *is* a decisive reason for *offering* compensation whenever there would have been a decisive reason to compensate someone who was like Benefactor in every way, except that she was not responsible for distributing the disadvantage to herself either according to standard luck egalitarianism. However, a decisive reason to offer compensation is not a decisive reason to *force* Benefactor to take it. Any injustice this causes will only make Benefactor worse off and in those cases the value of respecting Benefactor's freedom outweighs the value of distributive justice. This is what does the work in *Imprudent*. This is also what does the work in *the celebrated gamble* though this may be less obvious. Since undoing the result of gambles would make the activity pointless Immanuel and Gottfried can be seen as having refused compensation *ex ante* by engaging in the activity.

Thus, our treatment of *Imprudent* and *the celebrated gamble* does not indicate that the reason promote distributive justice is rarely decisive. There is normally a decisive reason to offer compensation to Benefactor, and in cases like *Brick* it seems plausible that Benefactor would rarely refuse compensation.

## V. Conclusion

In this paper we have argued that the reason it is counter-intuitive to deny compensation to those who are disadvantaged as a result of costly rescues, which prevent disadvantage to others, is that these people are not responsible for creating the disadvantage they incur, but only for distributing the disadvantage from others to themselves. Thus the problem posed by costly rescues reveals that standard luck egalitarianism overlooks a morally important distinction between responsibility for *creating* (dis)advantage and responsibility for *distributing* (dis)advantage, and that distributive justice should only be sensitive to responsibility for *creating* (dis)advantages. In light of this we have proposed revising luck egalitarianism in the following manner:

*The revised principle.* A distribution is just if, and only if, people's comparable positions reflect nothing but their comparable responsibility for creating advantages and disadvantages.

The revised principle can offer compensation for disadvantages incurred as a result of costly rescues while remaining a responsibility-sensitive principle of distributive justice. We also believe to have shown that the revised principle offers such compensation on firmer ground than the competing alternatives.



Our proposed adjustment of luck egalitarianism has theoretical importance for two reasons. First, it raises the hitherto overlooked question of whether luck egalitarianism should hold agents responsible for distributing disadvantages, or whether luck egalitarianism should only hold agents responsible for creating disadvantages. Second, our proposed adjustment enables luck egalitarianism to give plausible answers to hard cases raised as objections against luck egalitarianism. Notably, it seems that the revised principle can meet Elizabeth Anderson's objection that luck egalitarianism abandons dependent caretakers (Anderson 1999, 300). Many of these dependent caretakers will be eligible for compensation, because their disadvantageous choices prevent disadvantage to others. Therefore, they do not create disadvantage, but only distribute it from others to themselves. Interestingly, the vulnerability of dependent caretakers is one of the criticisms against luck egalitarianism that luck egalitarians have been inclined to concede (Knight 2005, 59–62). We hope to have shown that such a concession is unnecessary, since luck egalitarianism contains the resources to meet this challenge.

The revision of luck egalitarianism which we have proposed in this paper has practical importance as well, since it enables luck egalitarianism to offer compensation to a number of people who prevent disadvantage to others at the risk of suffering a disadvantage themselves. From public servants occupying hazardous jobs for the greater good, like firefighters and police officers, to good Samaritans who help persons in need at their own expense, putting the wellbeing of others above their own. When these people are hurt in the line of duty, they deserve to be compensated. Fortunately, luck egalitarianism is well equipped to offer such compensation, *pace* Anderson.

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None to declare

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