My aim in this paper is to consider the conception of responsibility that is appropriate to the enforcement of standards of justice, both distributive and corrective. I will defend what I will call a reciprocity conception of responsibility, which supposes that responsibility must be understood in terms of norms governing what people are entitled to expect of each other. If I have sole responsibility to look out for myself, or for some interests of yours, then I am not entitled to expect anything from you or others and I am responsible, that is, answerable, for how things turn out. My argument for the reciprocity conception is meant to apply only to its role in institutions charged with giving justice. Conceptions of responsibility, other than this institutional one I defend, may well be appropriate, or unavoidable, for other purposes. In defending the reciprocity conception, I will be contrasting it with a family of non-instrumentalist conceptions of responsibility which I loosely group together under the title of “agency” conceptions. The grouping is loose, but legitimate, I think, because all members of the agency group suppose that the moral significance of responsibility derives from the ways in which a person acts in the world rather than, in distinction, upon what one may expect of others. In terms favoured by Gary Watson, agency conceptions suppose that the way in which a deed or consequence is attributed to the agency of its author, that is, “responsibility as attributability,” provides the basis for the moral interest we take in the responsibility of others, that is, “responsibility as moral accountability.” Different versions of the agency conception are all alike in supposing that the basis of a person’s moral accountability is fixed by the concept of attributability as applied to that person. But all versions of the agency conception suppose that to explain moral accountability, one must simply come up with the correct refinement of the idea of attributability. Refinements will vary in their breadth, as well as in the conditions they
incorporate, and some version may even allow that different consequences are attributable to a person for different purposes. Some have suggested that no real refinement is necessary; a person is responsible for whatever he or she brings about. Others advocate various refinements, some resting on ideas of control, based on a conceptual claim to the effect that a person cannot be responsible for a consequence over which he exercised no control. Still other times the proposed refinements are avowedly normative, based on the intuitive idea that it is not fair to hold someone responsible for a consequence unless he had a fair opportunity to avoid it. For reasons that will be clear in what follows, these differences between different versions of the agency conception do not matter to the contrast I wish to draw. Whether the agency conception is construed narrowly or broadly, and whether construed in terms of real control or a fair opportunity, all versions are alike in supposing that the question about responsibility for the consequences of one’s conduct which is relevant to the just allocation of benefits and burdens is a question about the one’s agency and the circumstances in which she brought about, or failed to bring about, those consequences. Because agency conceptions begin with questions of attribution, they necessarily view responsibility as a relation between a person and a consequence.

The reciprocity conception differs from all of these in that it supposes that the sort of responsibility as accountability that is relevant to distributive and corrective justice, to the just allocation of benefits and burdens by institutions, is governed by interpersonal norms of expectation, rather than any account of personal attributability. The reciprocity conception views responsibility as a relation between persons with respect to expected consequences. As a result, nonrelational facts about a person’s agency and the circumstances in which she acts will never settle questions of responsibility as accountability. Although I will not deny that we do have some conception of responsibility that is independent of concerns about justice, I will argue that such a conception of responsibility is not appropriate to answering questions about when persons should be held responsible for consequences. As Aristotle might have said, the word “responsible” is spoken in many ways.

As a result, as I develop the reciprocity conception, I will do so by developing the account of justice in which it is at home. It is implicit both in the common law and in Kant’s
writings about justice, each of which analyzes both justice and responsibility in terms of relationships between persons. I will argue that considerations of justice shape the way in which we think about responsibility, and that we misunderstand the significance of holding people responsible for their choice if we fail to attend to the ideas of justice that make choice and responsibility matter. The reciprocity conception provides a plausible account of why we take an interest in some of the consequences of choice, but not others, even when an agent’s capacities are engaged in the same way in bringing them about.

I shall argue that the most significant difference between these two ways of approaching questions of responsibility concerns the range of consequences for which each supposes an agent can be responsible. The reciprocity conception insists that the relevant concept of responsibility only arises in the context of a certain understanding of interaction, and that understanding will provide a range or set over the consequences for which a person will be responsible. By contrast, all versions of the agency conception of responsibility suppose that the concept of responsibility has no inherent limitations on the range of its consequences. This is because the agency conception conceives of responsibility in terms of features of an agent and her situation. I should be clear about what is meant by this: many defenders of the agency conception insist that judgments of responsibility have certain preconditions. Indeed, a broad range of such conditions has been proposed. Sometimes the proposed conditions are formal, and centre around such requirements as adequate information, or awareness of the consequences of particular choices. Other proposed conditions are substantive, and centre around the need for people to have an adequate set of options and opportunities in order to be responsible for the consequences of their choices. These limitations are genuine, but are not inherent in the sense that interests me. By “inherent limitations” I shall mean those limitations that restrict the reach of responsibility, even in those cases in which a person can be said to be an agent, that is, has satisfied whatever formal or substantive criteria that are thought to fix agency for that person. I shall argue that the reciprocity conception makes these limits inherent in a more confining sense, which I will now explain.

I will illustrate this abstract talk about the difference between preconditions (as they appear in agency conceptions) and inherent limitations (as they appear in the reciprocity
conception) by looking at three examples in which such talk arises. These examples are meant to be morally uncontroversial, in keeping with my aim of showing that, on the reciprocity conception, responsibility is subject to inherent limits. Partisans of versions of the agency conception might defend the same conclusions which I do, but they would do so by appealing to factors extrinsic to responsibility. The first of these examples shows up in a standard puzzle in tort theory namely, how far do the consequences of a deed reach? If a ship is damaged as a result of another ship’s wrongdoing, the errant shipowner is liable for the full costs of the accident, including the costs of lost business due to any delay occasioned by repairs. But were the damaged ship to be destroyed by a storm after the repairs have been completed, the defendant is not liable, despite the fact that the ship would have been far away at the time of the storm were it not for other ship’s initial negligence. Law and common sense agree in supposing that the situation has returned to normal once the ship has been repaired. The example raises two questions: Where do the consequences run out? Why do they run out where they do? Both of these questions feed into our main question, which is whether this result in law and common sense is inherent in the idea of responsibility which underwrites liability in the first place, or whether the result is a matter of some causal or intuitive judgement that the consequences of an act eventually peter out as they mingle with a variety of other causes. The agency view, in its various versions, must say that the consequences of a deed eventually will in fact peter out. The reciprocity view says that the limits to consequences are inherent in the conception of responsibility which governs interacting parties. Thus partisans of the agency conception defend the same conclusion, but on factors extrinsic to a conception of responsibility.

The second example concerns a problem that was pressing in the seventeenth and eighteenth centuries. The philosopher’s version of question is whether you can sell yourself into slavery. The equally pressing legal version of the same question concerned how much could be required of a person in order to discharge a debt fully -- in the limiting case whether a debtor could seized in settlement of a debt. The important question for our purposes in not whether slave contracts or debt slavery are morally acceptable, or should be allowed by law. Except for a few libertarian holdouts, it is pretty much a consensus view that they are unacceptable and should not be legally enforceable. This is so despite the fact that slavery in these cases is
voluntarily undertaken, in a way that would in any other situation make the volunteer an agent responsible for its consequences. The important question for our purposes is why this limitation exists, whether, as the reciprocity view holds, because the idea of responsibility, when extended to slavery, undermines its own inherent rationale or whether some other factor, extrinsic to responsibility, steps in to limit its reach.

The first two examples have attracted the attention of few egalitarians; they have tended to pay little attention to the kinds of private order regulated by the law of tort and contract. Instead, egalitarians have tended to regarding private order either as an instrument for achieving an egalitarian ideal,⁵ or else as subject to merely instrumental concerns about enabling people to achieve their private purposes effectively.⁶ As a result, the topic has been left largely to libertarians, who have been wholehearted in their embrace of the agency conception. The consequences for egalitarian treatments of responsibility have been unfortunate, because egalitarians have too often embraced the agency model without fully considering the tension between it and their egalitarianism.⁷ In order to repair this defect in egalitarian thinking about responsibility, I will also look at a third example, specifically tailored to the concerns of egalitarians. It is a question that arises most sharply for egalitarians and those who share their concern for fair opportunities. Pick whatever formal or substantive criteria of responsibility seem most plausible to you, and consider the case of a person who satisfies them and makes a terrible choice. He would certainly be responsible for the ordinary consequences of his choice, but things turn out to be disastrous. What do we do about such a person? Do we abandon him to his fate, since he was responsible for it? Or is there some reason to limit his responsibility in this sort of context? If you think of responsibility in the unbounded agency way, you will think that, as far as responsibility goes, he made the bed he must lie in; of course you may well also think that things other than responsibility matter, so that, all things considered, we should not abandon him to his fate. Perhaps you don’t think he is entitled to help, but should receive it anyway, that justice should be tempered with mercy. If you think of responsibility in the bounded way offered by the reciprocity conception, however, you will think that although he is responsible in one sense, it is incoherent to hold him responsible in this sort of situation, because it undermines the underlying inherent basis of responsibility. Moreover, you may well also think that there are
other, independent reasons not to hold him responsible. However, if you think about responsibility in this bounded way, those independent reasons aren’t necessary to explain the limits of responsibility, because you will think that those limits are inherent in the concept of responsibility itself.

      Just so you know what to expect, I will argue that the reciprocity conception provides a superior account of all three issues. I will also argue that the reciprocity conception incorporates a powerful and appealing idea of equality in interaction that provides a compelling explanation of why people who care about individual responsibility would also care about at least some measure of material equality.

      There are other important social institutions, including coercive ones such as the provision of emergency services for fires or floods which, although we hope that they will not be unjust, may be more concerned with efficiency than justice. Insofar as they take account of responsibility, perhaps my defence of the reciprocity conception might be extended to include them, but I do not do so here. Nor do I say anything, except in passing, about the conception of responsibility appropriate to the criminal law.

      

      

      Agency and Reciprocity

      Before turning to my examples, I should say something more about both the reciprocity conception of responsibility and the agency conceptions with which it contrasts. I should be explicit here -- I think that agency conceptions have an important, indeed ineliminable place in moral life. But I also think that they are out of place in coercive social institutions. So my defence of the reciprocity conception is, at least in part, also a defence of the idea that political morality is distinctive, and works with a different conception of agency and responsibility than do other parts of morality.8

      Let me begin, then, by offering a broad contrast between the two conceptions. Agency conceptions require little by way of introduction. They play a significant and familiar role in ordinary life, and they play a prominent role in philosophical discussions of responsibility, especially in the context of debates about freedom of the will. In ordinary life, they figure in each person’s sense of him or her self as a being extended across time. My achievements are an
important part of who I am, and though it may sometimes pain me to admit it, my failures are a comparably important part. (No doubt it pains me because they are an important part.) So too are many of my deeds that would be hard to classify as either successes or the failures, but which turn out to have significant consequences. The same factors play an important part in the sense that each person has of other people. We think of ourselves, and of each other, as agents, persons who make a difference to how things turn out in the world. In thinking of persons in these ways, we typically focus on the consequences that are attributable to particular persons. Different versions of agency offer different accounts of the appropriate grounds of attribution. But they are all alike in attaching primacy to questions of attribution.

The agency conception supposes responsibility to be a relation between agents and outcomes or consequences of the agent’s act. Different versions of the agency conception conceive of this relation differently, and add differing qualifications to it. What all versions of the agency conception have in common is that they suppose that responsibility is a two-term relation between agent and outcome. The reciprocity conception, by contrast, conceives of responsibility as a relationship between persons with respect to consequences of a morally relevant kind.

The many different versions of the agency conception are alike in focusing on agency in this sense – hence the name. But they differ in their accounts of the conditions under which a person is responsible, and in the range of consequences that they take to fall within a person's agency. On the broadest version of the agency conception, the mere fact that a person caused a significant outcome is enough for that person, at least, to deem himself responsible for it. Bernard Williams gives the example of a careful driver who runs down a small child. The driver has no reason to believe that he could have avoided running down the child by being more careful. But, Williams points out, he will experience "agent regret," because he will think of himself as bearing a special relation to that consequence, a relation that bystanders or passengers in the car would not have. He bears that relation simply because his act brought the terrible consequence about.

Advocates of other, narrower, versions of an agency conception may well doubt that Williams's example of agent regret concerns responsibility at all, since they may want to suggest
that we can only be responsible for what one can control, in some suitable sense of that term. I will not attempt to canvass all of the different senses of ‘control’ that have been offered in the literature on responsibility. Instead, I will merely point to the ways in which they figure in accounts of responsibility for consequences: regardless of the precise account of control offered, competing accounts of responsibility as control are alike in seeking to narrow of the range of outcomes that are expressions of a person's agency, and each seeks to offer an independent account of the relevant sort of control. They all begin with the idea that responsibility for a consequence, if it is to make sense at all, must rest upon some relationship between the agent and the consequence. Some versions of the agency conception will focus on the agent's mental states, such as intention or foresight, while others will focus on the adequacy of the range of opportunities faced by the agent, and still others will combine them. But, as I said, they are alike in seeking to relate an agent to a consequence. I am responsible, just because it was me, and nobody else, who brought about this outcome.9

The Reciprocity Conception

In developing the reciprocity conception, my strategy will be similar to that deployed by Kant in his criticism of Locke's theory of property. The intuitive appeal of Locke's account is obvious: by the mixing my labour with a thing, that thing in some sense becomes an extension of me. Locke's proviso that "enough and as good" must be left for others limits the reach of this intuitive idea, but preserves its force. Kant argues that the Lockean account treats property as a relation between a person and that thing, but that property, precisely because it is a matter of the rights that one person has as against others, is better understood as a relation between persons with respect to things. In saying this, Kant does not mean to deny that people acquire unowned things by creating or appropriating them, but only to insist that such acts only bind others against the background of a particular normative understanding of persons interacting with each other on terms of reciprocity.

I want to make the similar claim about responsibility. Agency conceptions suppose that responsibility is a relation between a person and an outcome. I will argue that the sense in which responsibility is of interest to justice is the sense in which it is a relation between persons. That
relation explains why some people may either complain of the deeds of others, or remain indifferent to their suffering: one person’s deeds assert a claim of justice against others because of the background relations between people in which the deed takes place.

The reciprocity conception locates the place of responsibility within a more general idea of reciprocal limits on freedom. It starts with the thought that different people have separate lives to lead, with different ends, and treating them as equals requires rendering their separate pursuits compatible. To do so requires limits on the ways in which people treat each other as they pursue their separate ends. Those limits are reciprocal -- as Kant puts it—because limits ensure that no party may bind others more than they in turn may bind him. In using the conception of “binding” Kant is concerned with the ways in which one person may place another under an enforceable obligation. Kant also supposes that those limits provide the only basis for the legitimate use of force; the bases this on the grounds that freedom can be limited for the sake of freedom alone.10 This is not the place to consider whether this is the only way of justifying the use of force, but it is certainly an important way of justifying it. 11

For Kant, this requires the familiar legal regimes of private ordering -- tort, contract and property -- with something like courts charged with filling out the content of, as well as applying and enforcing, their rules. This stage already presupposes a conception of responsibility, for it draws a line between what a person does and what merely happens in terms of the rules of those private law regimes.12

Responsibility for bringing about consequences is most frequently at issue in two types of situations: when one person complains of another's conduct towards him, and when one person refuses to help another because she was the author of her own difficulty. In the first, the person complains that someone else did something to him; in the second that the other person did whatever it was to himself. The reciprocity conception of responsibility gives an account of each. As for the first situation: If you injure me, my complaint is that you were not permitted to harm me. The loss I suffer is your responsibility because I was entitled to have you forbear. If I breach a contract, I must typically provide a remedy because you were entitled to my performance, and I am responsible for my failure to perform.

The reciprocity conception offers a parallel account of the sense in which someone can
be the author of his or her own problems—as in the second situation. I am free to take advantage of the choices and activities of others -- if we are neighbours, I can grow mushrooms in the shade of your garage -- but do so at risk to my mushrooms; I cannot complain if you decide to tear your garage down, or if someone else destroys it carelessly. It counts as a chance I have taken because my decision to use something that belongs to someone else does not, on its own, bind anyone else. Again, if you and I make a contract, each of us becomes obligated to the other, but our agreement does not bind other people who are not parties to it. Having promised you that I will do something, I am responsible to you if I let you down. I bear that responsibility to you, even if someone else is, in turn, responsible for my letting you down. But I am not responsible for whatever disappointments others, independent of the nexus, might face as a result of my failure.

The reciprocity conception thus offers a distinctive interpretation of the familiar idea that people are responsible for what they make of their own lives. That responsibility is not, as agency conceptions would have it, an expression of the fact that it is my life. Instead, the reciprocity conception understand this idea contrastively: each of us has a special responsibility for how one’s own life goes, as against anyone else in particular having a responsibility for that life. This idea cuts in two distinct but compatible directions: first, it means that, subject to the qualification that I not interfere with others’ ability to make what they will of their lives, I am not answerable to them for what I make of my life. Second, others are not answerable to me for how my life turns out. Should things turned out badly for me, they may tell me that I must lie in the bed I made for myself. In saying this sort of thing, they identify my disappointments as my own doing by locating them within the sphere in which I act for myself alone, and so, they are saying that I am responsible for my losses in a way that is as transparent as it is familiar. In each of these examples, a person is related to a consequence through norms of equal freedom.

In focussing on the wronged person’s normative entitlement to be free from certain kinds of conduct by others, the reciprocity conception thereby distinguishes itself from the version of the agency conception that says a person is responsible for the full consequences that follow if he does something wrong. This latter agency view is put forward by G.E.M. Anscombe in her essay “Modern Moral Philosophy”, where she says "Whereas I should contend that a man is responsible for all the bad consequences of his bad actions but gets none of the credit for the
good ones, and contrariwise is not responsible for the bad consequences of good actions.”¹⁶ Hegel makes a similar claim in the *Philosophy of Right*, where he writes “a thrown stone belongs to the devil.” The Anscombe/Hegel approach is a restricted version of the agency conception. It is restricted because a person is only responsible for consequences provided that he has behaved badly in some way. But it is still a version of the agency conception, because the entire extent of a person's responsibility is determined by that person’s conduct and certain consequences that ensue, and does not depend upon the entitlements of others. For Anscombe, as for Hegel, if I behave badly, I am responsible for whatever turns out to happen as a result; If I behave well, I am responsible only for the good that follows.

For the reciprocity conception, by contrast, the consequences for which a person is responsible depend upon the entitlements of others, not simply on the fact that the person’s conduct had an effect, albeit deficient or harmful to others. The reciprocity conception thus understands responsibility in normative terms, not in conceptual ones.

You may think that this shows that the contrast I am getting at is really just a contrast between normative and non-normative conceptions of responsibility. Yet there are too many different ways in which an account of responsibility can be described as normative for that to be the entire issue. The reciprocity conception focuses on norms that govern the conduct of the person who is responsible. Other prominent accounts of moral responsibility which are sometimes characterized as normative incorporate norms that are supposed to govern the assessments of those who are making judgments about responsibility. Perhaps the most prominent example of such an account is the capacity/opportunity principle, which is invoked by H.L.A. Hart in his discussion of punishment. Hart contends that we can only hold people responsible provided they “had, when they acted, the normal capacities, physical and mental, for doing what the law requires and abstaining from what it forbids, and a fair opportunity to exercise those capacities.”¹⁷ The crucial feature of Hart’s principle, and of others like it, is that it is a norm governing occasions on which it is legitimate for *others* to judge someone responsible, and says (at least on a strong reading) that a person is only responsible if it is fair to *him* to hold him responsible.¹⁸ As such, it is a qualified version of an agency view; although it does not suppose that questions of responsibility are fixed entirely by facts about an agent, it supposes that the
question of whether a person is responsible is a question about that agent rather than about his relation to other persons. Indeed, one way of understanding Hart’s account, and others like it, is to see them as insisting that, if the agent lacked adequate capacities or opportunities with respect to some consequence of her conduct, that consequence is not really an expression of her agency.

The reciprocity conception is normative in a different sense from the normativity attributed to Hart’s account; it says that whether a person is accountable depends on what that person owes to others. Insofar as the norms here are norms of fairness, they are norms of fairness across persons, rather than of fair treatment of some particular person. The reciprocity conception is distinctive, then, in that it articulates the nature of responsibility in terms of reciprocal norms of conduct, that is, norms governing what people owe to each other within personal interactions. There may be a variety of norms that meet such a requirement, and the reciprocity conception does not, by itself, specify the content of those norms concerning what is owed very fully. It nonetheless represents a distinctive way of relating responsibility to norms.

Again, any account of the relation between justice and responsibility will suppose that responsibility is relevant to norms, particularly norms about what is owed respecting aid and repair. The reciprocity conception’s focus on norms of conduct makes it normative in a distinctive sense. That distinctiveness gives it decided advantages over agency conceptions, advantages that do not carry over to accounts of responsibility that are normative in other ways. I must now explain. Because it views responsibility through the lens of reciprocal obligations, questions that are pressing on some versions of the agency conception do not even arise for the reciprocity conception. It allows us to avoid such intractable questions as whether something counts as a choice when one of the options is not fully understood, or none of the options are particularly palatable, and such other, comparably intractable questions as whether some taste can be given up easily or only with difficulty. Such questions are potentially relevant on at least some versions of the agency conception, because that conception looks at responsibility as a relation between an agent and an outcome, and so must specify the features of the agent relevant to that relation. On the reciprocity conception, however, choices are understood in terms of the legitimate claims of others.

The reciprocity conception is able to avoid these intractable questions because it allows a
court to say, for example, to the tortfeasor who is held liable, "you are being held liable because you are responsible." It can say such a thing because norms of reciprocity specifies the respect in which the victim's injury is the injurer's doing. It is difficult to see what a version of the agency conception, even a robust version, could add to this. It might claim to show that the injury is the injurer's doing in some further sense, but any such further sense will bear no relation to the legitimate claims of others. The relevance of such a further sense is obscure. For the reciprocity conception, a consequence belongs to a particular person as against some other because of the norms governing the interaction of separate persons pursuing their distinct ends. So the reciprocity conception can say "because of what you have done – breached a contract, or wrongfully injured another person, or taken a risk upon yourself – as between you and this other person, this consequence is yours." The norms mark the boundaries between what someone has done, to himself or another, and what has merely happened to either of them.

In claiming that the reciprocity conception is able to avoid such questions, I do not mean to deny that some questions about attribution have philosophical interest outside questions about accountability. My claim is only that the reciprocity conception need not address these or presuppose answers to them, to justify its version of accountability. Instead, at the level of particulars, it can work with the thinnest possible conception of attribution, which requires only that we be able to say that a person can be responsible for something that we can say she has done or failed to do. This sense of attribution is familiar from contexts in which accountability is not at issue: we can say that the child spilled her milk, that the dog spoiled the rug, and that the drought brought about the famine. No robust sense of agency is required, and we can attribute a consequence to the failure of something to happen.

At the level of persons more generally, the reciprocity conception does require more, but not by way of a theory of attribution. Its norms govern the conduct of persons who are in general self-determining beings, capable of bringing their conduct into conformity with norms. As a result, it can only claim to apply to beings who are generally capable of acting in accordance with norms. But it does not require that they be self-determining with respect to a particular consequence in order to be responsible for it. This slightly thicker conception of responsible persons is still quite thin, so thin, indeed, that it provides no real constraint on the particular
consequences for which a person could be responsible. In particular, it does not require that responsibility be limited to outcomes which a person could have avoided, or has chosen in any robust sense of that term. Because it works with a thin sense of attribution, but a robust set of norms of conduct, the reciprocity conception thus has room for the familiar idea that a person can be accountable for consequences to which she gave no thought, and for violating norms she did not recognize. Whether these aspects of accountability are defensible can only be addressed by examining the norms that impose them. They cannot be ruled out (or in) by a metaphysical account of attribution.

But if the reciprocity conception refuses to subordinate accountability to a robust account of attribution, it also does not suppose that accountability is a necessary and sufficient condition for attribution. Instead, it simply denies that a robust theory of attribution is necessary to accountability. It rests content with the thin sense of attribution, because further refinement of the concept of attribution is irrelevant to its ambitions. Thus the reciprocity conception can allow that it may be appropriate to attribute a consequence to a person though she is not accountable. As we shall see, the three new examples below all involve consequences that can be attributed to a person without accountability. The reciprocity conception can explain these differences from the agency conception precisely because of the way in which reciprocity understands the context within which accountability is an issue.

I said earlier that the reciprocity conception is of special importance to coercive institutions concerned to give justice, and I should say something more about the way in which it is, and is not, an institutional conception. If by “institutional” we mean something like “conventional,” it is not institutional. It is, however, institutional because it requires institutions to specify the normative entitlements that people have against each other. Otherwise it is not sufficiently determinate to regulate conduct.

That brings me to my main question: what conception of responsibility is it appropriate for coercive social institutions to work with?

*The extent of injury:*

The law of torts imposes liability when one person wrongfully injures another. The
primary measure of, and rationale for, liability is compensatory: the injurer must make the victim “whole,” that is, he must make it as though the tort had never occurred, insofar as money can do that. Aristotle described the justice involved in such cases as “corrective,” and characterized the idea that people should clean up their own messes in terms of the relationship between one person’s doing, and another’s suffering. Aristotle’s characterization of the issue does not, on its own, tell us what counts as a person’s doing in relation to another person’s interests, and so is neutral between the agency and reciprocity conceptions. In looking at their implications for this question, I want to put to one side the question of whether liability is based on fault, or can be predicated on injury even in the absence of fault. I do so on the doctrinal ground that different torts impose different requirements of fault, ranging from the liability of those transporting gasoline or blasting with dynamite, which is “strict,” through the fault-based liability that attaches to most ordinary activities, to the requirements of intention for such wrongs as fraud or battery. Instead, I will focus on the question of how far the consequences of a wrong reach. Strictly speaking, that one question actually contains two: to which class of persons is the wrongdoer answerable, and for what type of injury to persons in that class. Everyone agrees that some such limits must be imposed; our question is “which limits, and why?” Any view of responsibility that supposes a person can be responsible for the consequences of her choices must answer it, for no coherent conception of responsibility can suppose that a person is responsible for everything that could be called a consequence of her actions.

The reciprocity conception has a simple and direct answer to this question. The rationale of the reciprocity view is that responsibility is an issue because people are required to treat each other in certain ways. Although they can be called to account for their failure to do so, they cannot be called to account for the risks that others have taken. As a result, the reciprocity view answers the question of remoteness in terms of the duties people owe to each other. You are only responsible for all and only those injuries that you had a duty to avoid imposing. This point can be made in terms of the common law’s requirement that injuries be foreseeable in order to be actionable, since you can’t have a duty to avoid injuring people in ways that you can’t take account of in your actions. One cannot be responsible for an unforeseeable injury because one person cannot owe another a duty to avoid one. Other factors may be relevant to the existence
of a duty, but foreseeability provides an outer bound beyond which there can be no liability because there can be no duty. Where a type of injury is unforeseeable, nothing anyone could do, or refrain from doing, would count either as taking a precaution against it or increasing its danger. If someone injures you in one of those ways, you cannot complain that she did anything wrong to you, because you cannot complain that she should have done anything different from what she did. You can wish they had done things differently, but that is just because of how things turned out. Like Williams’s careful driver, your injurer might, as things turned out, have spared you the injury by being less careful with your safety. But you cannot complain about that. If you think that driving is so dangerous that stricter norms apply to it, change the example – suppose you get injured in a sudden and unexpected hailstorm your way to visit me. I may well wish that I hadn’t invited you, or had invited you at a different time. There is something I could have done which would have prevented your injury, but nothing that I could have done to prevent it. We just wish the result had been different.

Consider the example I mentioned earlier of the ship that is damaged in a storm occasioned by the delay created by the need for repairs after an accident. The reciprocity conception says that the initial injurer is not liable for this second injury, even though it would not have happened if not for the first. The second injury was not foreseeable, not because operators of ships are unaware of the perils of the sea, but because of the way in which they are aware of them. The risk of ships that have been damaged subsequently being caught in storms does not provide a reason for operators of ships to take any precautions in particular. Nothing they can do can change the likelihood of another ship getting caught in a storm, because storms are a pervasive risk of going to sea. Conversely, the injurer cannot claim an offset against the damages he owes by showing, however persuasively, that dealing with the initial injury spared the ship from certain destruction by an oncoming storm.

The reciprocity conception thus allows us to see the limits to responsibility as intrinsic to its basis. The tightness of such a connection does not remove the possibility of disagreement as to what is, and what is not foreseeable, or the need for judgement to resolve it. It does, however, give such controversy a single subject matter, that is, what people are entitled to expect of each other.
Now consider what an agency conception of responsibility might have to say instead about the original example. The example poses difficulties for an agency conception, because the effects of the second storm seem to be attributable to the agency of the first ship. The owner of the second ship can say truly, “If the first ship hadn’t wronged me, I would still have my ship.” There seem to be three broad strategies open to an agency conception in addressing this sort of example. First, the agency conception might be developed in the ways that some libertarians, following Richard Epstein, have sought to develop it, by claiming that a person is responsible for whatever consequences he or she causes. Epstein’s view is that a person should be answerable for any damage that he causes to another person, and, in keeping with his libertarianism, seeks to derive this requirement from the concept of property.28

The difficulty for Epstein’s account is that because it focuses on everything that a person brings about, it has no room for any idea of limits to responsibility. Responsibility, on Epstein’s account, is unlimited because the causal upshots of an act extend indefinitely. As a result, Epstein appears to lack the resources to explain why responsibility should ever come to an end.

Second, an agency conception might be developed along the lines taken by H. L. A. Hart and Tony Honore in their book Causation and the Law. Hart and Honore argue that the limits of responsibility are given by common sense causal criteria, so that, although "freakish" consequences are too remote to attract liability, a wrongdoer is responsible for all those consequences which are "direct". Their rationale is the principle that ‘a man who "starts something" should be responsible for what he started.’29 Putting aside the difficulties with deciding who has started something, Hart and Honore go on to note a variety of extrinsic qualifications to their principle.30 They refer to these as “special” policy reasons. Thus on their account, we must simply conclude that the damage to the second ship is intuitively too remote, or else we must concede that the first shipowner is responsible, but, with some extrinsic or special policy ground for declining to hold him so. I do not deny that there may be such grounds, but it is difficult to see why foreseeability would map onto them in a systematic way. Moreover, it seems to limit drastically the force of the idea that "a person is responsible for what he started," because, given the policy considerations, a person is only responsible for some of what he started. Intuitively, the damage done by the storm is too remote; to explain this intuitive
sense in terms of some further policy undermines the idea that responsibility provides the basis for liability.

Third, an agency conception might be developed in such a way as to make foreseeability relevant to agency, perhaps by invoking a connection between foresight and control. There may well be difficulty in getting such a connection to extend to things that were merely foreseeable, but were not in fact foreseen, but there is another, more serious, problem with a strategy of invoking a connection between foresight and control. The problem is that the strategy seems to go too far: if foreseeability is relevant to responsibility, it would seem to always be relevant, so that a person would be responsible for all of the foreseeable consequences of his or her act. That is, such a development of an agency conception appears to attach independent normative significance to foreseeability as such. Intuitively, this seems to be the wrong result. If I stop patronizing your business, there is a clear sense in which I am not morally responsible for your losses, even though those losses are foreseeable. I am causally responsible for some of them, but that is not the point. Again, if I grow mushrooms in the shade cast by your garage, and, for reasons of your own, you decide to tear down that garage, it is certainly foreseeable that my crop will be destroyed, but, intuitively at least, it would seem that you were not responsible for my loss. Now a defender of the approach I am criticizing might suggest that I am morally responsible for your business’s difficulties and that you are morally responsible for my crop failures, but that there are extrinsic reasons for declining to hold you liable in this case. But this seems highly artificial. It seems much more natural to say that you were not responsible for my loss, even if you could have foreseen it, because I was not entitled to the benefit of your shade. Instead, I took a chance on your future conduct, and when my expectations are disappointed, I cannot hold you responsible for them. The reason I am responsible for my own loss is not that I could have foreseen it, but because I took a chance by using something over which I had no entitlement. That is why the second shipowner is not responsible for the collision, even though everyone who goes to sea knows that ships sometimes collide. You can rightly say “that’s not my problem” because, although you could have prevented my loss, you did owe me a duty to do so. Moreover, even if the idea that such limits are extrinsic could be made plausible, the claim that they are at work in cases as simple as this seems to undermine the idea that made
responsibility seems so important to questions of justice: namely, the idea that a person is answerable for a consequence because she is responsible for it. 32

The reciprocity conception does not face these difficulties, because it does not suppose that foreseeability is, taken on its own, of any normative significance whatsoever. Foreseeability does not link agents with actual outcomes. A consequence does not become mine just because I (or an ordinary person) could have foreseen it. Instead, norms link agents with consequences. If I owe others a duty to avoid imposing a consequence upon them, then that consequence, when it occurs, becomes mine, that is, one I am responsible for. Foreseeability is relevant to the possibility of norms, because no norm can require a person to take account of something unforeseeable. That is just to say that no norm can require a person to take account of something if nothing would count as taking account of it. 33

Still, you may be wondering whether it really matters whether the limits to either the extent of responsibility or basis of coercion are intrinsic or extrinsic. It matters quite a lot, actually. To see why, consider the next example.

\textit{Slave Contracts and Debt Slavery}

The next example concerns slave contracts and debt slavery. Both are widely thought of as morally reprehensible; the interesting question concerns why this is so. Both are ways in which, from the standpoint of agency and attribution, the slave is responsible for his own slavery. The contractual slave seems to be responsible in a straightforward sense. Assuming the agreement he enters into is not otherwise defective, he decides that becoming a slave is a better arrangement for him than anything else available to him. It isn’t easy to imagine what his circumstances might be, but let’s suppose that slavery is his best offer--perhaps his prospective master can offer him an immediate and unique opportunity which is worth more to him than his freedom. Debt slavery works slightly differently, but can also be explained in terms of taking responsibility. If one party wrongs another, by injuring him tortiously or by failing to perform a contract, and the wronged party prevails in court, then this person is entitled to attach the wrongdoer’s assets in settlement of the claim. Yet what if the wrongdoer’s current and projected assets are inadequate to cover the damages. May the aggrieved victim seize the wrongdoer in
settlement of the claim?

These may seem like far-fetched questions, ones best not discussed in respectable company. Indeed, libertarians and their opponents are the only ones who take these questions seriously. Time was, however, that they were pressing indeed. The Thirteenth Amendment to the U.S. Constitution prohibits indentured servitude as well as slavery, no doubt because examples of people voluntarily undertaking it were commonplace. Some of their felt urgency also reflected both the prominence of contractual ideas in political philosophy, and the attractions of the agency conception. Locke, for example, derives the impossibility of slave contracts from the wrongfulness of suicide: since a person does not have the power of life and death over himself (that power belongs to God alone), thus Locke says, he cannot surrender that power to another. But Locke concedes the propriety of what he calls “drudgery,” the narrower form of slavery that does not include the direct power of life and death, but might, for example, include the power to work a slave to death.

Again, Hegel exercises great effort in showing that slave contracts are impossible. His argument is a failure, but it is worth examining because it is obvious enough in Hegel’s case why he would think the problem so important. He adopts an agency conception of responsibility. Hegel’s theory of property rests on the idea that an agent spreads himself onto objects in the world by putting his will into them, and that that unilateral act is the basis of rights in things. Such rights require recognition by others, which is only possible through exchange. But exchange is limited to external things; I cannot give over my capacity for choice to others because I do not have it in the requisite sense. Unfortunately, this argument proves the opposite of what it is supposed to, because it shows that there is a sense in which the slave remains free even while in chains. If I cannot succeed in giving my will to you, then I continue having it, even if you are entitled to determine my every deed. Thus slavery is not objectionable, because the slave retains his will after all. As Allen Wood observes, Hegel seems to confuse what cannot be violated with what must not be violated.

The Lockean and Hegelian arguments are unconvincing, weak by the standards of these authors’ other work. I hazard the guess that they feel compelled to make them, because their commitment to the agency conception opens up the obvious possibility of slave contracts. The
slave had a fair chance to avoid slavery, and chose it anyway. Yet a commitment to the agency account leads them to ignore what is especially troubling about slavery itself, focussing instead on the possibility that someone would lose the power of choice. It is no accident that Locke derives the prohibition on slave contracts from a norm against suicide, because suicide will foreclose the possibility of future choices. If Hegel’s argument does not mention suicide, it nonetheless faces the same difficulty as Locke’s, because it too seeks to generate a problem about the slave losing his power to choose. But the difficulty with slavery is not that one person loses a power to choose – such powers can be lost in many ways – but rather that someone else comes to have that power. Such a problem is invisible on an agency conception.

So much for our historical digression. Slave contracts and debt slavery are possible on the agency conception of responsibility because they are the consequences of things a person might do. Friends of the agency conception might insist on moderating its influence by appeal to other values. Discussing Robert Nozick’s passing endorsement of slave contracts, G.A. Cohen considers the case of two people who “would each so like to have a slave that he is willing to become one in exchange for the same chance of getting one.”38 Cohen finds it hard to believe that people would make such a choice, but concedes John Mackie’s claim that “it would not be fair for the loser to complain of the unfairness” provided that we assume a sufficiently narrow version of the agency view, one which requires that people understand the probabilities of all of the possible outcomes their choices might lead to, and have acceptable alternative options.39 But Cohen’s stated reason for forbidding such contracts even where such an extravagant condition is satisfied comes from its spillover effects on others.40 They are not forbidden as such, because they are exercises of agent responsibility.

Cohen’s version of the agency conception sets a high standard for persons to be responsible for their choices, and so would, as things turn out, rule out almost any imaginable slave contract. It also allows effects on third parties to provide a further basis for interfering in such voluntary transactions as remain. But it does not offer an argument of the sort Locke and Hegel sought, an argument of principle to show that slave contracts could not be binding.

The reciprocity conception offers a different way of approaching the problem of slave contracts. It can be brought into focus by considering the related problem of debt slavery. First,
some background. There is a long tradition in common-law systems, reaching back more than two centuries, of exempting certain goods, in particular, the tools of a “mechanic” in an action for debt. In the eighteenth century context in which these principles were developed, that meant a person could not be turned into a mere labourer in satisfaction of a debt, but must be allowed to sell his services. Distinguishing between artisans and those who have only their labour to sell strikes modern sensibilities as arbitrary, because those with only their labour to sell don’t have tools to lose. Still, they cannot be seized in settlement of a debt; their wages can be garnished, but they cannot be required to work off their debts. Such limits to responsibility are puzzling on the agency conception, because that conception must regard them as external to responsibility. No less puzzling on that conception is the broader exemption that precludes a creditor seizing another’s person in satisfaction of a debt. Both exemptions follow directly from the reciprocity conception, however. Because the reciprocity conception places value on the ways in which people interact, it must, as a matter of principle, preclude any situations, regardless of how they arise, in which one person is able, as a matter of right, to bind another in ways in which the other may not bind her. Thus slavery is ruled out ab initio, regardless of the transactions that might have led to it. The point of the exemptions is not that it would be unfair to abandon the debt slave to his fate (though of course it would be) nor that it would be impossible, (because of course it wouldn’t be) but that it would subvert the rationale for holding people responsible in the first place, because it would create a class of persons who were unable to regain their capacity to set and pursue their own ends.

Let me say something more about the sense of “holding” people responsible that is at issue here. Unlike Hegel, those who support the reciprocity conception do not insist that slave contracts or debt slavery are impossible. Slave promises, and slavish conduct, are both possible, and depressingly common. I might, for reasons of my own, agree to do your bidding permanently in return for something you have on offer, or feel so dreadful about the loss I had inflicted on you that I commit myself to your service from this day forward. Personal vows of service, like personal vows of poverty, are possible, and the responsibility conception does not mean to deny that. What it denies is that the promisee can ever be entitled to complain if I go back on my word. That is, the problem is not that there is any difficulty in my surrendering my power; the
difficulty is with you coming to have an enforceable claim to it.\textsuperscript{42} Because the idea of reciprocity doesn’t allow you to have such a power, it doesn’t allow coercive institutions to treat me as having given it to you. The state may be unable to step in to prevent me from undertaking to do your bidding for the rest of my life, but it will not enforce any such commitment.\textsuperscript{43} The reciprocity conception insists that my power to make consequences my own through my deeds is always an expression of the demands of justice. In refusing to enforce slave contracts, the state does not act paternalistically to protect my autonomy against my own foolish exercise of it. It is protecting the condition in which I can be answerable for my deeds, the condition in which people interact as equals.\textsuperscript{44}

This brings me back to the issue of coercion. The reciprocity conception offers an account of responsibility that links responsibility to the justification of coercion. Coercion is justified in order to protect equal freedom, to ensure that people interact on grounds of reciprocity. As a result, coercion can never be used to uphold arrangements in which one person is master over another, regardless of how the bondsman got into that position.

Indeed, although I have been going on so far as though slave contracts pose special problems, they are precluded by a much more general feature of the reciprocity conception. Common law courts do not only refuse to enforce slave contracts. They also refuse to decree specific performance in the case of any contract for personal service. If I agree to sing at your wedding, and then cancel because I have received a better offer, you can recover damages from me, but a court will not compel me to sing. Although some commentators insist that this is just a matter of the difficulty of supervising such decrees, courts do not worry about such problems when they decree specific performance in other cases, or when they issue injunctions and restraining orders, all of which require comparable supervision. The reciprocity conception does not allow even temporary servitude to be enforced in this way. As one nineteenth century judgment put it, courts are “unwilling to extend decisions the effect of which is to compel persons not desirous of maintaining continuous personal relations with one another to continue those relations ... I think the courts are bound to be jealous, lest they should turn contracts of service into contracts of slavery.” \textsuperscript{45}

The prohibition on slavery does not mean that the reciprocity conception could not allow
the incarceration of criminals. What it cannot allow, however, is their enslavement by the victims of their crimes. If a criminal is able to pay damages in tort to his victim, the reciprocity conception requires him to do so, because he is responsible for the victim’s loss. But the victim cannot enslave the criminal, even while the criminal’s freedom is already curtailed.\textsuperscript{46} Again, the reciprocity conception does not preclude voluntary military service, even if a commanding officer can order a soldier to lay down his life. The reciprocity conception can treat both criminal incarceration and military service as different because they do not involve one private party coming to have a power over another.

The prohibition on debt slavery and slave contracts gives expression to the idea of equality that is at the root of the reciprocity conception. That idea demands that people interact on terms of equality; it begins, as I said, with the idea that people have ends of their own, and insists that none may bind other in ways that others may bind them.\textsuperscript{47} That idea of equality, in turn, gives rise to the conception of responsibility which I have been developing here. But when equality and responsibility come into conflict, as they do in the case of the person who, behaving responsibly, runs up a debt he cannot repay, responsibility must give way to equality’s demand. For responsibility matters on the reciprocity conception because of the underlying idea of equality, and where equality would be frustrated in ways that cannot be repaired, responsibility must run out. The limits to responsibility, like the limits to the consequences for which an injurer is liable in tort, are not exceptions to the reciprocity conception of responsibility, but expressions of it. Leaving one person entirely at the mercy of others means that their special responsibility for their own lives is compromised.

\textit{The bad bet}

Egalitarians who care about responsibility usually accept some version of the principle “\textit{volenti non fit injuria},” which says, roughly, that a person cannot complain about a consequence if she has chosen it, or the risk of it. The basic idea is simple and appealing: whatever an egalitarian hopes to equalize, a person’s claim to an equal share must be limited by the effects of his choices. The person who decides to squander his share is not entitled to have his losses made up, whether of resources or welfare.\textsuperscript{48} Hard-working ants need not subsidize
feckless grasshoppers. On welfare-egalitarian views, the *volenti* principle enters as an independent value that limits the claim of equality; on resource egalitarian views it enters as a constitutive element of equality, because resources only have value in relation to the uses to which people might choose to put them. My aim in this section is not to decide between equality of welfare and equality of resources, but rather to explore the role of our two conceptions of responsibility in this context.

In so doing, I do not mean to be claiming that either conception of responsibility provides, or even purports to provide, an independent argument for equalising material condition. I mean only to ask how a society that is concerned with providing people with fair shares should respond to someone who squanders his or her share.

I propose to do so by considering the third example I mentioned, that of the person who, despite having a fair chance and entering into formally acceptable transactions, ends up destitute. The example went like this: Pick whatever formal or substantive conditions of choice seem most plausible to you, and consider the case of a person who satisfies them and makes a terrible choice. Maybe he gambles and loses what he has, or his fair share of social resources (if that’s what you think is important), or maybe he defaults on a loan worth more than his assets. We’re imagining that the formal and substantive criteria have been met, so that means he had a fair chance, whatever the best interpretation of that idea is, and all of the transactions through which he got himself into the situation are unimpeachable by whatever formal or substantive criteria we measure such transactions. So none of the contracts he enters into are unconscionable, none of the people he deals with employ any sharp practices, he is paid a decent wage, and so on. The question is, what do we do about such a person? Do we abandon him to his fate, since he was responsible, on the conception of responsibility we are working with? Or is there some reason to limit his responsibility in this sort of context?

The massive inequalities countenanced by contemporary societies may undermine our confidence that someone has ended up badly off solely through his or her own choices. Still, there is no difficulty thinking of ways in which people who had fair opportunities could find themselves destitute through their own choices. These include the person who squanders more resources than most people ever receive, the person who injures himself, the person who can’t
afford to pay off his debts, and the person owed money by someone who can’t afford to pay. I want to suggest that this third example differs from the second in only one respect relevant to the present inquiry. In the second example, prohibiting debt slavery meant that the person to whom the money was owed was out of luck. In the third example, if our unlucky person is relieved of responsibility for his choices, some larger group will need to bear the cost. Because the second and third problems differ in only that respect, both conceptions seem to me to have no choice but to treat them in the same way. Although different proponents of the agency conception will fill out the example’s structure in very different ways, from the libertarian’s thin requirement of freedom of contract to Cohen’s robust requirement that people start with the right distributive shares and only be bound by agreements for which they fully understand all of the possible outcomes, I think it is clear what conclusion they would reach: because our unfortunate had his chance, the bad consequences that ensued can be attributed to him, and so others cannot be expected to pick up after him. Libertarians think people can never be required to pick up after each other, so their response is clear. Among egalitarians, John Roemer endorses a qualified version of the same view when he says that egalitarians need not be committed to what he calls a “nanny state”.50 Of course, moderate defenders of the agency conception might insist that things other than responsibility are just as important, and so maintain that such a person should receive some help anyway, perhaps because his welfare is so bad, or perhaps because his failure to insure against such a calamity entitles us to conclude that there must have been something defective in his process of choice.51

The reciprocity conception addresses this problem in the same way as it addressed the second, with one subtle twist. Taken on its own, the reciprocity conception does not mandate material equality. But it provides an interpretation of the impetus behind the call for material equality. Rather than supposing that material equality is somehow valuable apart from its effects, the basic idea of justice underlying the reciprocity conception supposes lets us see the value of material equality in the way that it enables people to interact as equals. On this understanding, some measure of material equality is introduced as a further boundary condition on the operation of the reciprocity conception, in just the same way that the prohibition on slavery was a boundary condition. So understood, both slave contracts and severe inequality are objectionable.
for the same reason: they render one person utterly dependent on the whims of others. In both cases, some are entirely subject to the generosity or bargaining power of others.\textsuperscript{52}

The reciprocity conception thus gives us a distinctive way of understanding economic redistribution. The basis of material equality is not external to concerns about responsibility, but continuous with it. Both are rooted in the same requirement that people interact as equals.\textsuperscript{53} Because this argument is about the boundaries of responsibility, rather than an application of it, it explains why, if we suppose that having adequate resources is an inherent condition on responsible agency, some measure of redistribution would be unconditional.\textsuperscript{54} It is unconditional because it supposes that the responsibility that society has for providing its members with adequate resources and opportunities is itself a requirement of the reciprocity conception.

Unconditional aid has recently fallen from favour, in part because the various respects in which it might be unconditional have not been distinguished adequately. The reciprocity conception does not preclude attaching conditions to the receipt of aid, such as a requirement that the receiver of aid restructure her debt, or sell off certain assets. Nor does it to require what Ronald Dworkin has called the "rescue principle", which supposes that unlimited resources must be devoted to improving, even marginally, the agency or well-being of those who are worst-off. That principle is, as Dworkin says, unacceptable. My claim about unconditional transfers only insists that, whatever limits are placed on the extent of transfers to those in need, eligibility for such transfers should not depend upon how a person got him or herself into the difficult circumstances.

So the reciprocity conception does not allow backward looking conditions on aid, for to allow those would be to allow debt slavery or its equivalent. Unconditional aid is sometimes criticized on the ground that it is unacceptable because incompatible with responsibility.\textsuperscript{55} That standard arguments point to what economists call the problem of “moral hazard,” an instance of which is the risk that people will make imprudent decisions, confident that others will be called upon to bail them out. That there are such hazards is difficult to deny, even if their magnitude is difficult to assess. As a result, a system that provides unconditional transfers will need institutional mechanisms to keep them under control, just as bankruptcy law requires similar mechanisms if it is not to encourage reckless borrowing. But, that said, it is important that the
problem be recognized for what it is, that is, a way in which people unfairly manipulate rules of justice, not a first-order failure to behave responsibly. The person who knowingly injures another in the expectation that the benefits he gains from so doing will be greater than the damages he must pay commits a different sort of wrong against rules of justice, the person who stands by as another mistakenly confers a benefit on her yet another, and the one who “sits on his rights” in the wrong way still another. The reciprocity conception insists that people interact as equals; when people set out to exploit that demand, their behaviour must be sanctioned, not because responsibility matters more than equality, but because they matter together.  

Conclusion

I want to conclude with some more general observations about the relation between distributive justice and private ordering. In *A Theory of Justice*, Rawls introduces what he calls a “division of responsibility,” under which society as a whole has a responsibility for guaranteeing that basic freedoms and a fair share of social resources are available to all, and each individual in society has a special responsibility for how his or her own life goes. Given his purposes, Rawls emphasises the need for individuals to moderate the demands that they place on social institutions. Without denying that aspect of individual responsibility, I would emphasize a second aspect, namely the requirement that people moderate their behaviour with respect to the interests of others, and, in particular, one must avoid displacing the costs of one’s choices onto others. Although the idea that people ought to forbear from displacing costs onto others is sometimes associated with libertarianism or economic models of social life, its proper home lies at the core of the sort of liberalism that defended by Rawls. In order for the way my life turns out to be my responsibility, others must forbear from interfering with my ability to direct it. Thus they must not injure me, or damage such goods as I have legitimately acquired. Conversely, I must forbear from displacing costs onto others. To interfere with a person’s ability to be self-directing in these ways is to undermine any claims about that person’s responsibility for how his or her own life goes. Because the ability to assume responsibility for how your own life goes implicates others in this way, it must be understood in terms of the reciprocity conception.

The reciprocity conception brings together three senses of the word “responsibility.”
First, each of us has a special responsibility for how our own life goes, and so, second, a responsibility to others to avoid displacing the costs of our choices onto them. Failure to take responsibility in either of the first two senses leads to responsibility in the third sense: we are answerable for our failures.

Footnotes:

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1 Gary Watson, “Two Faces of Responsibility” 24 Philosophical Topics 227-48 (1996) In adopting Watson’s distinction, I do not mean to commit myself to his application of it. In particular, Watson supposes that attribution is most at home in contexts in which a person is deciding how to live his or her life, while accountability is a matter of social practices of holding people responsible. I construe attributability more broadly, covering all of the senses in which an act might be thought to be “one’s own.” In this my use is similar to T.M. Scanlon’s distinction between what he calls “attributability” and what he calls “substantive responsibility” T.M Scanlon draws a similar distinction between attributability and what he calls “substantive responsibility” in What we Owe to Each Other (Cambridge MA: Harvard University Press, 1998) p. 248.

2 For example, Bernard Williams remarks that a responsible agent holds himself to a higher standard than others may rightly hold him to. See Williams, “Voluntary Acts and Responsible Agents” in Making Sense of Humanity (Cambridge: Cambridge University Press, 1995) p. 32. Again, Watson’s own use of the distinction suggest that attributability is important to individual identity, and so broader than moral accountability. But nothing either Watson or Williams says precludes the idea, prominent in the literature, that accountability is governed by some refinement of the concept of attribution.


For example, Rawls acknowledges the role of “rules that govern transactions and agreements between individuals and associations (the law of contract and so on).” He goes on suggest that they be “framed to leave individuals and associations free to act effectively in the pursuit of their ends and without excessive constraints.” Political Liberalism (New York: Columbia University Press, 1993) p 268. I discuss Rawls’s treatment of responsibility in “The Division of Responsibility and the Law of Tort” forthcoming in Fordham Law Review, April 2004.

Dworkin subordinates private law to distributive justice in a different way, suggesting that "a regulatory constraint, or an article of tort law, is justified under the principle of correction only if there are good grounds for supposing that the corruption of the opportunity-cost test would be less with the constraint in place than it would be without it." Dworkin, Sovereign Virtue p. 157

Ronald Dworkin’s influential work on equality and responsibility combines elements of both conceptions. In his seminal articles on equality of resources, reprinted in his Sovereign Virtue Dworkin adopts a version of the reciprocity conception when he articulates the relation between individual responsibility and social equality in terms of the idea that people should bear the costs that their choices impose upon others, and again when he criticizes what he calls “starting gate” theories of justice. However, Dworkin's arguments also include aspects of a version of the agency conception. That conception is at work, it seems to me, in Dworkin's discussion of whether an agent's preferences are genuine. He suggests that a preference is genuine if the agent whose preference it is identifies with it. A slightly different version of the agency conception seems to me to be at work when Dworkin introduces his distinction between what he calls "brute luck" and "option luck," in terms of the idea that something is matter of option luck if it is the result of a choice that a person “might have declined.” Both the identification test and the idea of option luck, are monadic -- that is, dependent solely on facts about the agent -- in a way that reveals them to be specific versions of the agency conception. The idea that people should bear the costs that their choices impose upon others, by contrast, is relational, in a way that suggests that it is a version of the reciprocity conception.

This puts my view squarely in the camp that G.A. Cohen has recently criticized. See If You’re an Egalitarian, How Come You’re So Rich? (Cambridge MA: Harvard University Press, 2000) I don’t disagree with Cohen’s claim that the justice of a society is in part a matter of its ethos as well as its coercive structure. But I think he is wrong to conclude that that important observation undermines the idea that the coercive structure itself requires a special kind of justification. In a society with an egalitarian ethos, different coercive structures might be needed than in one that lacked one. But that does not change the fact that the coercive structure poses special problems about justification.


Kant makes this point in the opening sections of the Doctrine of Right, the first part of the Metaphysics of Morals, translated by Mary Gregor in Immanuel Kant: Practical Philosophy
11 I develop these Kantian themes in more detail in Authority and Coercion, 32 Phil. & Pub. Aff. 2. (2004)

12 Is the reciprocity conception really Kant's view of responsibility? In several places Kant appears to endorse something close to a different view, which I discuss below, since he says “The good results of a meritorious action, like the bad results of a wrongful action, can be imputed to the subject.” (Metaphysics of Morals, p 382). But, the quoted passage comes in the introduction to the Metaphysics of Morals, and is appealed to explicitly in the doctrine of virtue, for example, when Kant says that a servant who lies on behalf of his master will have the master's wrongful deeds imputed to him "in conscience." It is not clear that it is meant to apply to issues of justice. Moreover, I think the rest of Kant's legal philosophy makes it clear that what he regards as the "bad" consequences of a wrong are to be understood in terms of that wrong, rather than simply in terms of natural causation and its effects on persons. This is particularly clear, I think, given his tripartite division of the ways in which something can be "ones own." One can have a right to a thing, as against all other persons. One can have a right to another's performance, as against that person only, and one can have a right to another person that extends to unspecified acts, and gives one a claim to that person has against all other persons. The differences between the first and the second ways in which a thing can be “one’s own” illustrate the role of the reciprocity conception. If two people make a contract, each of them has a right to the other’s performance of the promised thing. But their exchange of rights does not change the rights of third parties. If I have a contractual right to a thing, I can complain against my contracting partner if I do not receive it has specified, but I have no complaint against third parties who might act in ways the effect of which is to deprive me of it. This is so, even if the third party deprives me of it as a side effect of some wrong. I cannot complain because my contracting partner cannot give me a right against anyone else that I did not already have. As a result, although the wrongdoer occasioned my loss through his wrong, he is not responsible for that loss. In the notorious essay "On a Supposed Right to Lie from Philanthropy," Kant appears to go further, but, for reasons I allude to in a later footnote, I do not believe that this follows from the rest of his account. I am grateful to Dennis Klimchuk and Arnulf Zweig for discussions of this issue.

13 I may gain a prescriptive right with the passage of time, in a way that complicates but does not undermine the general point here.

14 I put to one side complications concerning tortuous interference with contract. I hope to explore these issues elsewhere.

15 Perhaps some less attractive conception of justice carries with it a different understanding of responsibility that nonetheless incorporates norms in a similar way, so that, for example, a serf is responsible for the consequences if he violates norms of fealty. I do not explore that possibility here, because my concern is with the relation between justice and responsibility, not that between injustice and responsibility.


For another example of an account that is normative in this sense, see R. Jay Wallace, *Responsibility and the Moral Sentiments* (Cambridge, Mass. : Harvard University Press, 1994.) In political philosophy, the account of responsibility implicit in Locke’s discussions of consent, property, and slavery, (discussed below) can be read as incorporating norms determining whether someone had a fair chance. More recently, G.A. Cohen’s view of responsibility, discussed below, can be read as an application of Hart’s approach, although Cohen himself sees the question of responsibility as leading political philosophy into the question of free will. See “The Currency of Egalitarian Justice” 99 Ethics 934 (1989).

The capacities relevant to the reciprocity conception all concern the ability to bring one’s conduct into conformity with the norms of conduct that the reciprocity conception incorporates. A person is not responsible for what she does while sleepwalking, and the reciprocity conception carves out narrow exemptions for those who, because of age or disability, cannot be guided by particular norms of conduct. These exemptions do not represent the intrusion of considerations about agency into the reciprocity conception. Instead, they reflect the reciprocity conception’s focus on norms governing the ways people treat each other.

Thin versions of the agency conception can accommodate responsibility for such consequences, but only at the cost of supposing that a person is accountable for all of the consequences of his actions.

I explain the role of institutions in making the demands of justice determinate in “Authority and Coercion,” 32 Phil Pub. Aff. 2.


Here as in other legal contexts, one can have a duty that one lacks the capacity to fulfil. If I owe you a hundred dollars, I owe you the money, even if I have difficulty paying. The reciprocity conception explains the foreseeability requirement in terms of the idea that there cannot be a duty that nobody could fulfill, because nothing would count as fulfilling it.

There are two apparent exceptions to the foreseeability requirement. One is the so called “thin skull rule”, which holds an injurer liable if what would have been a minor injury for most people turns out to be a severe one because of some preexisting condition of the plaintiff. It is only an apparent exception, however, because an injurer is always liable for the full extent of an injury provided that injuries of that type were foreseeable. If the injurer had a duty to avoid that type of injury; its unforeseen extent just is the injury he was supposed to avoid. The other apparent exception is fraud. Kant says that the person who tells a lie is “responsible for its consequences..
however unforeseen they may have been” See “A Supposed Right to Lie From Philanthropy” in Kant Practical Philosophy, p. 613. That most unKantian British judge, Lord Denning, says that “it does not lie in the mouth” of the fraud to complain that he could not have foreseen what the dupe would do in response to his lie. Doyle v. Olby(Ironmongers) Ltd. and others [1969] 2 Q.B. 158. Here too the exception is only apparent. While he cannot foresee what the dupe will do in response, the one thing the fraud can foresee is that his dupe will act on the belief he has induced in him. As a result, he cannot complain that the actions taken were unforeseeable, because those actions just are the injury he had a duty to avoid.

26I assume here that storms are not seasonal -- if they are, the initial injurer could be liable for delaying a ship so that it set out in the bad season. But if the season is predictably dangerous, the master of the injured ship might be judged responsible for not staying longer in harbour, since any such delay would be at the injurer’s expense.


28 Richard Epstein, “A Theory of Strict Liability” 2 J. Leg. Studies 151 (1973). It is essential to Epstein’s project that liability is not conditioned on norms of conduct. Indeed, that is the root of his account’s difficulties.


30 These include the absence of liability for pure economic loss, and for negligent invasion of contractual interests.


32 The agency conception cannot avoid this problem, a because agency is subject to what Joel Feinberg once called "the accordion effect." Just as an accordion can be pulled out or compressed to varying degrees, so to can our sense of what a person has done. As I flip the switch, I also turn on the light and alert the burglar to the fact that someone is home. There is no particular place where it is more or less natural to draw the line between what I have done and its more distant consequences. Of course, that doesn't mean that a line cannot be drawn. But it does mean that the concept of agency itself will be of no assistance in drawing it. See Feinberg, “Action and Responsibility” in his Doing and Deserving: Essays on the Theory of Responsibility (Princeton: Princeton University Press,1970) p. 134

33 The agency conception could be narrowed in one other way that would seem to make limits to
responsibility inherent in it, by limiting responsibility to the known or intended consequences of a deed. On such an understanding, I might be answerable if my bonfire burns down your fence but not your house, if I realised that the former could happen, but didn’t think of the latter. Much of the literature on free will seems to work with just such a conception – a person is responsible for those thing that he set out to do.

34See, for example, Nozick Anarchy, State, and Utopia (New York: Basic Books 1974) p. 283. So far as I know, Randy Barnett is unique even among libertarians in advocating debt slavery for those who impose costs on others through wrongdoing. Although perhaps not to his moral credit, it is at least to his intellectual credit that he pursues this line of thought consistently. See The Structure of Liberty (New York: Oxford University Press, 1998)

35 John Locke, Two Treatises of Government (1690/1980)p. 18


39I take this to be Cohen’s considered view of responsibility, since it is the only view compatible with both the limits he places on it in “The Currency of Egalitarian Justice” and his claim, in If You’re an Egalitarian, How Come You’re So Rich? that talented people who charge whatever the market will bear for their services are responsible for so doing. The talented are presumably responsible because they have other acceptable options. I am grateful to Susan Hurley for drawing my attention to this tension in Cohen’s several treatments of responsibility.

40 This is not Cohen’s only objection to slave contracts. He says, in passing, (Self Ownership, p. 21)that we might want to prohibit slavery simply because it is wrong. He declines to pursue that line of thought, whatever its merits, because those sympathetic with Nozick will not be moved by it. This argument depends less on the contingent effects of slavery on third parties, but it, too, is an extrinsic limit on an agency conception. The agency conception itself has nothing to say against slave contracts.

41The category of mechanic’s tools is broad, and includes, among other things, a barber’s mirror and chairs. See, for example, Terry v. McDaniel 103 Tenn. 415 (1899).

42 Earlier, I described Nozick's endorsement of slave contracts “passing” because he says that a free society would allow them, not that such a society would enforce them. His failure to attend to this distinction reflects his acceptance of the idea that the state can have no powers of enforcement that individuals lack. As we have seen, the fact that I can agree to do your bidding does not, on its own, entail anything about anyone's right to enforce such an agreement.
Although it may, through education and the provision of adequate opportunities make servility a less appealing option. See Thomas Hill, Jr. “Servility and Self-Respect” in his *Autonomy and Self-respect* (Cambridge, 1991).

Kant makes essentially the same when he claims that people cannot give up their equality by any rightful deed. See “On the Common Saying: That may be correct in Theory but it is of no use in practice,” in Immanuel Kant, *Practical Philosophy*, translated by Mary Gregor and edited by Allen Wood (Cambridge: Cambridge University Press 1996) p. 293.

De Francesco v. Barnham, (1890) 45 Ch. D. 430 at 438 per Fry, L.J.

Again, Kant’s development of the reciprocity conception makes this contrast clear. See *The Metaphysics of Morals*, in Kant, *Practical Philosophy*, p. 471.

Do the slave gamblers in Cohen’s example bind each other equally because they enter their gamble on fair terms? They do not because how things turn out is crucial on the reciprocity conception; it matters that people interact as equals, not that they have once so interacted. Once one becomes master and the other slave, they never again interact as equals, because the slave is entirely at the master’s mercy, since the master has rights against the slave which the slave does not have against him.


Indeed, the two developments of the reciprocity conception that I have appealed to – Kant and the common law – certainly do not suppose that the conception of justice underlying it mandates material equality. But if the reciprocity conception does not mandate material equality, it provides an interpretation of the impetus behind the call for material equality. Rather than supposing that material equality is somehow valuable apart from its effects, the basic idea of justice underlying the reciprocity conception supposes lets us see the value of material equality in the way that it enables people to interact as equals. On this understanding, material inequality is objectionable for the same reason that slave contracts are: it renders one person utterly dependent on the whims of others. Here, as in the slave contract example, the difficulty is not that a person is left without the means or opportunities to set and pursue his or her own ends. Instead, the difficulty is that, where inequality is of wealth is severe, some are entirely subject to the generosity or bargaining power of others.


Dworkin, *Sovereign Virtue* p. 344.

The same concern for material equality as a condition of fair interaction underwrites a variety of other institutional arrangements. I mention only one example here. A commitment to fair

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equality of opportunity requires that new parents be eligible for parental leave on terms that do not compromise their careers. To make new parents bear the cost of such programs by making leaves unpaid would thus be unacceptable. But to place the burdens on employers is also unacceptable, because it compromises their ability to function in a competitive setting. Instead, the burden should be held in common by the society. The reason is not that well cared-for children are a benefit to all -- thought that is doubtless true -- but that equality requires it.

53 Of course, that argument rests on the idea that people should interact as equals; that idea is not derived from an idea of responsibility.

54 This is not the place to consider the appropriate mechanism for redistribution, in particular, whether it should take the form of transfers or minimum wages, and whether taxation should be based on income or expenditures.

55 So, for example, Dworkin criticises Rawls’s “difference principle” for being insufficiently sensitive to considerations of responsibility, because it focuses on the condition of the worst-off, without considering how they got to be badly-off.

56 I said earlier that the reciprocity conception can explain why something close to an agency conception would be appropriate to the criminal law, and these examples provide the outline of just such an explanation: the person who sets out to exploit norms of justice commits a wrong against those norms in addition to the wrong he commits against particular persons. Such wrongs are important, but are not the appropriate starting point for thinking about responsibility.