

Ronald Dworkin on Distributive Justice

Notes for Philosophy 167

The three conditions. In “Justice in the Distribution of Health Care,” Ronald Dworkin holds that a morally just provision of health care in a political society would be whatever health care individuals decided to purchase if three conditions held: (1) There is “fair equality” in the distribution of resources, which he interprets as an initial equal distribution of resources. (2) Individuals are relevantly fully informed “about the value and costs and side effects of particular medical procedures.” Presumably the individuals must also be assumed to be fully informed about costs and benefits of alternative ways in which they might spend their money on items other than health care. (3) “No one in your community—including insurance companies—has any information available about the *antecedent* probability of any particular person contracting any particular disease that he or she does not evidently already have.” Why would choice under those imaginary circumstances produce a just outcome? Dworkin affirms “a conception of social justice that assigns individuals responsibility for making the ethical choices for their own lives against a background of competent information and a fair initial distribution of resources.” In footnotes he mentions two further issues. One is that in a just society there may have to be some paternalism, restriction of people’s liberty, against their will, for their own sake, to prevent or mitigate the effects of really bad self-harming choices they might make. A second issue is that a full treatment of justice in health care would have to decide to what extent it would be appropriate for people including health care insurers, in the imaginary choice exercises that determines what is just, to have information “relating risk of disease [and accident] to voluntarily chosen behavior.”

Dworkin thinks we could bring about condition (1) and move closer to fulfilling (2), but (3) would forever elude us. So we always would have to figure out the results of this hypothetical choice to determine just health care policy for a society. Moreover, even in a society in which none of conditions 1-3 comes close to obtaining, we can calculate what choices people hypothetically would have made and use that to determine what health care policies we should as a society pursue.

Equality of resources. Why according to Dworkin is fairness in the distribution of resources an equal initial distribution of resources? Dworkin in this essay refers to another he has written, “What Is Equality? Part 2: Equality of Resources.” In that essay and a companion piece he argues that insofar as we should care about equality, we should care about equality of resources not welfare. Equality of resources would be achieved if material resources were distributed as follows: There is a theoretical equal auction among the members of society, in which all members are given equal bidding power and all resources are up for auction. People bid until equilibrium, no one wants to change her bid, given how others have bid. (An equivalent procedure would be to divide all resources into homogeneous lots and give each of the N persons in society a $1/N$ share of each kind of resource, and then let individuals trade their initial allotments to an equilibrium in which no one wishes to make any further trade.) At the same time individuals can purchase two types of insurance: insurance against having low marketable talent and insurance against handicaps. In the first insurance market, each person knows her native talents and her tastes but does not know what price her talents will fetch on the market, and can purchase insurance against not being able to attain any income level she stipulates—the insurance premium is paid with the resources one will have as one leads one’s post-auction life. In the second insurance market, each individual knows the distribution of diseases and accidents and afflictions in society and relevant information about costs and benefits of available treatments but does not know her particular chances of getting or having any disease, accident, or affliction. You pay your insurance premium with resources you will have as one leads one’s post-auction life. Equality of resources obtains in a society just in case resources are initially distributed according to a theoretical equal auction adjusted by the two insurance markets for marketable talent and handicaps, and following that, brute luck outcomes that fall on people are entirely undone and outcomes that fall on people via option luck are left to stand.

Option luck and brute luck; choices and circumstances. The distinction between option luck and brute luck is explained as follows: “Option luck is a matter of how deliberate and calculated gambles turn out—whether someone gains or loses through accepting an isolated risk he or she should have anticipated and might have declined. Brute luck is a matter of how risks fall out that are not in that sense calculated

gambles.” Dworkin adds: “Insurance, so far as it is available, provides a link between brute and option luck, because the decision to buy or reject accident insurance is a calculated gamble.”

In another terminology, Dworkin writes, “People’s fates are determined by their choices and their circumstances. Their choices reflect their personality, which is itself a matter of two main ingredients: ambition and character. . . .Someone’s ambitions include all his tastes, preferences, and convictions as well as his overall plan of life: his ambitions furnish his reasons or motives for making one choice rather than another. . . .Someone’s character consists of those traits of personality that do not supply him with motives but that nevertheless affect his pursuit of his ambitions. . . .Someone’s circumstances consist of his personal and his impersonal resources.”

Dworkin holds that each of us must take personal responsibility for his choices, as described above, and what flows from them. In contrast, our circumstances are so to speak the cards that fate has dealt us. They lie beyond our individual power to control, so it makes non sense to give oneself credit or discredit for one’s initial circumstances (or for any circumstance except in so far as they result from our past choices). Dworkin’s master idea is that people’s circumstances should be equalized but that from there, so far as what happens to one results from option luck not brute luck given a fair framework for interaction, each of us should accept the outcomes and has no just complaint against society if some aspect of our choices turns out regrettably. You are responsible for the tastes, preferences and convictions that you affirm in your own voice as yours or are glad to have. But some inborn propensities toward choices might be ones that are just impediments to achieving your ambitions (the preferences you are glad to have). For example, I may have a genetic ambition towards addiction to certain drugs that is just an impediment to achieving my life goals. So in the insurance market against handicaps people might choose to insure against ending up with desires one is sad to have, desires that are just afflictions not part of one’s set of ambitions.

Notice that Dworkin’s cut between choices and circumstances locates some features and traits of persons on the side of unchosen circumstances. My inborn talents, or negative talents, that I am born with, or that develop due to early childhood socialization beyond my power to control, are circumstances not choices. This is why, when Dworkin imagines an ideally just society, setting initial resource distribution by a theoretical equal auction does not suffice. That still leaves people unequal in some circumstances—their inborn traits and talents that do not count among their ambitions. Hence we need in addition the two insurance markets for low marketable talent and for handicaps. Dworkin thinks it would not really make sense to just include personal resources among the resources to be up for bid in the equal auction. What would this mean—I bid on your piano playing talent? I then own your talent if I make the highest bid? Whatever that means, it does not sound appealing to Dworkin. So giving people the chance to insure against bad luck in one’s inborn talents and traits, one’s personal circumstances, is perhaps an appropriate way to deal with them, from the standpoint of creating a situation in which whatever people choose to do, the results of their free interactions with each other, are their responsibility, not the responsibility of society.

Capitalist markets and justice. A feature of Dworkin’s ideal of justice as equality of resources is that a capitalist market economy is a necessary ingredient in the idea of justice and in the actual operation of the just society. The just initial distribution is determined by a hypothetical market device, an auction. And once the initial auction with insurance markets is completed, justice requires that people be free to interact with each other as they choose in a free market economy--be allowed to set up firms, hire workers, apply for employment, engage in self-employment or unemployment, sell shares in the enterprise one owns to would-be investors, whatever. The fair framework of interaction is roughly a society with contract law and tort law as we know it in contemporary capitalist market economies.

Ideal justice and making progress toward justice in a nonideal world. If we actually somehow could establish and implement the theoretical equal auction with insurance market adjustments in a society, then we could let the mechanisms operate, and justice in distribution would be whatever results from people’s actual choices in the auction and thereafter. But in our society we don’t have such mechanisms in place, and perhaps we could not fulfill the requirements for a theoretical equal auction—it requires all participants be fully informed, an impossibility. So Dworkin supposes that in actual society, we should try to set

policies using these theoretical constructs as our guide. “Justice in the Distribution of Health Care” is supposed to be an exercise in selecting just policies, or closer-to-just policies, in a currently unjust society.

The limited veil of ignorance that Dworkin employs in his hypothetical choice exercise that is supposed to yield just health care policy is employed to reflect the distinction between choice and circumstance. It is just bad brute luck if I am born legless and with genes that predispose me to cancer, so actual insurance markets, in which insurers will charge me high premiums given my preexisting health conditions, impose bad outcomes on me due to my unchosen circumstances, matters that lie entirely beyond my power to control (and corresponding brute luck good outcomes on other people). The determination of fate by unchosen unequal circumstance is injustice according to Dworkin. Hence we imagine ourselves choosing what we would spend on health care in ignorance of particular brute luck advantages and disadvantages we have.

Another example: unemployment and underemployment. In another essay (not a course reading), Dworkin addresses the question, what provision would a just society make for unemployment and underemployment? (I am underemployed if I am skilled and qualified for various jobs but can only secure employment at a job calling for lesser skill.) Again, as with the health care example, Dworkin imagines a hypothetical choice exercise: we imagine (1) an initial equal distribution of resources, (2) people are fully informed, and (3) people are deprived of information concerning their particular risk of suffering bouts of unemployment or underemployment. Dworkin states condition 3 this way: “Everyone is offered the opportunity to buy insurance providing a stipulated income if unemployed, or employed at a wage lower than that income, and such insurance is offered at community rates, that is, at the same premium for the same coverage package for everyone, because—this is the only nearly impossible assumption—everyone assumes that each person, including himself, is equally likely to lose his job.” The question then is, what insurance would individual wish to purchase against the risk of becoming unemployed or underemployed? Again, whatever individual would actually choose in these circumstances would be just. If I decide I would rather not spend my resources buying insurance against the risk that I cannot get a job in the field I have prepared myself for, but would instead rather spend the resources on other things, then if I do end up getting a plumber’s license or law degree but am unable to find work as a plumber or lawyer, no compensation is owed to me. Dworkin supposes people would insure against catastrophic risks such as suffering a long bout of unemployment and being unable to provide for one’s basic needs while having no income.

The difficulty of moving from the ideal imaginary exercise to real-world choice. Ideally, justice is individualized: my choices determine what outcomes I reach, as mediated by option luck; my circumstances are adjusted in the direction of initial equalizing. But in trying to figure out what health care choices people would make in imaginary ideal circumstances, social science may not be sufficiently powerful to enable us to figure out individualized policies. So we are left with basing policy on the basis of choice we determine almost everyone would make. For example, if almost no one would in a fair choice situation spend her money on expensive end of life care (prolonging her life for a few days, or a few months at very reduced quality of life, when she could instead spend the money to enhance her life while she is fit and healthy), then the just social health care package would not provide that coverage. To allow for outlier tastes, we allow individuals to purchase extra insurance if they want, beyond the basic coverage supplied to all.

Ideally, in the world of justice according to Dworkin, our choices would give rise to costs and benefits falling on ourselves, which it is not the proper business of society to correct. If I goof off at work and get fired, society does not owe me compensation. If I work very hard and become wealthy, I do not thereby acquire obligations to help out those who from an initial equal starting point chose the goof-off life strategy. On the other hand, if I am untalented, and work hard, but with meager results, whereas you have the talents of Einstein and Bill Gates, and work hard, with spectacular results, this looks to be bad brute luck for me and good brute luck for you. So equalizing compensation is called for in this sort of case. In the same way, if I smoke and drink and waste my time writing bad philosophy articles, and end up unhealthy, whereas you lead a healthy lifestyle, and end up healthy, this is not a basis for social transfer from you to me. But if I have a gene for cancer at age twenty that you lack, and bad native vision while you are born with the eyes of a hawk, those unchosen brute luck differences call for redress.