

## **Dworkin and Luck Egalitarianism: A Comparison**

*{Slightly revised version published in Serena Olsaretti, ed., Oxford Handbook of Distributive Justice (Oxford University Press, 2018)}*

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In 1981 Ronald Dworkin published two magisterial essays on “What Is Equality?” that initiated a trend in political philosophy that eventually came to be called “luck egalitarianism.”<sup>1</sup> The name of the trend refers to a distinction that Dworkin drew between option luck and brute luck. The latter is good or bad fortune that simply falls on a person in ways that are entirely beyond her power to control or—in another formulation of the idea—in ways that are not alterable by any reasonable action the person might have chosen and pursued. Option luck is good or bad fortune that lies within the individual’s power to control or is alterable by some reasonable course of action the person might have chosen and pursued. The distinction between the two kinds of luck is one that varies by degree. Roughly speaking, luck egalitarianism holds that justice requires that people be made equal in the benefits and burdens that accrue to them via brute luck but not in the benefits and burdens that accrue to them via option luck. Several political theorists including G. A. Cohen (1989), Thomas Nagel (1991), John Roemer (1993 and 1998), and Larry Temkin (1993) have at one or another stage of their careers embraced some version of luck egalitarianism.

Dworkin was credited with articulating a powerful defense of broadly egalitarian views of social justice in the face of a challenge that had been issued by Robert Nozick, an adherent of right-wing Lockean libertarianism (Nozick 1974). Nozick presented a

thought experiment. Suppose that your favorite theory of distributive justice is fully implemented; for simplicity, let's suppose this is flat equality, everyone should have the same. Starting from that ex hypothesi fair distribution, people will make choices and take actions as they go about their lives that will, barring a miracle, result in a later unequal distribution. But if people are acting fairly, violating no one's rights, imposing no wrongful harm on others, voluntarily choosing to pursue their own ends, surely the later unequal distribution must be fair. But if distributive justice, as we initially assumed, requires equality, then the later distribution is unfair. Hence there is a contradiction. The distribution can't be both fair and unfair. Nozick urges that to avoid the contradiction we should give up our initial assumption that distributive justice requires an equal distribution, and since nothing in the argument turns on the particular initial choice of fair distribution pattern, the conclusion is that no pattern of distribution—neither equality nor any other pattern—is a distributive justice requirement. (A patterned distributive justice requirement demands that the distribution of goods across persons must conform to a specified shape. Everyone having the same is one. Everyone having a share that is proportional to her moral deservingness would be another.)

More broadly, a common and plausible right-wing objection to left-wing theories of justice is that requiring that everyone have the same or anything remotely close to that fails to pay adequate heed to the importance of personal responsibility in any sensible account of what we owe one another. People can become badly off, fall into misfortune, in any of a wide variety of ways, and how misfortune comes to attach to you plays a big role in determining the extent to which other people might be morally bound to come to your rescue. You might have fallen into misfortune by reckless, or imprudent, or self-

abnegating, or vicious, or willfully self-destructive conduct, so that your current plight is reasonably held to be your responsibility, not the responsibility of others to fix at cost to themselves. Same goes for good fortune: If you worked hard and long and made prudent and savvy choices and scrimped and saved, or took a gamble when the odds were favorable, your personal responsibility for your good fortune stands in the way of the egalitarian demand that we should take from you in order to help the needy.

Dworkin's answer to the "What Is Equality?" question he poses can be read as a reply to Nozick. Dworkin suggests that insofar as we care about equality in the distribution of privately owned goods, we should favor an initial distribution of material resources that is the equilibrium outcome of an auction in which all such resources are up for bidding and all have equal resources for bidding, with the auction supplemented by two hypothetical insurance markets, one for marketable talent and one for handicap. In the former, individuals who do not know the market value of the personal talents they possess have the opportunity to purchase insurance against having low marketable talent. In the market for handicap insurance, individuals who know the incidence of various disabilities that might befall people and the remedies available for such disabilities (e.g. eyeglasses for nearsightedness) but do not know their individual probability of having any disabilities have the opportunity to purchase insurance against finding oneself with a disability. The insurance market is conducted so that the books balance; what people would purchase yields an amount of funds that is the total payout to which individuals making these purchasing decisions would be entitled.

After an initial distribution of resources, individuals then interact as they choose in a framework of market exchange, with criminal law, tort law, and contract law set so

that people do not harm others in ways these laws forbid. Individuals pursue their projects in this fair framework, and whatever pattern of distribution emerges over time through people's lifetime from this fair starting point is morally acceptable according to this "equality of resources" proposal. So Nozick's concern that preserving any fair distributional pattern of resource holdings must squelch individual liberty is met. Apart from the once-a-generation distribution that sets the fair starting point, no pattern is imposed. Nozick's concern that egalitarian justice doctrines are insensitive to personal responsibility is also addressed. Under Dworkin's equality of resources scheme, people who start on a fair footing, choose well or badly, and have good or bad luck in the gambles that inevitably accompany decisions to interact with others when outcomes are not known in advance with certainty, have no complaint of injustice that calls out for compensation or further redistribution when outcomes are not to their liking or as they had hoped. (A complication is that the scheme cannot literally be put in place, because the hypothetical insurance markets cannot actually be administered, and generations do not succeed each other at discrete points of time, but come into being by continuous births and deaths, so Dworkin proposes that we ought to institute arrangements including a tax and transfer scheme that mimic as closely as possible the result of the hypothetical equality of resources procedure for the population over time.)

The views on social justice that Dworkin appeared to champion attracted criticisms. Meanwhile Dworkin refined his views. In 2000 he published *Sovereign Virtue: The Theory and Practice of Equality*, which offered a broad interpretation of social justice requirements. Its starting point is that governments (unlike private individuals) have a duty to treat each of the citizens under its jurisdiction with equal

concern and respect. This requires action from the complex conviction that it is important that the life of each member of the political community should go well, and equally important that each member's life goes well, and yet that each individual person has a nondelegable responsibility to shape her life in her own way. On the topic of distributive justice, the book reprints the two 1981 essays and adds chapters that explore what the theory requires by way of practical political measures to make advances in fair treatment of individuals in a society that has not implemented equality of resources.

The criticisms that the luck egalitarian trend of thought attracted were various (see especially Anderson 1999 and Scheffler 2003a and 2005). Some object to the “luckism” or personal responsibility component of the view (Fleurbaey 1995 and 2008). Others object to its egalitarianism (Miller 2015, Sher 2015).

Against the residual egalitarianism, Lockean libertarians and other conservatives can protest that there should be no moral presumption in favor of equality of condition, not even one qualified by personal responsibility. People have some moral rights, which should be honored, but nothing like a claim to the same property or same condition as others enjoy. The rejection of the idea that equality is morally desirable in itself is also shared by other moral perspectives: sufficientarians hold that justice demands that everyone have a good enough condition, not an equal condition, and prioritariness propose that it is morally more important to provide benefits for people, the worse off in absolute terms they otherwise would be. Another line of criticism objects that insistence on equality of condition can require policies that shrink the pie and make us all worse off over the long run, and such policies cannot be sensible or just. Another view is that the right interpretation of the personal responsibility idea renders any version of

egalitarianism otiose: distributive justice requires that the good fortune that people obtain in life should correspond to their deservingness: the virtuous saints should do better than the nonvirtuous sinners, and the greater one's virtue, the more one should outstrip the nonvirtuous (Kagan 1998).

Against the luckism or personal responsibility component, some hold that luck egalitarian doctrines support wrongfully moralistic, ungenerous policies toward those whose own choices and behavior have landed them in trouble. People in misery deserve help and surely often have a moral right to be helped even if they could have avoided their present plight by appropriately prudent conduct on their part. The thought that luck egalitarianism preaches wrongful stinginess toward those who have come to be in peril through their own fault or choice sometimes combines with endorsement of sufficientarianism: each person should be enabled to have enough, come what may, throughout life, whatever the source might be of threats to the person's maintenance of a good enough condition. Still others hold that it tends to be counterproductive to uphold a view of justice that requires classifying people into sheep and goats, sorting the deserving from the undeserving poor and the deserving from the undeserving rich for purposes of deciding what treatment people are owed. It would be better to avoid these classification exercises unless they happen to be cost-effective instruments for advancing entirely distinct and separate moral goals.

The treatment of personal responsibility in Dworkin's doctrine and in those of some luck egalitarians following his lead involves crucially the idea that the standards of distributive justice should be calibrated in terms of resource shares not the life outcome people reach by their uses of these resource shares. Once a fair distribution of resources,

liberties, and opportunities is in place, and then sustained in appropriate ways, individuals themselves bear responsibility for how they use their fair shares and what happens to them as a result. On this view justice might uphold rights to the pursuit of happiness but not to any degree of success in this pursuit. Whether resources or welfare is the proper measure of people's condition is partly an intramural dispute among luck egalitarians, but one that reflects large disputes about what we owe one another in the fundamental ways that should register in social justice requirements.

So far I have treated Dworkin as a founder of luck egalitarianism and one of its leading figures. But Dworkin's fascinating response to critics who regard his work as a canonical member of the luck egalitarian family of views is that his views do not belong within this family of doctrines as the critics characterize it. Responding to a critic, he denies he adheres to the core luck egalitarian idea that "inequalities deriving from unchosen features of people's circumstances are unjust." Instead he holds that his core idea is that distributive justice requires making people's circumstances "equal under some appropriate version of the envy test." He adds that this test properly understood requires "that people be made equal, so far as this is possible, in their opportunity to insure or provide against bad luck before it has occurred, or, if that is not possible, that people be awarded the compensation it is likely they would have insured to have if they had had that opportunity" (Dworkin 2002 and 2003; also Scheffler 2003a and 2003b).

To some of his followers (including the author of this chapter), Dworkin's protest that he is not a luck egalitarian sounded as startling as if the Roman Catholic Pope had responded to objections against central Church doctrines by announcing that he is not actually a Roman Catholic. However, we should not be too concerned about what labels

to attach to a candidate conception of social justice. This chapter eventually addresses these questions: Are the criticisms of what is called ‘luck egalitarianism’ sound? Do the main criticisms of luck egalitarianism, whether good or bad, apply to Dworkin’s social justice views fairly interpreted? If Dworkin’s doctrines differ from the main run of luck egalitarianisms, are Dworkin’s distinctive doctrines morally acceptable or unacceptable?

### **Resources or welfare as the distributive justice measure?**

Dworkin’s conception of distributive equality has two main building blocks. One is that the metric for equality should be resources not welfare. What matters from the standpoint of justice is whether people have the same resources not whether they enjoy the same welfare. Among resource-oriented theorists Dworkin’s position is notable for its expansive view of what kinds of things count as resources for individuals. The other main building block is that people should be made equal, so far as this is possible, in their prospects not in their outcomes. We should be seeking ex ante not ex post equality. This section explores the rationales that Dworkin offers for equality of resources over equality of welfare. The next section of this chapter considers the issue of ex ante versus ex post equality.

The idea of equality of welfare is that justice demands that everyone ends up with the same welfare so far as this is feasible. “Welfare” is a placeholder for whatever in itself makes a person’s life go better for her.

Dworkin suggests that when we seek to pin down the appropriate conception of welfare to serve as distributive justice metric, we find that none is appealing. A related argument is that people disagree about what makes people’s lives go better, what is worthwhile and choiceworthy in human life, and any attempt by government to improve



individuals' lives according one or another inevitably controversial specification of welfare will be aiming to promote what some affected people will see as irrelevant to their interests or even as hindering their pursuit of their interests. The government even though claiming to promote their advantage would be treating them disrespectfully.

Dworkin considers three broad types of notions of welfare. One is preference satisfaction or life aim satisfaction. A second is hedonism broadly construed. According to this latter notion, the good for a person consists in a desirable mental state or quality of conscious experience. A third type is objective. The idea is that there is a fact of the matter as to whether something you get or achieve makes you per se better off. Whether something you get or achieve increases your welfare level is independent of your subjective attitudes or beliefs regarding your getting or achieving that thing. So if achievement, knowledge, and enjoyment are objectively good, gaining some of any of these items improves your life. (The reader might respond that the distinctions are crosscutting; one might hold that getting pleasure is in itself objectively good for one, independently of one's subjective attitudes toward this state of affairs. I set this problem to the side.)

Dworkin considers and rejects unrestricted preference or desire satisfaction views. People's desires can range widely, and take impersonal objects, so that their satisfaction does not intuitively make the desirer's life go any better. So consider the restricted form of this proposal, which identifies welfare with satisfaction of preferences regarding one's own life and circumstances. Dworkin further distinguishes relative and overall success. One can achieve success in fulfilling one's preferences but regard this fulfillment as more or less important. Relative success is fulfilling a greater rather than a smaller proportion

of one's preferences and overall success has to do with a person's overall judgment of how successful his life has been given his relative success. With this distinction in mind, we can see that overall personal success is the better candidate for the idea of welfare in which we should all be made equal.

But whether a person has overall success or not depends on her judgments of the value of her life aims, and these can vary for idiosyncratic or arbitrary reasons. Jack and Jill can be leading lives that look to an outside observer to be identical in any respect that might be relevant to their welfare, but Jack has optimistic attitudes and believes his life is rich and valuable while Jill has a pessimistic philosophy of life and believes her life to be pretty much worthless. Trying to make people equal in their overall judgments of how well their lives are going, in light of this example, looks to be a fool's errand.

Comment: the Jack and Jill example as developed by Dworkin undermines the overall success version of a preference satisfaction conception of welfare in a way that supports the idea that there is an objective fact of the matter as to how well off or badly off a person is in given circumstances. That is, there is an objectively correct account of individual welfare, which determines how well off a person is independently of her subjective opinions on this matter or her attitudes toward her circumstances. If Jack and Jill have lives that are the same in work, achievement, friendship, love, enjoyment, and other components of welfare, they are equally well off, regardless of whether either one subscribes to odd beliefs or philosophies of life and happens to have some inflated or depressive opinion about how well her life is going. So it will be important to see what Dworkin has to say about objective conceptions. (Not much, it turns out.)

(It should be noted that there is another possible ground available to Dworkin to support the claim that distributive justice demands no compensation from Jill to Jack or vice versa. In the example neither would prefer to have the resource bundle possessed by the other. The no-envy test is satisfied. But in the argument under review the issue is this: is there a plausible conception of welfare that could be the standard for a viable principle of distributive equality? The concern being voiced is that Dworkin's arguments do not rule out objective list accounts as a plausible conception of welfare for this purpose.)

Dworkin then turns to broadly hedonistic or quality of experience conceptions of welfare. Against them he makes the reasonable objection that feeling good or more broadly having desirable experiences is very plausibly a component of living well but not plausibly regarded as all of it. Individuals reasonably seek, for example, not merely to have the experience as though having a friend but actually to have a friend, and not merely the experience of writing a good novel or surpassing some athletic achievement threshold but actual success in these endeavors.

It might seem that once one acknowledges that there are different and opposed conceptions of human good (human welfare) and that competent adult individuals disagree as to which one, if any, is correct, for a political community to embrace any conception of good and seek to bring it about that its members are equally well off according to that inevitably controversial conception is to treat its members with disrespect (Rawls 1982; see also Ripstein 2007). But this issue is delicate. There is a danger here of just begging the question against the view that at the end of the day questions of value admit of right and wrong answers. Some things are genuinely

valuable, some are not. If that is true, then it is not at all obvious that a political community treats its members wrongly when it seeks to bring it about that people have the opportunity to flourish according to that conception even when that differs from the individuals' own views. For a comparison, it is not at all obvious that a political community does wrong in trying to bring it about that people treat each other fairly according to the correct or most reasonable account of fairness even if some of their members conscientiously adhere to some mistaken conception of fairness.

Dworkin thinks he has a master argument that defeats all types of equality of welfare views at one stroke. When do I plausibly have a complaint against society on the ground that my opportunity for a good life is meager? I cannot complain just on the ground that my fulfillment is not as great as I could imagine or wish. To have a complaint I must be able to voice reasonable regret about my opportunities. Dworkin suggests that the only reasonable baseline for this necessary reasonable regret is that I have had less than an equal or fair share of the resources that others enjoy and for this reason my opportunities for welfare are not what they should be. But this move gives the game away. If any attempt to specify a welfarist notion of a person's equal share of resources already must presuppose an independent notion of fair or equal shares of resources, then the project of identifying a plausible conception of equality of welfare is doomed.

Far from being decisive, this objection is question-begging. An equality of welfare view must include a measure that tells us when some are worse off than others and how large is the shortfall between better off and worse off. No notion of "reasonable regret" tied to resource shares is needed. We need a measure of welfare, not one of

“reasonable regret.” Same goes for a doctrine of equal opportunity for welfare.

According to views in the category, people have (roughly, we need make no false pretenses of fine degrees of measurement) equal opportunity for welfare when their circumstances are such that if they conduct their lives with the same rational prudence their welfare prospects (their expected lifetime welfare) are the same. If we take on board the idea that someone’s bad brute luck may include a poor genetic endowment and early socialization that make it more difficult for him than for others to figure out and follow a rationally prudent life course, we might adjust the formulation of welfarist equal opportunity: individuals have equal opportunity for welfare when it is the case that if each conducted her life as prudently as it would be reasonable to expect given her prudential capacities, each would have the same lifetime welfare prospects.

Dworkin presses yet another objection against equality of welfare that has more substance, and cuts through to deeper issues. If we accepted the ideal of equality of welfare, we would accept that a person with expensive tastes, who needs the best oysters to get the pleasure others readily obtain from canned tuna fish, would be entitled to redistributive transfers so that he stays equal in welfare to the level of other people. Balking at this implication of the ideal, we should see that we do not and should not accept the ideal.

Here is a parallel story about equality of resources. Suppose that a person squanders whatever resources are bestowed on her. If she starts with equal shares of resources along with all members of her community, the resources slip through her fingers like so much water. To stay at a level of resources that is continuously equal to what others have, she needs continuous infusions of more and more resources. Rejecting

this implication of the equality of resources ideal, we should see that we do not and should not accept the ideal.

But of course Dworkin never embraces that flat equality of resources ideal that this story criticizes. He embraces something closer to equal opportunity for resources. Having had a fair initial share of resources, the person described in the previous paragraph bears responsibility for how he uses them, and does not merit compensation for future resource deficits he suffers that lay within his power to control.

The advocate of “equality of welfare” can take a similar tack (Arneson 1989 and 2004 and Cohen 1989 and 2004). We should distinguish expensive tastes that simply fall on a person and are beyond her power to control. Perhaps her taste buds are substandard, so ordinary food and water are unpleasant for her to eat, though pleasant for everyone else. If this is the source of her shortfall in welfare stemming from expensive tastes, it merits equalizing compensation. In contrast, if a person negligently or recklessly falls into a lifestyle that emulates that of the idle rich and results in her being afflicted with expensive tastes, her faulty conduct that predictably brings about her expensive tastes undercuts her demand that justice requires compensation for them. The same goes if a person deliberately cultivates expensive tastes for no good reason. If a person enjoys equal opportunity for welfare, and squanders her opportunities, in ways for which she is reasonably held responsible, equality of opportunity for welfare does not identify her as entitled to equalizing compensation.

Dworkin raises interesting doubts about this response in defense of a welfarist distributive justice metric. One is that a sensible person who develops expensive tastes supposes that doing so will make her life go better even if she becomes pinched for

resources. If society by its welfare metric judges she has become worse off, this judgment flies in the face of the person's own appraisal of her situation after her deliberate cultivation of expensive tastes. It would be inappropriate for a person to demand compensation for a condition she embraces and views as enhancing her life, so it would be inappropriate for society to offer or impose compensation. Compensation for expensive tastes violates a justice constraint: there should be no compensation for an individual's condition if the person regards that condition as an enhancement not an affliction.

Dworkin adds that even when an expensive taste is voluntarily cultivated, this action will proceed from underlying judgments and other features of the individual's personality that are not voluntary at all. So the division between voluntarily cultivated and not voluntarily cultivated expensive tastes is rather superficial, and cannot bear the weight the advocate of equal opportunity seeks to place on it. Dworkin proposes a different way of distinguishing tastes, preferences, and ambitions for which the individual should bear responsibility and the rest: if an individual is glad not sad to have a preference, that preference falls on the side of her choices and ambitions for which he bears responsibility rather than on the side of her unchosen circumstances.

The advocate of a welfarist distributive justice metric need not abandon her ground in the face of these worries. The glad-to-have test is flawed. That I choose certain values and form certain preferences and am glad to have them may simply reflect my poor native endowment of choice-making and value-forming ability. Even if I cannot coherently ask to be compensated for what I take to be a benefit, other people, charged with determining whether I am badly off in a way that triggers requirements that people

offer me aid, can coherently judge that some of my preferences and values and ambitions are warped through no fault of my own, in such a way that I am entitled to compensation for the worsening of my life they have induced.

The claim that the line between deliberate or careless cultivation of expensive tastes and other such cultivation is superficial raises issues about free will and determinism and responsibility that are entirely orthogonal to the dispute between the resourcist and welfarist versions of equal opportunity. If hard determinism is the truth, then responsibility will play at most an instrumental role in distributive justice theory. If any version of free will libertarianism or soft determinism is the truth, then there is room for responsibility to play a not merely instrumental role in distributive justice theory (so that the theory might judge, for example, that it is intrinsically morally better when saints rather than sinners get more of scarce benefits). The thought that the problem of determinism poses some special difficulty for welfarist as opposed to resourcist views rests on confusion (but see Scheffler 2005 for an opposed view).

Finally, in trying to figure out whether welfare or resources should be the metric for assessing people's condition for purposes of deciding who owes what to whom as a matter of distributive justice, we should separate the issue of welfare as the metric and the issue of the appropriateness of equality as the distributive principle. If some people through no fault or choice of their own suffer from grievous afflictions that make them very poor transformers of resources into welfare, then equality of welfare and equal opportunity for welfare as well will keep recommending resource transfers from other people to these grievously afflicted individuals, even if the resource transfers greatly diminish the welfare of those who give up resources and just barely improve the welfare



of the grievously afflicted. These people then become a basin of attraction for resources, and the level of transfer supposedly required by justice looks to common sense to be excessive. But this intuition should perhaps persuade us that equality is not the proper and fair distributive principle, and leave intact our conviction that the proper measure of how badly off a person is for purposes of determining distributive justice obligations is how badly off the person really is according to the correct objective account of what makes someone's life go better or worse for her. (Knight 2009 and Segall 2013 defend equal opportunity views.)

Dworkin holds that people should be made equal in resources not welfare. So the negative claim is that in assessing a distribution of resources we should not look beyond it to the welfare outcomes that individuals gain using those resources. Each individual has a nondelegable responsibility for how her own life goes, for better or worse, against a backdrop of a fair initial distribution of resources and a fair framework in which individuals can freely decide how to cooperate together and how to transact with others. Dworkin's view about equality of resources also includes a positive view about how to conceive of resources. Resources for an individual are means to achieving her goals. The value of a resource that is assigned to one individual is what others would pay for it—the opportunity cost of not assigning it to another individual when the scheme for registering willingness to pay is fair. So if a bundle of resources is distributed to a group of individuals by giving each equal bidding power (equal money to use in the auction) and conducting an auction in which no bids are final until no one wants to change any of her bids given the bids others are making, then if the auction concludes, and resources are

given to the highest bidder, the distribution satisfies equality of resources as conceived by Dworkin. (In this way an ideal market procedure defines the equality of resources ideal.

**Ex ante versus ex post distributive principles.**

Imagine that a group of people is going to establish a fair initial distribution of resources. Following this distribution, people will interact in circumstances such that the outcomes of their choices will not generally be known at the time of choice. Dworkin holds that equality in the relevant sense obtains when no one envies (prefers to have) the circumstances of any other individual. If a pile of divisible resources is distributed according to an ideal equal auction, then no one envies the bundle of resources anyone else possesses, so equality prevails. Now suppose people are free to choose a course of action so long as they do not harm others, the outcome of anyone's actions being dependent on the actions of others via market processes. Each knows the choices of others but the outcome of one's choices is not known in advance, one knows only that one of several outcomes might obtain, and perhaps the probability that this, that, or the other outcome will ensue given one chooses a certain course of action. An ex ante principle of distributive justice assesses people's situations prior to the resolution of the uncertainty in the outcomes of their choices. An ex post principle assesses people's situations after uncertainty is resolved and the outcomes for individuals are known.

The conviction that shapes Dworkin's view is that provided the initial set-up is fair, the relevant perspective of assessment for social justice is ex ante rather than ex post. For example, people may have different proclivities for risk-taking. Given a fair distribution of resources, some may follow play-it-safe strategy, and some may accept the chance to win big accompanied by a chance of losing big. Whatever their preferences, in

the face of an uncertain future each person has a responsibility to choose a course of action and accept the consequences that ensue. Choosing a course of action can include purchasing insurance against undesired future contingencies or taking actions that provide the equivalent of insurance. Having made a choice from a fair array of options, a competent agent must take responsibility for the advantages or disadvantages that accrue to her from that choice, in the sense that she is not entitled to demand that others are obligated to make good her losses if the outcome is bad for her.

It is hard to adjudicate the dispute between advocates of ex post and ex ante distributive principles (Fleurbaey 2008 versus Dworkin 2002 and 2011). From the ex post perspective, the choices that people make under uncertainty are just choices they make when ignorant of information that is relevant for sound choice. If the test of fairness is some version of the idea that an arrangement is fair when no one prefers the situation of another, then ex ante fairness makes people's preferences regarding states of the world that will not occur relevant to the determination that they have been fairly treated, and the advocate of taking an ex post perspective will deny that this is appropriate.

One might think that the advocate of ex post fairness must be embracing principles that give people perverse incentives. If it is known in advance that justice requires compensating people who gamble and lose for their big losses, I may have the incentive to take a very bad gamble with a small chance of a spectacularly good outcome and a large chance of a very bad outcome, since I will not have to bear the adverse consequences if I lose. But this thought is a mistake. Ex post principles might reward or punish people depending on the quality of their choices, regardless of the outcomes that ensue, so that a prudent individual whose good bet turns sour, an altruist who sacrifices

her prospects to get great gains for others, and an imprudent person who gambles recklessly, will be treated differently if they all end up with the same poor outcome. If the ex post advocate happens to favor equal outcomes for the equally virtuous (see Eyal 2007, and more broadly, Kagan 1998 and 2012), then she will favor ex post equalization across persons who choose equally prudently and end up better and worse off, and across persons who equally opt for virtuous self-sacrifice and end up better and worse off.

Recall that the initial luck egalitarian thought is that it is morally bad if some are worse off than others through no fault or choice of their own. “Fault or choice” suggests two different norms. “Choice” asserts an ex ante perspective: people should be free to act as they choose by their own lights and absorb the consequences that ensue, whether the outcomes are certain or uncertain (Sher 2014). “Fault” points toward the idea that we ought to bring it about the people get what they deserve, or more weakly that deservingness partly determines rightful distributive shares. This idea consorts naturally with an ex post perspective.

Deservingness might displace egalitarianism altogether. A noncomparative ideal might hold that for each degree of virtue one might achieve, there is a particular well-being level that is fitting, and each person ought to get exactly that amount of well-being that corresponds to her virtue. A comparative ideal says the virtuous should be better off than the nonvirtuous. Many combinations and variants are possible. One might regard the deservingness that affects the well-being one should get as global (one’s overall welfare should match one’s lifetime deservingness score) or as local and contextual (if you are undeserving with respect to a situation, you are less eligible for benefits and more eligible for harms in that situation).

Deservingness might also play a role in a broadly egalitarian view (Arneson 2007). Roughly, views in this camp hold that the worse off you are, the greater the moral reason to bring it about that your condition improves, and also that the more deserving you are, the greater the moral reason to bring it about that your condition improves. From this standpoint it is always good to improve a person's condition, but being more deserving can render an individual more eligible for benefits than others if goods to be distributed are limited. Call this view *weak deservingness*, in contrast to the strong deservingness views that hold it is intrinsically good that the nonvirtuous suffer evil to a degree corresponding to their negative deservingness.

Dworkin should be interpreted as holding that taking personal responsibility seriously in the right sort of way just does require interpreting what we owe one another by way of compensation for bad luck from an ex ante not an ex post perspective. When one gambles for high stakes in a game of chance, or makes a risky investment decision, or decides whether to accept or reject an employment offer with an uncertain package of benefits, or an offer of marriage or friendship when the future is unknown, there is strong moral presumption that one is responsible for bearing the consequences of one's choice, be they good or bad, such that others have no moral obligation to make good one's losses if things turn out badly. The presumption can be overcome in various ways. If the array of options available to one is unfairly limited, there may be grounds for compensation ex post. If one is incompetent at the time of choice among options or predictably will choose so incompetently so that an acceptable norm of paternalism comes into play, then perhaps one should be denied the opportunity to make the choice without constraints to discourage inept choice, and if these constraints are not put in place, and one's

incompetent choice leads to a misfortune, one may be owed compensation to reduce one's losses. But if society follows a distributive justice principle that systematically rejiggers the outcomes of people's choices in risky situations so that some morally preferred distributive pattern is maintained no matter how one chooses, then personal responsibility as we should understand it is not being properly respected. So run Dworkin's convictions.

Finally, we should note that one might hold that social justice evaluations should combine the ex post and ex ante perspectives. Suppose we have an indivisible good, relief from a lethal threat, that we can give to just one of two persons, who are identical in any way relevant to moral assessment. From an ex post perspective that values lives saved, any rescue strategy that results in one life saved is equally good. From an ex ante perspective, we might be concerned to satisfy some standard of ex ante fairness, such as giving each an equal chance of rescue by flipping a fair two-sided coin and rescuing the coin toss winner. Contemplating the example, some might suppose that justice requires somehow splitting the difference between ex post and ex ante evaluations.

### **Fair insurance extended.**

Dworkin notes that the chapters of *Sovereign Virtue* that apply the equality of resources theory to public policy issues also modify it. The modification is that the idea of hypothetical insurance markets as dictating what we owe to one another, present already in his chapter 2 discussion of equality of resources, looms larger in the later chapters and subsequent formulations of his considered view.

The fair insurance account of distributive justice could be extended to the point that it entirely supplants the equality of resources idea. In fact, this actually occurs in

Dworkin's post-1981 writings reasonably interpreted. Let the amount and kind of benefits that we owe one another, to be supplied through government action, be set by fair hypothetical insurance. The background is that people interact freely in a competitive market economy, with market failures appropriately regulated, and contract and tort and criminal law set to facilitate people's making mutually agreeable deals and not imposing negative externalities on one another. Against this background, people will face significant risks of bad fortune, for which actual insurance markets will not be available. Individuals may find themselves out of work and unable to find paid employment, but familiar moral hazard problems will prevent actual insurance markets from arising in the face of this uncertainty. Individuals may find themselves lacking marketable talent. Individuals may find themselves with genetic predispositions to disease or accident injury. For any such uninsurable variations in good and bad fortune across individuals, we can work out what insurance the average member of the community—with average wealth and prudence—would purchase, if insurance were available that covered these various contingencies.

For each type of hypothetical insurance, individuals make their decisions behind an appropriate veil of ignorance tailored to the case at hand. In the case of initial-bank-account-wealth insurance, one might choose coverage against the possibility that one will have low initial wealth, and the cost of this insurance is that one will have to pay to fund this coverage if one is more fortunately situated. Also, the level of coverage provided might diminish or boost people's incentives to produce and save, and so the total wealth of society that is passed on from one generation to the next may vary depending on the fair insurance chosen. There is also the consideration that a person who has earned

money fairly may want to choose to give it to others or bequeath it. Taking these factors into account, the question becomes, what initial-bank-account-wealth insurance the average member of the community would purchase in the appropriate hypothetical insurance market. The answer fixes the character and level of inheritance and gift taxation and regulation in the just political community.

Fair insurance enters Dworkin's distributive justice proposals in two different contexts of discussion. When he elaborates the ideal of equality of resources, the initial thought is to give people equal bidding power and let all available resources be put at auction, the equilibrium result fixing people's initial shares of goods. But once we notice that personal traits cannot be just divided up and put at auction in this fashion, yet personal traits count as resources for individuals, Dworkin is led to propose hypothetical insurance markets for marketable talent and for handicap as supplements to the equal auction specification of what equality of resources means.

In later chapters, Dworkin considers problems of nonideal theory. Suppose we are living in a society that has not implemented equality of resources and is thus unjust in that regard. Now we are considering particular political issues that bear on distributive justice. What advice does the equality of resources ideal give us for policy choice in circumstances in which it is given that there will not be full compliance with the full Dworkin ideal? In this setting of partial compliance, Dworkin suggests that we can invoke the hypothetical insurance mechanism tailored to the particular political issue that is being addressed. We ask, what insurance would people on the average have purchased had they had the opportunity to do so with equal wealth and full information about facts



relevant to the insurance decision and under the constraint of an appropriate veil of ignorance.

Am I twisting Dworkin's ideas to suggest that fair insurance might come to rule the roost in his theory of justice? Here are some considerations that press him in this direction. First, note that in the initial description of equality of resources, the thought experiment is to imagine shipwrecked sailors who are wondering how fairly to allocate cargo washed ashore among them as resources to be privately owned. These resources are like manna from heaven; there is no question that anyone might have prior claims. But the claim that these resources should be divided equally does not straightforwardly imply that resources that individuals earn in a fair setting should revert to the state at their death and be entirely available as fair shares for the next generation. Dworkin himself suggests that if you fairly earn resources and are free to spend them as you like, why not be allowed to give them to other persons? There is a concern that inheritance and targeted gifts might reproduce class inequality, and a concern that what you get via gift and inheritance is overwhelmingly brute luck not option luck. But then we have considerations that press in opposed directions and need to be balanced, not just a tidal wave of reasons favoring prohibition of acquiring significant resources by inheritance or gift.

There is also a leveling down problem to be considered. Suppose that the desire to provide well for one's children, or beyond that the desire to give one's children a leg up in social competition or a buffer against losing in social competition, or beyond that a dynastic ambition to establish wealth that will pass from generation to generation among family members, looms large in people's motivations to contribute productively to the

economy, and especially large for the more productive individuals. If any of these possibilities or a mix of them should hold, then insistence on an economic regime that forbids significant transfers by gift or inheritance might be a regime in which in each succeeding generation, individuals on the verge of adulthood acquire an equal share that is smaller in absolute terms than what the preceding generation enjoyed. In this scenario there may be compromises with strict inheritance and gift egalitarianism, under which everyone ends up with greater initial wealth when initial inequality is tolerated. If it is permitted that the children of the rich have greater initial wealth than the children of the poor, the children of the poor will end up with greater initial wealth than they would have if there had been a prohibition on intergenerational transfers. What is clear is that people purchasing hypothetical insurance against the possibility of starting out in life with very little wealth will care about improving their opportunities overall and not at all about attaining equality of initial shares per se.

Dworkin asserts that if someone would not purchase insurance at a certain level of coverage against the possibility of being afflicted with some misfortune if one had had the opportunity to purchase such insurance in a fair setting, the person has no valid demand for compensation to that level of coverage if it turns out that the misfortune falls on her. If one would not (in a fair setting) purchase insurance against blindness at a level of coverage that would render one neither glad nor sad to be blind given one is compensated for blindness at that level of compensation, one does not have a moral right to that level of compensation. This same claim can be applied to the issue, when is one unfairly disadvantaged by having an initial stock of resources that is less than others have. Dworkin does apply this fair insurance test to settle the ideal theory issue, what

distribution of resources is fair, and counts as satisfying the ideal of equality of resources, when the domain of resources is expanded to include personal traits in addition to material resources. In this way the equality of resources ideal as Dworkin elaborates it includes the fair insurance idea, and there is no principled bar to extending the fair insurance idea, so that distributive justice (or “equality of resources” properly conceived) becomes distribution according to the fair insurance model. In fact, the logic of Dworkin’s position leads to dropping equality of resources altogether.

Objection: in the various hypothetical insurance markets Dworkin considers, people are always imagined as having equal purchasing power. So there is a kernel of equality of resources inside the fair insurance model.

Reply: The general requirement for hypothetical insurance is that people imagined as purchasing insurance are fairly placed. “Fair” need not mean “equal.” The fair initial resources people should be imagined as having are those they are entitled to under the fair insurance scheme regulating inheritance and gifts. We have seen that this insurance market does not yield the outcome that everyone should have equal money on entering adult life. This starting point insurance scheme then determines the fair amount of resources people should be imagined as having in facing further hypothetical insurance markets. So the equality of resources kernel in fair insurance becomes vanishingly small. (A concern here is, what determines the fair resource share for an initial run of the Dworkin procedures? Dworkin might follow a suggestion made by Nozick and hold that there should be a once for all time equal initial distribution, following which the proper distributive norm is justice as fair insurance.) Notice also that people engaged in purchasing gift and inheritance “insurance” are directly choosing a tax and transfer

scheme under ignorance of what gift and inheritance bundle one would have absent that scheme—the cost of choosing high taxation is that one gives up wealth if one is a lucky inheritance and gift recipient and one faces the cost that high taxation will lower over time the funds available to be taxed and redistributed (one is ignorant of whether one will face the scheme in an early or later cycle of its operation). In this imaginary exercise the choosing parties are symmetrically placed but need not be envisaged as literally purchasing insurance with equal resources of any sort.

**Interpreting values and principles as seamless: the case of liberty and equality.**

Dworkin's thinking on social justice issues is marked by a strong penchant for seamless unity. The idea is that values and principles that are thought to be opposed can profitably be reinterpreted as united in such a way that one can pursue the amalgam value-principle wholeheartedly without facing the need to accept tradeoffs between achieving more of one value and more of the other. We might think equality and liberty are opposed values, but Dworkin finds a clue in the thought that the theoretical auction that defines equality of resources cannot be imagined as functioning unless people know what they are legally at liberty to do with the various resources among which they are choosing and bidding. You do not sensibly know how much to bid for an acre of pine trees unless you know whether you are at liberty to look at them or chop them down for firewood and so on. Dworkin takes this as a sign that liberty is internal to equality, in the sense that we cannot understand the equality of resources ideal without working out what people should be at liberty to do with their resources.<sup>2</sup>

Dworkin supposes that there is a right answer, from the standpoint of equality of resources, to the question, what should people be legally at liberty to do with the resources they will possess under an equality of resources regime. The answer is that people should be free to do whatever they choose with their resources so long as they do not wrongfully harm others in ways the criminal law should forbid and do not impose negative externalities on others in ways that tort law should restrict. For the same reason, in the imagined equal auction for resources, people should be free to bid for the smallest bit of any resource they care to have. The ideas just stated are asserted by Dworkin in the form of what he calls the principle of abstraction and the principle of correction.

The obvious objection at this juncture is that the correction principle allows what we should regard as nosy preferences and unwarranted disgust and repulsion and moralistic revulsion to affect what counts as imposing external costs on others in a way that triggers claims for compensation and restriction of the liberty of those who are objects of busybody feelings, disgust, repulsion, and revulsion. Not all negative externalities that fall on others as a consequence of what you do constitute any sort of reason to restrict your legal liberty to do that sort of thing.

Dworkin accepts this. He endorses a principle of independence that disallows any standing to preferences that involve having contempt or dislike for other persons or groups of persons. So in a society ruled by Dworkinian principles I could not claim that I am harmed by my neighbors selling my home to people whose skin color I dislike or whose way of life I find contemptible. Nor will the Dworkin hypothetical markets that dictate what we owe to one another register such preferences as affecting the content of these derived social justice norms.

This sounds fine as far as it goes, but seems to leave the boundaries of the liberty that ought to be protected largely unresolved. Suppose I have no dislike or contempt for my neighbors but am concerned that they are spoiling the community by (a) homosexual conduct, or (b) recreational use of alcohol or marijuana, or (c) recreational use of heroin or methamphetamine or (d) living in accordance with caste and gender hierarchy norms that press women to stay in the home and subordinate to males. Cases a through d seem to differ significantly (to put it mildly) and to merit different legal response, but why and how?

I do not see that the norms of treating people as equals and equalizing their comprehensive means to whatever aims they might choose to pursue provide adequate resources for settling the boundaries of acceptable restriction of individual liberty. The welfarist who has identified the best available account of what makes people's lives go better has a principled basis for settling these boundaries, albeit one that is highly controversial. Here as elsewhere the principles Dworkin articulates seem to be more a nice sounding vocabulary in which to express his generally sensible and humane policy convictions rather than genuine principles that dictate those policy convictions.

### **Luck egalitarianism.**

The distributive justice view known as luck egalitarianism takes as central some version of the distinction between what Dworkin has called "option luck" and "brute luck." In Dworkin's words, "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 how risks fall out that are not in that sense deliberate gambles" (Dworkin 2000, ch. 2). Luck egalitarianism

in a nutshell is the doctrine that social arrangements should be set so that people's condition stays equal except insofar as inequality between people arises via option luck. Brute luck inequality should be equalized; option luck inequality should not be or need not be equalized. The basic moral appeal is that if people are born into grinding poverty or sheer unchosen affliction and in this way are worse off than others, their being worse off than others is morally bad, unfair. In contrast, if people are born with good prospects, and become worse off than others due to their neglectful or careless, or willfully imprudent, or risk-seeking, or freely self-sacrificing behavior, their being worse off than others is not morally bad and unfair (or at least less morally bad and unfair than their being worse off than others as a result of bad brute luck).

A few simple distinctions delineate varieties of luck egalitarianism. One distinction is between the doctrine that luck egalitarianism does not require eliminating option luck inequality and the doctrine that luck egalitarianism requires not eliminating option luck inequality. *Hard* luck egalitarianism holds that brute luck inequality should be equalized and option luck equality should be left standing and *soft* luck egalitarianism holds that brute luck inequality should be equalized and option luck equality may or may not be equalized. A second distinction is between luck egalitarianism understood as one element in a pluralistic distributive justice position that includes other elements and luck egalitarianism understood as the sole determinant of distributive justice requirements. Call the former *weak* and the latter *strong* luck egalitarianism. The two distinctions are independent so they mark off four possible views.

Another set of distinctions refines the rough distinction between option luck and brute luck. As formulated by Dworkin, the distinction between option luck and brute

luck evidently admits of degree. Also, there is the distinction between a risk that one prefers to face and that one prefers to avoid. One prefers to face a risk when one prefers to face a lottery with good and bad possible outcomes than to get the expected value of the lottery. There is also the distinction between a risk (a lottery) that simply falls on one and that one cannot avoid by any course of action one might take and a lottery that one can avoid by one's choice of action. A further distinction is between a lottery that can be avoided by some reasonable action one could take and a lottery that can be avoided, if at all, only by some unreasonable course of action. These distinctions all vary by degree: one might more or less greatly prefer the lottery to its expected value, one might be able to avoid facing a particular lottery by more or fewer course of action, one might be able to avoid a lottery by more or less reasonable course of action and by more or less numerous courses of action of given reasonableness. For further discussion, see Vallentyne 2002 and Lippert-Rasmussen 2003)

In Dworkin's formulation, an option luck risk is one that one either notices and might have declined or that one does not notice but should have (and might have declined if one had noticed it in time). So choice and fault are combined in the idea of option luck. A risk one does not choose can be option luck in character if one is at fault for not anticipating it and might have declined if one had seen it looming. A further complication arises if one holds that a risk is brute luck unless, having noticed it, one could avoid facing it by some reasonable course of action. (If I could avoid attack by an irritated squirrel only by plunging into the raging current, my having the drowning plunge option does not make the attack risk one of option luck. But if my only way to avoid the



squirrel attack risk is an unreasonable course of action, then the risk does not cease to be brute luck even if one negligently fails to notice it).

For purposes of distinguishing brute and option luck, we should say that one lacks a reasonable alternative to accepting a risk only if there is no acceptable course of action (with reasonable prospects) one can take to avoid facing the risk. So if one is offered a terrifically attractive lottery, that would be most reasonable to accept, the lottery (if one accepts it) still qualifies as option luck provided there is some alternative course of action one might have chosen instead that would have yielded an acceptable (good enough) outcome.

On this view, taking a gamble involving a risk can qualify as option luck whether or not accepting this risk is reasonable or unreasonable. On an alternative way of drawing the line between conduct issuing in inequality that triggers a distributive justice demand for equalizing compensation and one that does not, what counts is not whether one had a choice whether or not to accept the risk but rather the degree to which accepting the risk is meritorious or nonmeritorious. Consider supererogatory admirable risk-taking for the benefit of others. A person who rushes in to save the children trapped in the burning building may face a high risk of suffering grievous injury, but this choice to rescue is morally admirable even though not morally required, and so (on this view) the rescuer who suffers grievous injury and is thus rendered worse off than others should be restored to being as well off as others and is owed this restoration as a matter of distributive justice.

All versions of luck egalitarianism as characterized here hold that to some degree, or given that certain conditions obtain, it is in itself morally desirable that everyone's

condition or prospects be the same, according to some favored standard for assessing people's condition or prospects. The most sweeping rejection of luck egalitarianism in all its forms and varieties insists that equality of condition or prospects simply is not *per se* morally desirable at all, even conditionally or to a certain degree.

A moral position that sometimes mimics egalitarianism in its implications for policy but flatly denies that equality is ever *per se* morally desirable is prioritarianism. The prioritarian holds that (1) benefits matter more morally, the worse off in absolute terms is the person who gets them and (2) at least to some degree, we are morally obligated to bring about outcomes of greater rather than lesser moral value. The strictest version of prioritarianism is an act consequentialist doctrine that says (1) we are always bound to do what brings about the best attainable outcome, (2) outcomes are better and worse as they contain more and less aggregate human welfare, and in particular (3) outcomes are better and worse as they contain more and less priority-weighted welfare, with benefits counting for more, the worse off the persons who get them. But prioritarianism rejects egalitarianism and *a fortiori* is not a member of the family of luck egalitarian views. This remains the case even if the prioritarian accepts a further priority pertaining to personal responsibility—for example, benefits matter more, the more deserving is the person who gets them.

Dworkin's fair insurance view of justice might be regarded as rejecting egalitarianism if that doctrine is construed as affirming that equality of condition of some sort is morally valuable under some conditions and at least to some degree. Dworkin holds that governments, though not private individuals, are required to treat all members of the political community with equal concern and respect. So perhaps Dworkin is

committed only to equal concern not to the maintenance of equality of condition. True, Dworkin's apparently canonical formulations of his view tend to assert that people should be made equal in their ex ante opportunity to deal with the uncertainty of suffering misfortune. But the logic of the fair insurance approach belies these assertions. This says that people should be equally positioned in the hypothetical insurance markets that fix what resources people are entitled to as a matter of justice. These hypothetical markets determine what is fair in the face of the risk of starting life with few material or bank account resources, low marketable talent, and disability, and of facing unemployment and health problems as life proceeds. None of these hypothetical markets would tend to dictate equal prospects for all or equal condition for all.

The upshot is that if it is so that equality of condition or prospects by any measure is not in itself morally desirable, Dworkin's fair insurance approach has the advantage over any version of luck egalitarianism. However, as the discussion in the next section shows, the fair insurance approach itself attracts criticisms of unfairness.

Luck egalitarianism takes the distinction between brute luck and option luck to be crucial for the determination of fair distributive policies. The more uncompromising strong and hard versions of luck egalitarianism especially invite the objection that too much is being made of too little—that giving the distinction so much weight makes luck egalitarianism unforgiving and harsh in its recommended treatment of people who suffer grievous misfortune via their own choice or fault. Consider the example of a young person who has already received the resource share that luck egalitarianism identifies as fair and then engages in a risky sport without purchasing accident insurance, and ends up grievously injured, but could be restored to good health and good life prospects at

moderate cost. Without extra help, his life prospects are grim; with help, he lives well. Luck egalitarianism in most versions says the person has suffered misfortune and is now far worse off than others through option luck not brute luck, so justice at least does not demand help for the person and (in the strong hard version) demands that no further help be given.

But the luck egalitarian may respond that Dworkin's fair insurance approach ends up paying insufficient heed to the norm of respect for personal responsibility that demands responding to the distinction between brute luck and option luck. The objection is that Dworkin throws out too much of the baby with the bath water. Nothing in the fair insurance approach brings it about that hypothetical persons making their imaginary insurance distinctions will pay any attention to whether misfortunes they might suffer will arise by brute or option luck. I will as a rationally prudent agent choosing under ignorance be just as concerned to avoid or mitigate the misfortune of bad luck that falls on me beyond my power to control and bad luck that I could avoid but will not in fact avoid.

### **Justice as fair insurance: an assessment.**

According to Dworkin, justice requires making people equally able to insure or take action to prevent misfortune or, if that is unfeasible, compensating people for misfortune they suffer according to the coverage the member of the community with representative tastes and average income would have purchased had the opportunity to purchase such insurance been available. Is this a plausible view?

Suppose luck egalitarianism is interpreted as holding that all inequality arising from brute luck should be eliminated and that all inequality arising from option luck

should be left standing, so far as this is possible. This so-far-as-possible qualification is necessary because brute luck and option luck can combine to produce outcomes in such a way that the aims of eliminating brute luck equality and retaining option luck inequality cannot be met together. If the luck egalitarian insistence on equality is not constrained by other values, then it can be very demanding. A person born deaf and blind and limbless may benefit, though only slightly, from ever greater assignment of resources. The person would be worse off than others, by any standard of measurement, even if most of the world's resources are lavished on her. Unconstrained luck egalitarianism as just characterized would insist on yet further transfer of resources to the single unfortunate so long as she remains worse off than others. The badly off person who is a very poor transformer of resources into welfare becomes a basin of attraction for transfers. Even if further transfer would provide no benefit at all to the recipient, if it is morally bad that some are worse off than others thorough no fault or choice of their own, then it is at least in one way better if better-off persons are made worse if even if their losses produce no benefit at all to worse-offs.

The basin of attraction problem and the leveling down problem clearly strike Dworkin as reasons to favor the insurance model. If I do not know whether I am disabled or not, I will be unwilling to purchase insurance that offers unlimited compensation to the disabled, channeling resources to them so long as they are unequivocally poorer in resource holdings than others. Dworkin has the hunch that the pattern of transfers recommended by hypothetical insurance will be moderately equalizing and mesh with our considered judgments.

Unfortunately, sensible interpretations of the hypothetical insurance market do not yield that result. If money will be less useful to me if I am disabled than if I am not, then given the opportunity to purchase insurance, I might well, if risk-neutral, prefer to purchase insurance that would transfer money to me if I turn out to be able and would take money from me if I turn out to be disabled. The average community member might have this pattern of preference, and if so, the hypothetical insurance transfer requires reverse transfers from the disabled to the able. If we balk at the implication that justice requires reverse transfers from people who suffer the bad brute luck of disability to those who have good brute luck in this respect, we are rejecting the claim that the fair insurance model of justice as articulated by Dworkin is really fair and just (Roemer 2002).

If any initial willingness we might have had to accept justice as fair insurance rests on the expectation that the hypothetical insurance contraption that Dworkin constructs will yield implications for policy that fit our antecedent convictions, then it is clear the hypothetical insurance idea is window dressing. The view might just as well be stated as consisting of Dworkin's personal judgments about how much is owed to the disabled and to the unemployed and underemployed, and those lacking marketable talent, and to those prone to sickness and injury, and to those whose parents lack wealth and resources to pass on to them, and so on. The view if it comes to that has no rejoinder to anyone who disagrees with Dworkin's own personal judgments in this matter.

If some huge brute luck contingency threatening widespread disability hung over our community, and insurance markets actually offered insurance against this contingency, and people's actual decisions led to reverse transfers from unlucky to lucky when the disaster strikes, we at least could appeal to people's actual voluntary choices

and their personal responsibility for their choices. We might nonetheless have strong moral reasons to disallow such an insurance market outcome, but these reasons would oppose responsibility for choices. However, the appeal to the hypothetical insurance decisions of people lacks this appeal to personal responsibility for actual choice. Moreover, the hypothetical insurance compensation is set by the average preferences of community members, and my preferences or yours might be minority preferences. So the Dworkin scheme could well end up requiring reverse transfers from unlucky to lucky even on the part of the unlucky individuals who would never have purchased the hypothetical insurance that is imputed to them.

Objecting to Dworkin's fair insurance approach to social justice on the ground that it recommends reverse transfers from unlucky badly off people to lucky well off people might seem misguided. After all, virtually any view that gives some moral weight to gains for better off people will sometimes make such a recommendation. A prioritarian welfarist will hold that if a resource does hardly anything for me and would enormously benefit a better off person, transfer of the resource may be warranted, depending on the amounts of benefit and loss for the affected parties, even allowing for the prioritarian thumb on the scale for the interests of the worse off. I would say the reverse transfer objection to the fair insurance approach is really an objection that the factors that justify reverse transfer on Dworkin's view are not justifying. The objection is similar to the complaint often voiced against John Rawls's justice as fairness idea. What individuals concerned to advance their interests behind a veil of ignorance would choose simply does not capture the considerations that fix the content of social justice requirements.

### **Conclusion.**

Dworkin's sophisticated fair insurance approach avoids any commitment to any version of equality of condition or prospects, and in this way sharply differs from luck egalitarianism. This is a merit of Dworkin's position for those of us who deny that equality of condition or prospects is ever per se morally valuable. Dworkin develops sophisticated arguments supporting his idea that incorporation of any sensible personal responsibility norm in the theory of social justice rules out welfarism—the idea that each individual's lifetime well-being level is the appropriate measure of her condition for the purpose of deciding what we owe to one another. This essay has sought to rebut those arguments. Dworkin argues forcefully that the ex ante not the ex post perspective is the right focus for social justice principles. This essay identifies no decisive argument for going one way or the other on this issue. Dworkin ingeniously suggests that hypothetical insurance markets offer correct guidance to the question of what we owe one another in a world of uncertainty. This suggestion merits rejection.

A final comment: Dworkin asserts that morality requires that we organize our economy on the basis of capitalist free markets, regulated as justice as fair insurance proposes. But since Dworkin's view appeals to idealizations of market processes, he ends up asserting an independent standard of justice (what the ideal market would deliver), and it then remains a completely open question, to what extent actual feasible private ownership free market institutions would be the best means to achieve this ideal.

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<sup>1</sup> . I thank Thomas Parr and Serena Olsaretti for their challenging and astute criticisms of a draft of this chapter.

<sup>2</sup> . This claim should puzzle readers. First, to know what to bid for resources at auction, it would seem that one needs to know not just what one will be legally at liberty to do with them, but rather what one will actually be able to do with those resources, given actual future circumstances. Second, anyway perfect foreknowledge is not needed. To know what one should bid for resources at auction, one can proceed provided one can form probabilistic expectations of what one will eventually be able to do with those resources and with what results.