

EQUALITY, AMBITION AND INSURANCE

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ABSTRACT It is difficult for prioritarrians to explain the degree to which justice requires redress for misfortune in a way that avoids imposing unreasonably high costs on more advantaged individuals whilst also economising on intuitionist appeals to judgment. An appeal to hypothetical insurance may be able to solve the problems of cost and judgment more successfully, and can also be defended from critics who claim that resource egalitarianism is best understood to favour the *ex post* elimination of envy over individual endowments.

I

One influential tendency in contemporary political philosophy claims justice requires that we share fairly in each other's good or bad luck. But what degree of redress for misfortune does justice demand?

Prioritarrians argue that inequalities in fortune should be redressed so as to benefit those less fortunate.¹ Depending on how much priority it attaches to benefiting the disadvantaged, their view faces two problems. If they attach absolute priority to the disadvantaged, prioritarrians face the *problem of cost*. Given the absence of decisive reasons to favour less over more advantaged individuals regardless of how small a benefit we might bestow on the former and how large the opportunity cost to the latter of our doing so, the absolute view is implausible. Instead prioritarrians might endorse a more moderate view. It claims benefiting the less advantaged takes some priority over benefiting the more advantaged whilst also recognising the relevance of further factors, such as the magnitude of potential benefits, and the number of potential beneficiaries. A second difficulty arises for moderates who hope to defend principles of political morality that economise on intuitionist appeals to judgment.² To solve the *problem of judgment* moderates must

1. Parfit (2002: 101 and 116–21).

2. Rawls (1999: Secs. 7 and 8).

provide some principled explanation of how much priority to attach to an individual's level of advantage when deciding whom to benefit.

John Rawls makes various suggestions about how his conception of *justice as fairness* addresses these two problems. His initial suggestion rests on a restrictive view of which types of misfortune are relevant, and an additional empirical conjecture. Thus, Rawls's difference principle attaches absolute priority only to those least advantaged in terms of social primary goods, such as income and wealth. It does so, moreover, on the assumption that other principles are satisfied and that, partly in consequence, society will not face hard choices between denying the least advantaged small benefits and imposing large sacrifices on those better off.³

Due to its restrictive view of relevant misfortunes Rawls's initial suggestion may not be fully satisfactory. According to Amartya Sen, an exclusive focus on primary goods mistakenly denies the relevance of capabilities to interpersonal comparison and ignores variations in the ways primary goods are transformed into capabilities.⁴ In his final reply to Sen, however, Rawls insists his view does attach fundamental importance to specific capabilities, namely those necessary to attain the capability threshold enjoyed by 'free and equal citizens' who are 'normal, fully cooperating members of society' (2001: 169–70). Rawls also endorses a social minimum principle that requires redress for capability shortfalls that temporarily place individuals below this threshold.⁵ Thus, in the case of medical misfortune in 'the normal range of cases' he favours restoring individuals to the level of fully cooperating citizens provided the cost of doing so does not jeopardise other essential forms of expenditure. In addition, Rawls recognises the existence of more extreme cases where grave disabilities place individuals below the threshold permanently. Here he notes that it is 'obvious, and accepted by common sense, that we have a duty towards all human beings, however severely handicapped', but also expresses doubts about

3. Rawls (2001: 66–68).

4. Sen (1992: Ch. 5).

5. Rawls (2001: 170–76).

the weight of such duties, and admits to not knowing whether his view can be extended to such cases.⁶

Rawls's reply goes some way to responding to the problem of cost under realistic conditions. Thus, where misfortune extends beyond the economic domain, Rawls avoids the implausible implications of unrestricted absolute prioritarianism by relaxing the absolute priority he elsewhere attaches to the least fortunate. However, there are two reasons to doubt his minimum capability principle fares as well in escaping the problem of judgment. First, although the principle's requirements are to be balanced against competing requirements, Rawls provides little guidance in resolving such conflicts, and leaves unspecified our duties in extreme cases. Second, given the vagueness in the idea of a normal fully cooperating member of society, the principle's application is likely to vary greatly depending on individual judgment.⁷ So, while certain incapacities may clearly generate a claim for redress under the principle, others may be more difficult to classify; compare, for example, a medical condition which precludes employment with one which causes infertility.

Despite these difficulties, Rawls's view may be more plausible than any rivals. Before drawing that conclusion, we must investigate the alternatives. In what follows, I examine the very different response to the problems of cost and judgment suggested by Ronald Dworkin's appeal to the idea of a fair insurance market.

II

According to *equality of resources*, whether a distribution of privately owned resources is just depends on the possibility of its emerging from a counterfactual market process involving individuals guided by their particular ambitions but unaware of their relative fortunes.⁸ Providing illustration, Dworkin imagines castaways distributing ownership rights in a desert island. He

6. Rawls (2001: 176, n. 59).

7. Defending his difference principle against an alternative social minimum principle, Rawls voices a similar suspicion when he writes 'The difficulty here is the same as that with intuitionist doctrines generally: how is the social minimum to be selected and adjusted to changing circumstances?' (Rawls, 1999: 278).

8. Dworkin (2000: Ch. 2).

argues fairness requires nobody prefer any other individual's allocation, and that 'envy', so defined, should be eliminated via an auction amongst equally endowed bidders with lots continuously divided until the market clears and nobody wishes to repeat the process. Dworkin then asks whether some market process remains appropriate once production, investment, trade, illness, disability, and variations in talent complicate the island's economy, and prospects are shaped by differences in luck as well as ambition.

Here Dworkin distinguishes forms of inequality that arise from differing choices rather than variations in certain types of luck. For illustration, suppose castaways vary only in their preferences, and having received their fair share of resources make different economic decisions with full information about their actual consequences. If some produce more valuable crops than others, equality of resources implies the resulting inequality is just because it arose solely from differences in *choice*. Now suppose those castaways have information only about the risks associated with different decisions, and that some make more risky decisions that happen to pay off. Although the resulting inequality is not due merely to differences in choice, equality of resources implies it may nevertheless be just if it arose from differences in *option luck*. Finally, suppose that some produce more than others because of some good fortune the likelihood of which nobody could have estimated. Equality of resources then implies the resulting inequality, unless suitably redressed, will be unjust because it arose from differences in *brute luck*.

Having endorsed inequalities arising from differential choice and option luck, Dworkin then employs his crucial assumption that fairly situated individuals are entitled to expose themselves to varying degrees of risk to explain how brute luck inequalities should be redressed. Thus, he argues bad brute luck should be redressed to the extent required to mimic the operation of a counterfactual insurance market in which equally wealthy individuals, aware only of the distribution of luck rather than their personal fortunes, purchase coverage against suffering relatively bad brute luck guided by their own values and attitudes to risk.

Consider now how this proposal responds to the various problems mentioned earlier. Since equality of resources

recognises the relevance of *personal resources*, such as health and talent, as well as *impersonal resources* like income and wealth, it cannot be accused of completely ignoring inequalities in capability. However, if those inequalities are so expensive to remedy that individuals would not insure against them, the theory can justify withholding benefits from the least advantaged because of the costs to more advantaged individuals of not doing so. Moreover, since the theory identifies the point at which to withhold those benefits by reference to preferences and the relative prices of different goods it is less reliant on the types of judgment involved in Rawls's appeal to an ideal of normal cooperation amongst free and equal citizens, or alternative pluralist proposals. Thus, assuming we can estimate the operation of the relevant insurance market, it is arguable that equality of resources provides a more promising way to escape prioritarian extremism whilst still economising on intuitionist appeals to judgment.

III

One familiar objection to Dworkin's proposal denies that redressing inequalities to the extent necessary to mimic the operation of a fair insurance market is sufficient to realise equality of resources. Michael Otsuka has recently provided a forceful defence for this supposedly internal critique.⁹ His argument begins by granting that egalitarian justice permits certain inequalities that arise because of differences in individuals' option luck. Such acceptable inequalities include those resulting from high stakes gambles undertaken by identically and munificently endowed agents. They also include relative disadvantages borne by individuals who declined to purchase reasonably priced insurance that would have *fully* compensated them by leaving them indifferent between suffering misfortune and receiving compensation and escaping misfortune and receiving no compensation. Otsuka insists, however, that fair insurance fails to justify inequalities in outcome when reasonably priced fully compensatory insurance is unavailable.¹⁰

9. Otsuka (2002).

10. Otsuka (2002: 44).

Defending such insistence, Otsuka focuses on Dworkin's example of blindness. He argues individuals who become blind having declined insurance, or purchased reasonably priced partially compensatory insurance, or unreasonably expensive fully compensatory insurance, did not enjoy sufficiently valuable options to render their disadvantage unproblematic from a resource egalitarian perspective.¹¹ The inequality between the blind and sighted should remain problematic to resource egalitarians, Otsuka maintains, because their view requires eliminating envy over the distribution of individuals' comprehensive endowment of personal and impersonal resources. Thus, resource egalitarians cannot coherently argue justice merely requires mimicking an insurance market since the resulting distribution will not generally eliminate envy over endowments; for example, if only partially compensatory insurance is available then individuals who purchase it and become blind will still envy the endowment of those who do not become blind. Instead, Otsuka concludes, they must demand far more radical wealth transfers; in worlds like ours, populated in part by 'the severely incapacitated whom it is impossible or fantastically expensive to compensate', equality of resources implies that justice requires 'mutually shared misery' (Otsuka, 2002: 46).

Otsuka anticipates two resource egalitarian responses to the unpalatable consequences he has identified. The pluralist response renders those consequences less unpalatable by claiming that resource egalitarian principles are meant merely to provide defeasible rather than decisive reasons for political action. Though himself sympathetic to pluralist egalitarianism, Otsuka points out the first response is unavailable to Dworkin, given his well-known opposition to pluralism, and his view of equality as the sovereign political virtue. The second response involves distinguishing envy across the opportunity sets with which individuals are actually endowed from envy across individuals' prospects. Employing this distinction, Otsuka notes resource egalitarians might eschew the requirement to eliminate *ex post* envy his argument attributes to them. They might instead require only the elimination of *ex ante* envy, and claim mimicking a fair insurance market satisfies that demand.

11. Otsuka (2002: 45).

Otsuka recognises that Dworkin's remarks suggest the *ex ante* interpretation of the envy test, and also notes Dworkin's explicit rejection of the type of extremist 'rescue policy' required by the *ex post* envy test. Nevertheless, he provides at least two arguments to deny that resource egalitarians may rest content with the less redistributive envy test.

The first argument has two stages, and compares three scenarios. At the former stage, Otsuka imagines an initial scenario where on reaching adulthood each individual enjoys the same personal and impersonal resources, and is known to face the same positive risk of later developing a horrible mental illness, a misfortune that is impossible to ameliorate in any way, or insure against. Explaining why he supposes such *ex ante* equality does not by itself suffice for equality of resources, Otsuka appeals to what he implies is a necessary condition for the realisation of the resource egalitarian ideal.¹² It would not suffice, he suggests, since 'Those who come down with this illness will, through no choice of theirs, enjoy a severely diminished stock of personal resources over their lifetimes in comparison with those who are spared this ailment' (Otsuka, 2002: 50). At the latter stage of his argument, Otsuka asks us to consider a second scenario where it is possible to purchase only very expensive insurance that covers minimally effective treatment. To show that, like the first, the second scenario also fails to realise equality of resources, he compares the latter to a third scenario where some medical breakthrough makes it possible to purchase inexpensive insurance that provides a miracle cure for the horrible illness. If the elimination of *ex ante* envy via the provision of fair insurance suffices for equality of resources, then that ideal has already been realised prior to the miracle cure's discovery. According to Otsuka, however, it is clear 'With this breakthrough, we now possess the means to bring society much closer to (indeed fully to realise) the ideal of equality of resources' (Otsuka, 2002: 50). Thus, from our supposedly different responses to the second and third scenarios, Otsuka concludes we should reject the *ex ante* view, and accept his earlier claim that an equal opportunity to insure does not suffice for equality of

12. Otsuka (2002: 50).

resources in the absence of a reasonably priced fully compensatory coverage.

The second argument focuses on inequalities in impersonal resources resulting from another form of luck, differential receipt of gifts and bequests. Employing hypothetical insurance, Dworkin recommends a steeply progressive tax on such transfers, which would greatly reduce the types of inherited privilege that currently exist but still not completely eradicate *ex post* envy. According to Otsuka, however, if *ex post* envy over inherited wealth is unproblematic, then some inequalities in bidding power at the outset of Dworkin's hypothetical auction should also be unproblematic. Assuming an equal opportunity to insure against having a smaller stock of clamshells than others, these could arise if unequal stocks were randomly assigned to the castaways. Such a permissive attitude to the existence of *ex post* envy undermines hypothetical insurance since inconsistent with Dworkin's earlier, plausible claim that the 'desert island auction would not have avoided envy, and would have no appeal as a solution to the problem of dividing the resources equally, if the immigrants had struggled ashore with different amounts of money in their pockets at the outset, which they were free to use in the auction' (Otsuka, 2002: 52).

If successful, Otsuka's arguments show that hypothetical insurance fails to provide egalitarians with a plausible non-intuitionist solution to the problem of cost. I now attempt to refute those arguments, taking into account Dworkin's own responses.

IV

Though Dworkin admits having once left the issue 'in at least some doubt', he now insists that 'Equality of resources means that people should be equally situated with respect to risk rather than that they be equally situated after the uncertainties of risk had been resolved' (Dworkin, 2002: 121).¹³ Rejecting the *ex post* envy test, Dworkin argues that the levelling down it demands

13. See also the previously unpublished remarks in Dworkin (2000: Ch. 9, Sec. VI), where Dworkin withdraws his earlier reservations, first expressed in 1981 and reprinted at p. 104, about the possibility of fair insurance delivering insufficient compensation for brute bad luck.

would not only fail to display equal concern, and so jeopardise governmental authority, but also be irrational for any individual to prefer. In addition, he criticises Otsuka's two attempts to show his view requires an *ex post* envy test.

Dworkin's first criticism flatly rejects Otsuka's response to the miracle cure. Denying Otsuka's conviction that its discovery enables equality of resources to be better realised, Dworkin writes: 'On the contrary . . . a new issue for equality arose when the cure was discovered. Did people have an equal opportunity to provide for that cure if needed? If, as he [i.e. Otsuka] assumes, people did have an equal opportunity, because low-cost insurance was offered on equal terms to all, then equality of resources was preserved but not improved' (Dworkin, 2002: 124, n. 33). Dworkin's denial will strike some readers as mere counter-assertion, but can be elaborated by appealing to the distinction between *deontic* and *telic* conceptions of justice.¹⁴ Doing so provides a reply to Otsuka's ingenious example, which grants there is some sense in which the miracle cure enhances justice but denies that equality of resources is concerned with justice so understood.

On my understanding, the role played by deontic conceptions of justice is confined to guiding distributive decision-making. Thus, if some facts are unalterable, such conceptions claim they are neither just nor unjust in the deontic sense. In contrast, telic conceptions may play a broader role in practical reasoning. Since such conceptions deal with justice understood as a property possessed by a distribution in itself, they evaluate even unalterable states of affairs. Thus, if a telic conception includes normative principles that govern the production of valuable states, then like a deontic conception it too may guide distributive decision-making. In addition, however, such a conception performs further roles, like guiding aspiration and regret; for example, it may demand we hope for a particular state of affairs even when its existence is beyond our control.

Thus understood, deontic and telic judgments can be plausibly combined. For illustration, consider Rawls's remark that, like other facts beyond anyone's control, the 'natural distribution [of talents and abilities] is neither just nor unjust', and that what 'is

14. Parfit (2002: 122, n. 17, and 90).

just and unjust is the way that institutions deal with these facts' (Rawls, 1999: 87). The remark is plausible if understood as a judgment about justice in the deontic sense. However, we might also think that some of our convictions about the natural distribution resist expression by deontic judgments alone. We might, for example, criticise an individual who welcomes the infeasibility of redressing certain natural inequalities because he would otherwise be required to bear certain costs. To justify such criticism we might appeal to the telic judgment that his world is less just than one where it is feasible to redress those inequalities, and claim his attitude is objectionable because it welcomes the existence of telic injustice.

To return to Dworkin, it seems clear his project is to devise a sound theory of justice in the deontic rather than telic sense. If so, resource egalitarians have a ready response to Otsuka's three scenarios. At the outset, they can reject his assumption that equality of resources is not realised in the first scenario where the eventual victims of the illness enjoy fewer personal resources than others through no choice of their own. Such a rejection will seem odd if we take for granted that equality of resources is a telic conception that ranks states of affairs as more or less just regardless of whether they can be altered by rational agents. But, as suggested, we should scrutinise that interpretative preconception, and recognise that equality of resources, like justice as fairness, is a deontic conception. Thus, if as Otsuka stipulates 'Nothing can be done' to alleviate misfortune in his first scenario, it is not necessarily implausible to deny it exhibits any injustice in the deontic sense assumed by equality of resources. Resource egalitarians can challenge Otsuka's comparison between the second and third scenarios on similar grounds. Assuming the miracle cure's initial unavailability was beyond human control, they can echo Rawls's response to the natural distribution. Just as Rawls claims there is a sense in which a natural distribution where all are born sighted is no more just than one where only some are sighted, they might claim that equality of resources implies that the discovery of the miracle cure does not necessarily make a society more just in the deontic sense. Whether the society is more or less just depends not on the absence or availability of the cure but rather on its response to such facts, and in particular their likely effects on the operation of a fair insurance market.

Emphasising the deontic character of equality of resources is important not only because it renders more plausible Dworkin's claim that, provided that the relevant insurance schemes are mimicked, the cure's discovery does not improve equality. Doing so also enables resource egalitarians to grant the cure may enhance justice in some distinct sense. Rather than merely dismissing Otsuka's view as unsound, they can argue that his conviction that the cure enhances equality of resources is most plausibly construed as a judgment about justice in the telic sense. Thus construed, however, it does not contradict their judgment that the cure does not enhance justice in the deontic sense. I conclude then that, provided its proponents concede that equality of resources is incomplete insofar as it does not aim to account for certain telic convictions, Dworkin's first counter-argument can be elaborated in a way that effectively rebuts the miracle cure argument.

Now consider Dworkin's response to the claim that because equality of resources prohibits an unequal initial distribution of wealth in his desert island scenario it should also prohibit wealth transfers that produce unequal distributions. Dworkin alleges there are significant differences between the distribution of unowned resources in the first fictional world and previously owned resources in any actual world governed by his theory. Arguing that in the latter case the demands of equality are more complex, he claims it is not only 'inegalitarian that some people begin their lives with different levels of wealth available to them . . . by way of gift' but also 'inegalitarian for government to tax differentially the different choices that people make about how to spend what is rightfully theirs, and therefore inegalitarian separately to tax gifts and bequests' (Dworkin, 2002: 125). To reconcile these competing egalitarian demands, Dworkin reaffirms the insurance approach's applicability to differences in inheritance. He also insists that because it frustrates the second demand of equality to treat gifts differently from other decisions, Otsuka is mistaken to 'claim that equality unambiguously requires prohibiting gifts and bequests altogether' (Dworkin, 2002: 125).

In assessing Dworkin's response, it is worth bearing in mind that Otsuka's remarks about gifts do not simply question whether equality of resources is better realised by permitting

rather than prohibiting gift-based inequalities in wealth. As I reported them, they also threatened the crucial assumption that the theory can rely exclusively on an *ex ante* version of the envy test by alleging that such reliance leads to an implausible conclusion. More specifically, they alleged that if equality of resources claims eliminating *ex ante* envy by mimicking a fair insurance suffices to render unproblematic *ex post* envy over inherited wealth then the theory should also accept *ex post* envy over initial endowments in the auction, provided that bidders enjoyed the opportunity to insure against being under-endowed. So, to rebut Otsuka's argument fully, resource egalitarians need either to show why the appeal to fair insurance does not require a permissive attitude to initial allocations that fail to eliminate *ex post* envy, or show that such an attitude may be defensible.

It is not immediately apparent how Dworkin's response, which seems designed to show only that equality of resources does not prohibit gifts, meets this particular challenge. Moreover, in claiming it is 'inegalitarian that some people begin their lives with different levels of wealth available to them . . . by way of gift' (Dworkin, 2002: 125) Dworkin even appears to lend some support to the *ex post* version of the envy test. Despite these problems, there are at least two ways to respond to Otsuka's challenge.

Resource egalitarians might first deny that their appeal to insurance endorses initial allocations where 'Clamshell holdings are unequal because all the clamshells have been divided at the outset into unequal piles that will be randomly assigned to the survivors', who 'are given the opportunity to insure against failing to receive less than whatever number of clamshells they specify' (Otsuka, 2002: 53). Contrary to Otsuka, it is debatable whether he has shown that such a clamshell lottery is akin to the familiar scenario involving differential receipt of gifts, which resource egalitarians claim fair insurance can justify. Since the bidders will later enjoy ample opportunity to participate in lotteries having received their initial clamshell allocation, and purchasing insurance is costly, it is implausible to assume they would prefer to be forced into the clamshell lottery. Despite this, Otsuka's discussion provides no grounds for empowering the auctioneer to impose the lottery on them against their will. It seems more apposite to compare the lottery

to a scenario in which each individual's property is stolen and then redistributed by a random and to some degree wasteful process. Given such background conditions, where some have already acted unjustly, the advocates of fair insurance could plausibly deny that their view implies the availability of theft insurance eliminates injustice. They can also, I suggest, make the same claim about the clamshell lottery. Thus, they can accept that injustice persists despite the availability of insurance, but provide an explanation of that conviction which does not concede justice generally requires the elimination of *ex post* envy but instead appeals to those unjust background conditions.

Though the second response has less appeal, resource egalitarians might also question whether, on reflection, the clamshell lottery does necessarily generate injustice. To support this suggestion, suppose an identical initial allocation takes place amongst a group of survivors, all of whom prefer their clamshells then to be redistributed through a random process, which produces certain limited though substantial inequalities in future bidding power. If those individuals instituted a post-allocation lottery, I conjecture Otsuka would not condemn the resulting inequalities as necessarily unjust. Suppose, however, that it is feasible for those same survivors to institute only a pre-allocation lottery. So, before their vessel ever encounters danger, they agree to accept the outcome of any pre-allocation lottery that produces the same inequalities in outcome. Since there seems no significant difference between the inequalities produced by the two lotteries, which vary only in their timing, I conclude that is less obvious than first appears to assume it is necessarily unjust for survivors to enter the auction with unequal bidding power.

To summarise then, this section has argued Otsuka's arguments from the miracle cure and the clamshell lottery are unsuccessful in showing that an *ex post* test is an essential element in equality of resources. Having cleared some ground, I now turn to an argument supporting the *ex ante* test.

V

As a preliminary, recall Dworkin's description of equality of resources as an attempt to satisfy two demands on a just

distribution of resources, namely *ambition-sensitivity* and *endowment-insensitivity*.¹⁵ According to the argument I shall examine, the first of these demands plays a fundamental role in justifying fair insurance. That role, however, may not be immediately apparent. The most familiar illustrations of the ambition-sensitive character of equality of resources involve individuals who differ in their preferences but are otherwise similarly situated.¹⁶ Equality of resources satisfies ambition-sensitivity insofar as it implies, for instance, that Adrian and his less industrious fellow castaways are entitled to choose between different combinations of income and leisure, and can be held liable for the resulting differences in their circumstances. The theory is also ambition-sensitive because it favours distributing unowned resources via an auction, in which everyone's preferences help determine the structure of lots.

We might conclude from such examples that the demands of ambition-sensitivity can be satisfied merely by adopting an appropriate standard of interpersonal comparison that focuses on individuals' opportunities, and evaluates them by reference to their prices in a particular type of market. Having adopted such a standard, some further principle then determines the extent to which justice requires redress for inequality so construed.

Equality of resources rejects this familiar picture, and instead insists the twin demands just mentioned are interdependent insofar as endowment-insensitivity must be secured in an ambition-sensitive manner. To make this discrepancy more apparent compare the type of protection against relative misfortune provided by an *ex post* envy-eliminating rescue policy with that of the *ex ante* envy-eliminating insurance approach. Both types are equivalent to insurance packages combining a premium in return for some level of coverage. As already explained, granted certain assumptions about the operation of insurance markets, they differ in part because the package provided by the rescue policy provides a higher level of coverage but also demands a much higher premium. An even more fundamental difference exists, however, because the *ex post* envy-eliminating rescue policy allows individuals' preferences to count

15. Dworkin (2000: 89).

16. See Dworkin (2000: 83 and 67–68) for the next two examples.

only insofar as they determine whether envy exists across endowments. Like other *ex post* luck-sharing principles, the rescue policy attaches no importance in principle let alone practice to tailoring an individual's package of coverage and premium to her own estimate of its desirability compared with some other package. In contrast, the *ex ante* insurance approach assumes that, to the extent that the relevant information is available, there are reasons of justice to customise protection to individuals' actual values and the counterfactual decisions those values support.

The importance of achieving endowment-insensitivity in an ambition-sensitive manner is fully apparent in Dworkin's previously unpublished discussion of 'The Luck of the Draw' in *Sovereign Virtue* (Dworkin, 2000: 340–46). Here Dworkin defends the insurance approach with an argument proceeding in two stages. At the former stage, he describes two examples in which wealth is fairly distributed, and everyone faces the same risk of contracting a disabling disease at forty, an age none has yet reached. Regardless of whether the disease strikes randomly or on the basis of genetic endowment, Dworkin claims that the political community should ensure individuals are able to purchase insurance at market rates provided either by private firms or public programs. Appealing to the fact his proposal, unlike a rescue policy, enables individuals to decide for themselves how much protection they enjoy against misfortune, he writes that in these two cases

It is a great strength of the insurance approach . . . that it allows people to make decisions about the relative importance of various risks for themselves, so that they can tailor their use of their own resources to their own judgments, ambitions, tastes, convictions, and commitments. That makes the insurance policy both more egalitarian and more liberal than the rescue policy (Dworkin, 2000: 344).

The latter stage of Dworkin's argument addresses a more realistic case, which differs because everyone knows which individuals will succumb to the disease; hence, an actual insurance market is absent. Dworkin argues that, nevertheless, all three cases are sufficiently similar that in the third case the community should redistribute resources to approximate what would have emerged in the first and second cases. Given the

unavailability of individualised information, the community should attempt to ensure that those who succumb to the disease receive the level of coverage that would have been purchased on average, or most frequently, had risk been equally distributed.

A full treatment would question both stages of this argument, but on this occasion let us suppose if the former stage succeeds, there are weighty reasons in favour of hypothetical insurance. How might its proponents attempt to show that in the first two examples individuals are entitled to decide which risks to bear, and so justice demands they share misfortune through an insurance market?

One way to address our question appeals to prior elements within equality of resources itself. Thus, we might examine whether accepting the theory's ambition-sensitive implications in cases where individuals differ only in their preferences supports the insurance approach in cases where they also differ in their endowments. Consider first why some market process is essential to the definition of a resource egalitarian distribution. Dworkin's explanation appeals to the possibility that, depending on the form in which resources are provided, a plurality of distributions can satisfy the envy test. Assuming it would be unfair for the distributor arbitrarily to impose any one of these envy-free distributions, for example, by transforming resources into lots all of which one individual dislikes, he concludes that envy-elimination is not sufficient to eradicate all forms of fairness. To eliminate the unfairness present when lots are imposed arbitrarily Dworkin proposal an auction in which resources are divided into lots, and then sub-divided even further at any bidder's request.¹⁷

Elaborating this proposal in his discussion of liberty's place in equality of resources, Dworkin explains the need to specify a *baseline system* of civil and economic rights as the background against which the envy test and auction are applied.¹⁸ Assuming that a community must treat each of its members with equal concern when distributing resources and that a market process is the best way of doing so, Dworkin defends certain principles for designing the baseline system of such a process. These include the

17. Dworkin (2000: 68).

18. Dworkin (2000: 146).

principle of abstraction, according to which ‘An ideal distribution is possible only when people are legally free to act as they wish except so far as constraints on their freedom are necessary to protect security of person or property, or to correct certain imperfections in markets’ (Dworkin, 2000: 148). Such a principle is plausible, Dworkin argues, because it implies a market process ‘is fairer—that it provides a more genuinely equal distribution—when it offers more discriminating choices and is thus more sensitive to the discrete plans and preferences people in fact have’ (Dworkin, 2000: 150–1). Thus, the principle explains why, for example, it is fairer to distribute land by an auction where individuals can bid for smaller rather than larger lots.

If the principle of abstraction is sound, resource egalitarians have a ready justification for the key assumption supporting the *ex ante* envy-eliminating insurance approach, namely that individuals themselves are entitled to decide which risks of misfortune to bear. To understand that justification, imagine a political community that is instead committed to the *ex post* equalising approach in the Dworkin’s two examples, in which individuals face the same risk of succumbing to a disabling disease. Though the resulting distribution is envy-free, the principle of abstraction still condemns that community for restricting individuals’ liberty to dispose of their resources as they see fit by imposing the equivalent of a particular insurance policy on each individual, regardless of her preferences. Just as a distributor who offers land only in plots large enough to build a stadium treats unfairly those individuals who want only enough land to build tennis courts, so an *ex post* equalising community treats its members comparably when it denies their entitlement to purchase a lower level of coverage.

If the community is to satisfy the principle of abstraction in such examples, it must recognise the importance of both comparative and non-comparative considerations in designing its distributive system. Thus, it should ensure not only that individuals’ resource shares are equally valuable in the relevant sense, but also that the baseline system of property rights provides individuals with resources in as flexible a form as possible. When risks are equally shared, that latter consideration counts against forcing individuals to participate in any particular luck-sharing scheme, including one that secures *ex post* equality.

Instead it favours granting each individual an equally antecedently valuable entitlement to decide, on the basis of her own attitudes to the risk of misfortune, which package of premium and cover to purchase. Assuming such entitlements, we should favour a corresponding understanding of the envy test. Just as we adopt an *ex ante* test in cases involving gambling in the casino or on the stock market, and allow that the test may be met despite the fact some will prefer others' good fortune, we should also favour an *ex ante* test in this case.

VI

If the appeal to abstraction succeeds, we have an immediate argument for the insurance approach that rebuts any accusation it compromises the resource egalitarian ideal for the sake of non-egalitarian values. Instead the approach draws on considerations relevant in specifying a resource egalitarian distribution in cases where individuals differ only in their preferences, and then extends those considerations to more complex cases involving differential fortune. Some critics, however, will resist such an extension, and argue it exaggerates the scope of the principle of abstraction, and ambition-sensitivity more generally. Those critics might accept that individuals are liable for decisions about consumption and saving or leisure and labour, and also agree that just inequalities may arise when fairly situated gamblers bear risk in similar ways but enjoy differential option luck. Nevertheless, they could still insist there are other cases involving differential option luck where the availability of fair insurance cannot justify unequal outcomes. Suppose, like Otsuka, they claim these include cases where inequality is unavoidable because fully compensatory insurance at reasonably inexpensive rates is unavailable.

One reply to these claims questions whether the appeal to unavoidability justifies combining a permissive attitude to inequalities arising from conventional gambles with a restrictive attitude to inequalities arising from certain natural lotteries. It is quite natural to assume the difference in attitudes is defensible because individuals, providing they are sufficiently wealthy, voluntarily choose to expose themselves to reasonably avoidable risks when gambling, and so have no complaint against any

resulting inequality. In contrast, when they face the chance of medical misfortune individuals have inescapable risks imposed upon them, and so may still complain if they eventually become disadvantaged.¹⁹ This explanation appears plausible if we confine our concern to an individual's risk of *intrapersonal* disadvantage, or becoming worse off than she once was. For it may often be true that an unlucky gambler could have avoided such a risk simply by not venturing his stake. The focus of egalitarian concern, however, is *interpersonal* disadvantage, or being worse off than others. This distinction is important since it is false that if some individuals exercise their entitlement to participate in conventional lotteries others can still avoid the risk of disadvantage understood in the latter sense. Instead all they can do is either participate and risk both forms of disadvantage, or decline participation and risk only the latter. Since permitting gambling means the relevant form of disadvantage is not avoidable, the appeal to unavoidability fails to provide a stable defence of the critic's attitude to different types of option luck inequality. Given this instability, he should either abandon the criticism of unavoidable option luck inequalities, or pay the price of extending the criticism to conventional lotteries.

Even if the critic chooses the latter option, advocates of the principle of abstraction have an additional reason to doubt that the availability of reasonably inexpensive fully compensatory insurance is as important as the appeal to unavoidability supposes. As mentioned, when such insurance is available Otsuka assumes individuals are entitled to choose whether to purchase it or bear some risk of misfortune. If they decline purchase, and suffer bad option luck, then he grants that the resulting inequality is consistent with equality of resources. In the absence of such insurance, however, Otsuka insists that equality of resources requires establishing a scheme of transfers from more to less fortunate individuals that eradicates *ex post* envy, and so may under some conditions create mutually shared misery. The latter claim implies equality opposes granting individuals any entitlement to bear some risk of even greater misery by relinquishing some of the benefits of such a scheme in exchange for some corresponding relief from its burdens.

19. For a similar objection, see Macleod (1998: 99–100).

Proponents of the principle of abstraction, however, are likely to counter-assert that in both cases equality supports an entitlement to bear differing levels of risk. In doing so, they may acknowledge that in the latter case there is no reasonable alternative to accepting some risk of serious disadvantage. Nevertheless, they may also point out individuals can possess entitlements to make decisions for which there is no reasonable alternative, and that such decisions can modify their liabilities.²⁰ Suppose, for example, that each of us is virtually certain of an imminent painless death unless she chooses to take a drug that may restore us to good health but also carries a risk of causing a more lingering painful death. Even if we grant that there is no reasonable alternative to choosing the drug, many of us are convinced that the power to decide which risks to face rightfully belongs to each individual, and that they can be held responsible for what results. Moreover, we do not believe that in granting that entitlement we compromise equality in any sense about which we have reason to care. It is, of course, consistent to reject to such convictions, and insist that in granting the entitlement there is some respect in which equality is sacrificed. I find that response unconvincing in itself, however, and hope to have shown at least that it is not an unavoidable implication of equality of resources.²¹

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20. Cp. Scanlon's remark that 'the fact that the only available alternative led to imminent, painful death ... would not, as Hume noted, free one from a promise to pay a surgeon.' See Scanlon (1998: 245).

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