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Luck, Insurance, and Equality*

Michael Otsuka

Some people are the victims of luck—that is, of the effect of events and things beyond their control—that is both bad and worse than the luck of others. This is a problem for egalitarians, since luck is at the source of many of the differences in the circumstances of individuals. But egalitarians are not bothered by every variety of luck. Ronald Dworkin, for example, has drawn a distinction between two types of luck—“option luck” and “brute luck”—and has argued that the former does not necessarily give rise to inequalities that are unjust.¹ Option luck, as he defines it, 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, by contrast, is “a matter of how risks fall out that are not in that sense deliberate gambles.”²

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1. See Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, Mass.: Harvard University Press, 2000), esp. chap. 2, pp. 73–83. All references to this book include chapter as well as page numbers. I refer to chapters because two of the chapters that I cite are reprints of previously published articles. Chapter 2 was originally published as “What Is Equality? Part 2: Equality of Resources,” *Philosophy and Public Affairs* 10 (1981): 283–345, and chap. 3 was originally published as “What Is Equality? Part 3: The Place of Liberty,” *Iowa Law Review* 73 (1987): 1–54. A third chapter I cite—chap. 6—is a revised and abridged version of “Foundations of Liberal Equality,” which was originally published in *The Tanner Lectures on Human Values*, vol. 11, ed. Grethe B. Peterson (Salt Lake City: University of Utah Press, 1990).

2. Dworkin, *Sovereign Virtue*, chap. 2, p. 73. Dworkin illustrates this distinction as follows: “If I buy a stock on the exchange that rises, then my option luck is good. If I am hit by a falling meteorite whose course could not have been predicted, then my bad luck is brute (even though I could have moved just before it struck if I had any reason to know where it would strike)” (ibid). As I understand the concept, option luck is a property of a choice that makes sense only when that choice is compared with another choice. Imagine that I have one thousand dollars, that only three choices are now available to me, and that the risks associated with each are known to me: (1) to place it in a savings account at low interest,

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“It is a ruling principle of equality,” declares Dworkin, “that it is unjust when some people lead their lives with less wealth available to them, or in otherwise less favorable circumstances, than others, not through some choice or gamble of their own but through brute bad luck.”³ The government should not, however, eliminate differences in people’s circumstances that can be traced purely to option luck, since Dworkin also endorses a principle which “demands that government work, . . . so far as it can achieve this, to make [citizens’] fates sensitive to the choices they have made.”⁴

So long as we restrict ourselves to those who had equivalent opportunities to expose themselves to risk and who could easily have chosen an alternative in which they were exposed to no risk at all, Dworkin’s claim is highly plausible that differences in circumstances which arise solely from differences in option luck are consistent with egalitarian justice. To illustrate the plausibility of this claim when so restricted, let us suppose that equally wealthy and capable individuals are presented with an equal opportunity to gamble in a casino. Suppose further that nobody is a compulsive gambler and that everyone could live a life comfortably free of risk in the absence of gambles. Egalitarian justice would not be violated in these circumstances when some grow richer than others because they have made high-stakes gambles at roulette that others could have made but chose not to. Nor would it be violated when two people make equally risky high-stakes gambles at roulette, and one wins and the other loses.⁵

There are, however, many cases in which people are exposed to unchosen risks which they cannot or know not how to avoid, and these are risks of grave harms which are difficult to repair or compensate in other ways. Among them are the risks of coming down with diseases such as Alzheimer’s or schizophrenia or of suffering comparably grave injuries on account of unforeseeable natural catastrophes. There are many more risks of grave harm that people can avoid only at great cost, such as the risks associated with walking, cycling, and automated transportation. Dworkin has maintained that, if each person had an “equal opportunity to insure” against these and other risks of harm, they “would

(2) to purchase stock, or (3) to bet it all on a single number on a roulette wheel. Assume that the stock rises at a rate higher than the rate of interest on the savings and that another number comes up in roulette. If I choose 2, then my option luck is good with respect to each of 1 and 3. If I choose 3, then it is bad with respect to each of 1 and 2. If I choose 1, then it is good with respect to 3 but bad with respect to 2.

3. Ibid., chap. 9, p. 347. Chapter 9 contains previously unpublished reflections on the theory of equality of resources, which presumably reflect Dworkin’s views at the time of publication of *Sovereign Virtue*.

4. Ibid., “Introduction,” p. 6.

5. For Dworkin’s persuasive defense of the compatibility of voluntary gambling with egalitarian justice, see *ibid.*, chap. 2, pp. 74–76.

pose no special problem for equality of resources”—where “equality of resources” is the name of his own theory of egalitarian justice. He stipulates that people have an equal opportunity to insure against a harm when the following three conditions are met: each person has the same risk of suffering such harm, each knows roughly how great this risk is, and each has an ample opportunity to purchase insurance provided by the free market against such harm.⁶

Dworkin’s theory of equality of resources calls for the equalization, among other things, of those resources that are external to the individual and a part of the world: “impersonal resources.”⁷ He also maintains that a person’s physical and mental capacities are to be regarded as resources for the purposes of his theory. He calls these “personal resources.”⁸ The ambition of his theory of equality of resources is to ensure that no one envies anyone else’s bundle of impersonal and personal resources.⁹ Such envy will be absent, and hence the distribution of resources will pass an “envy test,” so long as no one prefers anyone else’s bundle of impersonal and personal resources, over his or her lifetime, to his or her own.¹⁰ This test might be satisfied even though the capacities of some are recognized by all to be superior to those of others. When capacities are unequal, impersonal resources are to be redistributed to compensate for such differences.¹¹

It is the aim of this article to refute Dworkin’s claim that the provision of an equal opportunity to insure against risks is sufficient to render differences in people’s circumstances that are the result of luck consistent with his theory of equality of resources. Section I addresses bad brute luck in the circumstances of individuals which is the result of the vicissitudes of nature, whereas Section II addresses bad brute luck which is the result of the choices of other individuals.

6. *Ibid.*, p. 77. As I understand Dworkin, one has an “ample opportunity” to insure if one has the opportunity to purchase insurance from a range of differently priced insurance policies that are economically feasible for insurers to provide and that offer various levels of compensation for the harm in question (see *ibid.*, secs. III–VI).

7. See *ibid.* Dworkin introduces the term “impersonal resources” in *ibid.*, chap. 9, pp. 322–23.

8. See *ibid.*, chap. 9, p. 322.

9. Dworkin writes that “the general ambition of equality of resources . . . is to make circumstances equal under an appropriate version of the envy test” (*ibid.*, chap. 3, p. 141). He defines circumstances to include “[impersonal] resources, talents and capacities” (*ibid.*, p. 140).

10. See *ibid.*, chap. 2, p. 85.

11. Dworkin maintains that capacities may not themselves be redistributed or otherwise manipulated or transferred (see *ibid.*, p. 80).

I

Are there any good grounds to believe that luck would be rendered unproblematic from the point of view of equality of resources by the provision of an equal opportunity to insure? Consider the following positive answer to this question, which rests on an appeal to Dworkin's claim that "insurance, so far as it is available, provides a link between brute and option luck, because the decision to buy or reject catastrophe insurance is a calculated gamble."¹² In chapter 2 of *Sovereign Virtue*, Dworkin maintains that having an equal opportunity to insure against known risks transforms any differences in fortune which are the result of such risks into differences in option luck, which are unproblematic from the standpoint of equality of resources, rather than differences in brute luck. He asks the reader to imagine that two sighted people have an equal, and known, chance of becoming blind, and each has the opportunity to purchase one of a range of insurance policies that are economically feasible for insurers to provide and that offer various degrees of compensation for blindness.¹³ He asks us to assume that one of them chooses to insure and the other does not. Dworkin claims that equality of resources "would not argue for redistribution from the person who had insured to the person who had not if, horribly, they were both blinded in the same accident. For the availability of insurance would mean that, though they had both had brute bad luck, the difference between them was a matter of option luck." He contends, moreover, that "the situation cannot be different if the person who decided not to insure is the only one to be blinded. For once again the difference is a difference in option luck against a background of equal opportunity to insure or not."¹⁴ Here Dworkin is claiming that, just as it is the case that any *difference* in fortune between the two individuals is attributable to option luck *alone* when both are blinded, it is the case that any difference in fortune between the two individuals is attributable to option luck alone when only one is blinded.¹⁵ It follows from Dworkin's

12. Ibid, p. 74.

13. See *ibid.*, pp. 76–77.

14. Ibid., p. 77.

15. Elsewhere, however, Dworkin denies that the provision of an equal opportunity to insure fully transforms brute luck into option luck. He writes in the previously unpublished reflections on his theory of equality of resources in chapter 9 of *Sovereign Virtue* that the "effect of the hypothetical insurance strategy is not to eliminate the consequences of brute bad luck . . . but only to mitigate it to the degree and in the way that prudent insurance normally does" (*ibid.*, chap. 9, p. 341). Even in his original presentation of the theory reprinted in chap. 2, Dworkin appears at one point to deny that the equal opportunity to insure fully transforms brute luck into option luck. Directly following the quoted sentence attached to n. 12 above, Dworkin writes: "Of course, insurance does not erase the distinction [between brute and option luck]. Someone who buys medical in-

commitment to the preservation of differences that can be traced solely to option luck that it would be unfair to take from someone who insured against blindness but does not go blind in order to give to someone who failed to insure and goes blind.

I agree with Dworkin that when both persons are blinded, any resulting difference in their (personal or impersonal) resources is attributable to option luck alone, since their brute luck is identical. Yet I deny that the difference in circumstances which arises when only one goes blind is necessarily attributable to option luck alone. I deny this because I believe that an equal opportunity to insure is not sufficient to transform all differences arising from known risks into differences in option rather than brute luck in a large class of cases in which (unlike cases of gambling in casinos) one couldn't (or couldn't without great cost) avoid the risks. This class includes all those cases in which no insurance policy exists that it would be reasonable to purchase and that would fully compensate the harm, where "full compensation" is understood as an amount of money awarded that would make the person indifferent between (1) that amount of money plus the harm and (2) the absence of that amount plus the absence of the harm. No such policy would exist (1) if it were impossible fully to compensate the harm¹⁶ or (2) if, although it is possible fully to compensate the harm, the cost of purchasing such insurance that compensates fully were (2a) beyond the capacity of the individual to purchase¹⁷ or (2b) within his or her capacity to purchase yet unreasonably expensive.¹⁸

An equal opportunity to insure would, by contrast, be sufficient to

insurance and is hit by an unexpected meteorite still suffers brute bad luck, because he is worse off than if he had bought insurance and not needed it. But he has had better option luck than if he had not bought the insurance, because his situation is better in virtue of his not having run the gamble of refusing to insure" (*ibid.*, chap. 2, p. 74). This denial is both inconsistent with his remarks about the blinded individuals and difficult to reconcile with his claim that risks of harm pose no special problem for equality of resources when people have an equal opportunity to insure.

16. Ailments such as blindness or insanity might be impossible fully to compensate because no amount of money could purchase a cure, treatment, and/or supply of other things which money can buy, which in turn would make an individual indifferent between a situation in which he or she was never afflicted by the ailment and one in which he or she is afflicted by the ailment but it is remedied or offset by the monetary award.

17. Insurance would be beyond the capacity of an individual to purchase if the combined assets of the individual plus any loan that the individual could secure plus the fulfillment of any labor contract would not cover the cost of the premium.

18. Insurance would be within the capacity of an individual to purchase yet unreasonably expensive in cases such as those in which everyone has a slight chance of coming down with a horrible disease that is curable only if enormously expensive medical technology is employed. If the cost of such an insurance premium entails the impoverishment or indentured servitude of the individual, then such insurance would be unreasonably expensive. Insurance would also be unreasonably expensive across a wide range of less extreme cases.

satisfy equality of resources in a different class of cases in which one couldn't (or couldn't without great cost) avoid exposure to risk in the absence of insurance. Such equal opportunity to insure would be sufficient if reasonably and modestly priced insurance could fully compensate any instance of brute bad luck. If in a certain community, for example, persons suffer an equal and small risk that their personal belongings will be destroyed by a tornado, then having an equal opportunity to insure against such destruction might satisfy equality of resources even if no one could, except at great cost, avoid having any personal belongings or avoid keeping these personal belongings above ground rather than in a storm cellar. Such equal risk of loss would not pose a threat to equality of resources if each person had the opportunity fully to protect him or herself against such risk by purchasing reasonably and modestly priced insurance that would fully compensate losses of personal belongings resulting from tornados. In this case, it would be appropriate to attribute any losses to option luck alone.

Unlike the above cases involving material possessions, it is, unfortunately, often impossible to protect against such things as severe physical and mental incapacitation in this way. In such cases of incapacitation, it could easily be the case that no affordable or reasonable insurance policy would be available that would come close to compensating the harm fully. If all of an incapacitated person's options are very bad, both in absolute terms and relative to the value of the options of others, then he or she would have a justified complaint of unfairness even though he or she had an equal opportunity to insure and had rationally chosen that option which is least bad. The range of options open to someone who, for example, eventually goes blind or insane (e.g., going blind or insane without having purchased insurance, going blind or insane after having purchased reasonably priced insurance that only partially compensates, or going blind or insane after having purchased insurance that fully compensates but is unreasonably expensive) would be inadequate to justify the claim that the choice such a person makes regarding insurance transforms his or her harm from a case of bad brute luck into an unproblematic case of good or bad option luck. It might, of course, be rational for such a person to purchase some insurance against blindness or insanity even though the level of relief that the insurance provides does not fully compensate the harm. It might, as Dworkin suggests, be rational to purchase insurance that would cover the cost of aids and training in the event that one goes blind.¹⁹ But if no insurance policy that it would be reasonable to purchase would come close to compensating the harm fully, then the fact that people who will suffer the brute bad luck of going blind or insane previously found it reason-

19. See Dworkin, *Sovereign Virtue*, chap. 2, p. 76.

able to buy some amount of insurance against blindness or insanity does not eliminate the bad brute luck of going blind or insane by transforming all of it into good or bad option luck. Bad brute luck remains, and its differential effects must be neutralized if an envy-free distribution is to be preserved.

If a government is committed to Dworkin's theory of equality of resources and, hence, to coming as close to the realization of an envy-free distribution of personal and impersonal resources as possible, then it must do more than provide an equal opportunity to insure when such insurance is inadequate in the manner sketched in the previous paragraph. It must make sure that those who are able-bodied are deprived of impersonal resources and their resources are transferred to the severely incapacitated until the point is reached at which no incapacitated person prefers any able-bodied person's bundle of personal and impersonal resources to his or her own. Such redistribution should also aim for an outcome in which no able-bodied person prefers any incapacitated person's bundle of personal and impersonal resources to his or her own. Even when it is impossible, through monetary payment, fully to compensate those who have been severely and incurably incapacitated, it will almost always be possible to transfer enough resources from the able-bodied to the incapacitated so that no incapacitated person would prefer the bundles of the able-bodied to their own. For if one deprives the able-bodied of resources to that point at which they are starving and dehydrated, one will probably reach a point at which even the most severely incapacitated individuals who are nourished and otherwise well provisioned would not prefer the bundles of the able-bodied to their own. We cannot guarantee that the envy test will be satisfied by means of such deprivation and transfer, since we cannot guarantee that no able-bodied person who is so deprived will prefer the bundles of any of the incapacitated. We cannot even guarantee that, for any given pair of able-bodied and incapacitated individuals, there is a point of deprivation and transfer at which neither will prefer the bundle of the other. Nevertheless, it is highly plausible to assume that in a population that includes the severely incapacitated whom it is impossible or fantastically expensive to compensate fully, the deprivation and transfer that achieves a state of mutually shared misery would more closely approximate an envy-free distribution of personal and impersonal resources than the compensation that Dworkin's insurance would award. Therefore, one who is committed to an envy-free distribution which is the ambition of Dworkin's theory of equality of resources should favor such extreme, leveling-down deprivation and transfer over insurance.

This, I submit, is a highly unpalatable consequence of Dworkin's theory of equality of resources. How might Dworkin block this consequence? In answering this question, I will first consider some relevant

remarks of his in chapters 2, 3, and 6 of *Sovereign Virtue* and then consider some of his more recent reflections on insurance in chapter 9 of that work.

Dworkin acknowledges in chapter 2 that he is vulnerable to the “powerful complaint” that the redistribution called for by insurance is insufficient to bring about an envy-free distribution of personal and impersonal resources.²⁰ He says that “I do not doubt that . . . arguments can be found” which would recommend the erasing of even more differences than would be called for by insurance.²¹ But he says that “it is hard to anticipate how great a motive we should have to search for further arguments” once we have redistributed to that degree which is called for by insurance. He suggests that our motivation might be lacking because “it might be that the costs in overall efficiency of even those features [of redistribution called for by insurance] would be so great that those who are prepared to compromise equality of resources . . . for general utility . . . would argue that even that much equality would be condemned by their more embracing conception of justice.”²²

This line of response could be motivated as follows. One could concede that the particular aspect of justice which is concerned with distributive equality really does call for the extreme, leveling-down redistribution already described. This would be so if, for example, a commitment to distributive equality were underpinned solely by the principle that it is unfair that the circumstances of some, through no choice of theirs, are less good than those of others.²³ Such unfairness would be minimized only by the leveling-down distribution described above. But one could consistently also maintain that justice is by no means exhausted by the call to minimize unfairness. The promotion of the general welfare is also an element of justice, one which might come into conflict with and outweigh the minimization of unfairness. The sacrifice of the general welfare in the aforementioned leveling-down case is sufficiently great that it outweighs the call to minimize unfairness. On this approach, justice broadly conceived consists of the proper bal-

20. See *ibid.*, pp. 102–9. Dworkin’s remarks here are specifically addressed to a scheme of hypothetical insurance which is meant to address inequalities that arise from differences in income that are traceable to differences in talent. This scheme differs in important respects from an equal opportunity to insure against incapacity that I have been discussing above. Nevertheless, I believe that his remarks generalize to a response to my claim that an equal opportunity to insure against incapacity is insufficient to realize equality of resources. All references of mine to “insurance” shall be to “an equal opportunity to insure against incapacity” unless I indicate otherwise.

21. *Ibid.*, p. 107.

22. *Ibid.*, p. 106.

23. Compare Cohen’s formulation of the “primary egalitarian impulse” in G. A. Cohen, “On the Currency of Egalitarian Justice,” *Ethics* 99 (1989): 906–44, p. 908.

ancing of a plurality of distinct and potentially conflicting values or principles such as distributive equality, utility, liberty, and the right not to be sacrificed for the greater good.²⁴

Dworkin, however, would not upon reflection be disposed to adopt this line, and for the following two reasons. First, he maintains that equality of resources is a requirement of what he calls the “sovereign virtue of political community”: this sovereign virtue is an “equal concern for the fate of all those citizens over whom [a government] claims dominion,” and such “equal concern requires that government aim at a form of material equality that I have called equality of resources.”²⁵ Second, he is opposed to the pluralism just described. He resists the notion that distributive equality is one of many values that must be traded off against other values. It has been a perennial refrain of his over the past three decades that two fundamental values that are thought to be at loggerheads in modern society—liberty and equality—do not in fact conflict.²⁶ Dworkin has also advanced the more sweeping claim that the “particular conception of liberalism” that he defends “insists that liberty, equality, and community are not three distinct and often conflicting political virtues, as other political theories both on the left and right of liberalism declare, but complementary aspects of a single political vision, so that we cannot secure or even understand any one of these three political ideals independently of the others.”²⁷ It follows from these two reasons that the sovereign virtue of equal concern gives rise to the nonoverridden requirement of equality of resources. Given that the ambition of equality of resources, as noted earlier,²⁸ is to ensure that no one envies anyone else’s bundle of impersonal and personal resources, it therefore follows that the sovereign virtue of equal concern gives rise to the nonoverridden requirement to come as close as possible to the realization of an envy-free distribution.

24. This proper balancing must, however, exclude certain considerations which seem intuitively to be inimical to justice even if these considerations are relevant to the still broader question of what, all things considered, is to be done. Cohen has persuasively argued that justice might speak against the government’s giving in to the unjust demands of individuals (e.g., kidnappers who demand a ransom or the talented rich who withhold their talents for higher pay) even though the government ought, all things considered, to give in to those demands. See Cohen, “Incentives, Inequality, and Community,” in *The Tanner Lectures on Human Values*, vol. 13, ed. Grethe B. Peterson (Salt Lake City: University of Utah Press, 1992).

25. Dworkin, *Sovereign Virtue*, “Introduction,” pp. 1–3.

26. See Dworkin, *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1977), chap. 12, *A Matter of Principle* (Cambridge, Mass.: Harvard University Press, 1985), pp. 188–89, *Law’s Empire* (Cambridge, Mass.: Harvard University Press, 1986), pp. 297–301, and *Sovereign Virtue*, chap. 3.

27. Dworkin, *Sovereign Virtue*, chap. 6, p. 237.

28. See n. 9 above.

An interpretative puzzle arises when one tries to reconcile this last claim with Dworkin's reflections upon insurance in chapter 9 of *Sovereign Virtue*. There Dworkin argues that equal concern condemns the sort of radical redistribution that would be called for by the leveling-down strategy. More precisely, he condemns a "rescue principle" which calls upon society to do as much as possible for the least well-off, no matter how costly. He notes that no society could honor this principle "without crippling itself." Insofar as a society applies this principle to those who are seriously ill or incapacitated, it "would have to spend so much on medical care that it would have nothing left with which it might try to make the lives of its members—the unlucky as well as lucky—good as well as long."²⁹ Dworkin maintains that the provision of an equal opportunity for all to insure against risk, and not the rescue principle, would provide "the ideal way" of showing equal concern for all.³⁰

The interpretative puzzle arises when we recall that there are circumstances in which the extreme, leveling-down redistribution would more closely approximate an envy-free distribution of personal and impersonal resources than would the less-radical redistribution which an equal opportunity to insure would call for. Hence, Dworkin appears to be committed to the claim that the sovereign virtue of equal concern both does and does not give rise to the requirement to come as close as possible to the realization of an envy-free distribution.

One solution to this interpretative puzzle would be to show that insurance does in fact, contrary to my argument above, most closely approximate an envy-free distribution. Consider the following argument that insurance really does come closest to satisfying the envy test. Suppose that the "appropriate version of the envy test" consists of the following *ex ante* application of that test. The envy test would be applied to the insurance policies that each individual holds at the time of purchase and before it is known whether he or she will need to collect on that policy. Given that each had an equal opportunity to insure, nobody would have any reason at that point to prefer to have purchased the different insurance policy that anybody else has purchased. Equality of resources would, on this line of argument, be satisfied by virtue of this *ex ante* envy-free distribution even though inequalities in the circumstances of individuals subsequently arise. This case might be considered analogous to a case in which two people possess equal personal and impersonal resources at the outset, yet one chooses to invest all of his or her savings in stock X, whereas the other chooses to invest all of his or her savings in stock Y. Equality of resources is preserved in this latter case even if one goes on to win a fortune and the other loses nearly

29. Dworkin, *Sovereign Virtue*, chap. 9, p. 341.

30. *Ibid.*, pp. 341–42.

everything. Perhaps this is so by virtue of the fact that their circumstances are *ex ante* equal in the following respect: before they knew how their stocks would fare, neither would have swapped his or her stock portfolio with the other's.³¹

I do not think the *ex ante* strategy succeeds in reconciling equality of resources with the inequalities that arise *ex post*. In order to explain why it does not, I would first like to draw attention to the fact that there is *ex ante* equality even in the absence of insurance in any set of circumstances in which, *ceteris paribus*, each individual knows that he or she has the same probability of suffering bad luck as anybody else. Suppose, for the purpose of illustration, that people are identical in their personal and impersonal resources at the beginning of their adult lives. Moreover, they each have the same known and greater than zero but less than one hundred percent chance of developing a horrible mental illness later in life. This illness is such that nothing can be done to cure it, treat it, alleviate one's suffering from it, or otherwise compensate one for it. Since nothing can be done, insurance against this illness is impossible. Would the ideal of equality of resources be realized in the absence of insurance simply by virtue of the fact that these people's chances of coming down with this illness are known to be *ex ante* equal? It would not, as 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. Now suppose that it becomes possible, at a steep premium, to purchase insurance against this illness, but this insurance would cover nothing more than a very expensive but minimally effective new treatment which succeeds in making the effects of this illness only very slightly less horrible. Would the possibility of purchasing such negligible insurance be sufficient to transform a state of affairs which is manifestly not one of equality of resources into one in which the ideal of equality of resources has been realized? Once again, it would not. To see why it would not, let us suppose that a subsequent medical breakthrough gives rise to an inexpensive miracle cure to this illness which is free of side effects, and that inexpensive insurance becomes available which would cover the cost of such a cure. Surely one would be entitled to say that, with this breakthrough, we now possess the means to bring society much closer to (indeed fully to realize) the ideal of equality of resources. Hence the *ex ante* view must be rejected, since one would not be entitled to say this if one thought that *ex ante* equality were sufficient to realize the ideal of equality of resources. By hypothesis,

31. See *ibid.*, chap. 2, p. 76, where Dworkin proposes an *ex ante* application of the envy test to illustrate how the test might be satisfied in the case of those whose holdings differ as the result of voluntary gambles.

the circumstances of the individuals were *ex ante* equal before the advent of the miracle cure, when people could not purchase adequate insurance to protect themselves against this illness. Hence, on the *ex ante* view, society will already have realized the ideal of equality of resources even before the advent of the miracle cure, and therefore the medical breakthrough could not bring society closer to the realization of this ideal. This critique of the *ex ante* view reinforces the earlier moral of my story, which is that an equal opportunity to insure is insufficient to bring about equality of resources whenever no insurance policy exists that would be reasonable to purchase and that would fully compensate the harm.

Even when no such policy exists, and insurance provides hardly any protection against severe brute bad luck, justice might nevertheless call for that distribution which arises when each is given an equal opportunity to insure rather than a leveling-down distribution which would realize equality of resources. To return to an earlier theme, however, this would be because justice encompasses a plurality of potentially conflicting values and principles, of which distributive equality is only one among others, none of which is lexically prior. An equal opportunity to insure might plausibly be regarded as that policy which strikes the proper balance between the competing considerations, among others, of distributive equality and utility. But it cannot always plausibly be regarded as that policy which realizes distributive equality considered on its own rather than in combination with the full range of values and principles which jointly and disharmoniously constitute the more encompassing virtue of justice.

II

I would now like to turn to a consideration of brute bad luck in one's circumstances that arises from the choices of others with respect to the disposition of their resources in the form of gifts and bequests. Dworkin notes that it "is bad luck to be born into a relatively poor family or a family that is selfish or spendthrift."³² As above, Dworkin proposes compensation modeled on insurance as the egalitarian remedy for this sort of brute bad luck. He maintains that inheritance and gifts should be regulated by a tax modeled on a hypothetical insurance market in which people deprived of information concerning the wealth and generosity of their parents would be asked how much insurance, if any, they would purchase against receiving less than a specified amount. Members of society would be required to pay a tax on wealth that they transfer in the form of gifts and bequests which is equal to the cost of the premium of the insurance policy that the average person who is deprived of infor-

32. *Ibid.*, chap. 9, p. 347.

mation would have purchased. The revenue from such a tax would compensate those who turn out to receive gifts and bequests that are worth less than the amount specified by the average person. Dworkin believes that the average person would favor a premium which would justify a tax at a “steeply progressive rate” on the value of any gifts or bequests that people make: “The premium rate rises steeply from zero in the case of modest gifts or a modest estate to a very high marginal proportion of very great wealth.”³³ Such a tax scheme would not, of course, result in the equalization of the amount of resources that parents pass on to their children, even though it would greatly reduce the inequalities that are permitted in most contemporary societies. Some children would be able, under such a scheme, to begin their adult lives with more wealth than other children, not as the result of their different choices from an equal starting point but because of the unequal generosity of their parents. This would frustrate Dworkin’s ambition to realize an envy-free distribution of personal and impersonal resources. Once again, therefore, the redistribution called for by Dworkinian insurance would be insufficient to realize equality of resources. In this case, one could realize an envy-free distribution only through the extremely strict regulation of gifts and bequests which would be necessary to ensure that nobody benefits to a greater degree from such gifts or bequests than anyone else.³⁴

Dworkin maintains that his “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, or if some had stolen clamshells from others.”³⁵ For similar reasons, Dworkin cannot allow participants

33. *Ibid.*, p. 348.

34. This fact follows from the more general fact that unregulated nonmarket transactions and transfers will almost inevitably disrupt an initially envy-free distribution. To see why, consider the following example borrowed from Hal Varian. Imagine three people with equal initial endowments of impersonal resources. The first two are twins who have identical tastes, while the third person has different tastes. If the third person trades exclusively with the first twin, making them both better off, the second twin will envy the first since they both have the same preferences. The same would be true if the third person gives only the first twin a gift. Market exchanges, on the other hand, will satisfy the envy test “because the market mechanism is itself a symmetric mechanism in the sense that everyone faces the same prices and thus has the same opportunities to trade. In this sense the market mechanism . . . provides the special property of preserving the symmetry of the initial endowment” (Hal Varian, “Dworkin on Equality of Resources,” *Economics and Philosophy* 1 [1985]: 110–25, p. 114).

35. Dworkin, *Sovereign Virtue*, chap. 2, p. 70. Dworkin employs such an auction in chap. 2 to illustrate his theory of equality of resources. He asks us to suppose that “a number of [propertyless] shipwreck survivors are washed up on a desert island which has abundant resources and no native population.” We are to imagine that one of the survivors is elected to distribute to each an equal and large amount of clamshells that serve as

in the auction to give away clamshells to others. He cannot, for example, allow ascetics or altruists to give most of their initial equal share of clamshells to their relatives before the auction begins. Such nonmarket transfers would immediately frustrate the goal of realizing an envy-free distribution. But if, as surely he must, Dworkin would prohibit such transfers from ascetics and altruists to their relatives, then he also must, on pain of inconsistency, also prohibit or otherwise severely regulate parental gifts or bequests that would result in children beginning their adult lives with unequal shares.

It is a telling criticism of Dworkin's scheme of hypothetical insurance to regulate the amount of money that parents pass on to their children that an analogous scheme of insurance would be wholly inadequate as a response to a scenario which is akin to that which Dworkin imagines, in which shipwreck survivors enter the auction with highly unequal numbers of clamshells. Suppose that their clamshell holdings are unequal because all the clamshells have been divided at the outset into unequal piles that will randomly be assigned to the survivors. Before their fates are determined, they are given the opportunity to insure against failing to receive less than whatever number of clamshells they specify. The premium is to be fixed as an increasing percentage of the number of clamshells that the policy owner will turn out to have. Survivors might well find it prudent to insure only against ending up with less than a fairly low number of clamshells, since insuring against ending up with less than a high level of clamshells might not be worth the high cost of the premium.³⁶ If it is prudent to insure only at a low level, then the inadequacy of insurance as a device to realize an envy-free initial distribution of clamshells should be self-evident. Insurance might protect people from the bleak prospect of bidding with few or no clamshells. But significant disparities in clamshell holdings would remain, and these disparities would frustrate the envy test. The envy-cleansing solution to differences in brute luck in this example is not insurance; rather, it is government redistribution from the lucky to the unlucky until the point at which the lucky do not prefer their bundles to those of the unlucky. Such a solution would be achieved if the government redistributed until everyone possessed an equal number of clamshells.

money and to list each distinct item on the island (including parcels of land) as a lot to be sold. "The auctioneer then proposes a set of prices for each lot and discovers whether that set of prices clears all markets, that is, whether there is only one purchaser at that price and all lots are sold. If not, then the auctioneer adjusts his prices until he reaches a set that does clear the markets." At the conclusion of the auction, according to Dworkin, "no one will envy another's set of purchases because, by hypothesis, he could have purchased that bundle with his clamshells instead of his own bundle" (*ibid.*, pp. 66–68).

36. On the prudence of insuring only at a low level, see *ibid.*, pp. 96–99, and chap. 9, pp. 334–35.

Since, as I have argued, only severe regulation of gifts and bequests would satisfy the ambition of equality of resources of realizing an envy-free distribution, there exists an unavoidable conflict between certain familiar liberal freedoms and Dworkin's ideal of equality of resources. This conflict must be resolved by balancing the concern to reach an envy-free distribution against an independent concern to leave people free to benefit others. A fundamental question that those who value equality must confront is the extent to which the pursuit of distributive equality is worth the unavoidable sacrifice of freedom and other values that such pursuit entails. I hope to have shown in this and the previous section of this article that those who share Dworkin's egalitarian sympathies cannot avoid making trade-offs in order to resolve a clash among the plural and conflicting values of distributive equality, liberty, and utility.