

**Sensitivity, choice, luck and insurance:  
a reading of Ronald Dworkin's egalitarianism**

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## Abstract

In this thesis I consider Ronald Dworkin's theory of equality of resources. Dworkin states that his concern is to interpret the 'abstract principle of equal concern', and I try to reach a full understanding of his interpretation. I argue that the best articulation of the theory takes it to be a form of limited liberal perfectionism which is answerable to (our) society's shared conception of the good. This articulation is not vulnerable to accusations of tacit welfarism which might be provoked by the role of the Dworkinian notion of 'auction sensitivity to plans and preferences'; and it is equally safe from the attacks of 'luck egalitarian' critics such as G.A. Cohen, who hold that the motivation at the root of their own and Dworkin's egalitarianism is that no one should suffer because of bad brute luck. These critics think that Dworkin's distinction between a person and her circumstances aligns with a distinction between what is compensable and what is not compensable in the name of justice. I show that this rests on a mistaken understanding of Dworkin. 'Luck egalitarians' have come under fire themselves recently from philosophers who dispute this interpretation of egalitarianism. I argue that their criticisms should not be directed at Dworkin, whose theory should not be considered 'luck egalitarian' at all.

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## Introduction

This thesis is about distributive justice, and specifically egalitarian distributive justice. Theories of egalitarian distributive justice offer us first and foremost answers to this question: insofar as justice dictates that we are to be made equal at all, how are we to be made equal? There have been many such theories, and they are often sorted into categories according to their central ‘*equilising claim*’<sup>1</sup> – the part of the theory which tells us in what respect it is that we are supposed to be made equal. Thus we have equality of capability, equality of resources, equality of welfare, equality of political status, and more. I am going to be concerned primarily with the egalitarian theory developed by Ronald Dworkin in his book *Sovereign Virtue*.

Dworkin is classed by Richard Arneson and others as proposing a theory of equality of opportunity for resources<sup>2</sup>. But Dworkin himself denies that his is such a theory. He calls it ‘equality of resources’; and in this thesis I examine the theory and eventually vindicate the denial. To begin with (in chapter 2) I consider his solution to the problem of creating an equal distribution of resources: the auction. I argue that he owes us an elaboration of the notion of sensitivity, which allows us to pick the best constraints under which the auction is to take place in order for it to represent the best interpretation of the ‘abstract principle of equal concern’. Then I argue (in chapters 3 and 4) that this notion also underlies his distinction between the type of post-auction development that threatens equality (‘brute luck’) and that which does not (‘option luck’). (This is not the standard reading.) It requires that we offer bidders at auction insurance against disadvantages not essentially part of their lives. I discuss problems with the idea of insuring against some varieties of such

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<sup>1</sup> The phrase is from Cohen, ‘On the Currency of Egalitarian Justice’, 908.

<sup>2</sup> See ‘Equality and Equality of Opportunity for Welfare’.

disadvantage, namely those which are known to obtain at the time of the insurance decision. Dworkin's putative solution, to use a supposed average insurance policy to guide the implementation of a taxation-funded compensation scheme in reality, does not work – it counteracts the very motivation for insurance in the first place. I conclude (in chapter 5) by describing how a theory of democratic deliberation can be built into the theory to get around this, and by explaining how sensitivity and equality of resources are related such as to secure the fundamentally resourcist character of Dworkinian equality while taking into account welfare considerations which, as Dworkin notes, we would be 'mad' to ignore. On the way, I defend my reading of Dworkin against 'luck' egalitarians (represented by G.A. Cohen) on one side and anti-'luck' egalitarians (represented by Elizabeth Anderson) on the other.

## Chapter 1: The Auction

### I. *Two sources of unfairness*

Dworkin's aim in *Sovereign Virtue* is to offer equality of resources as the best interpretation of a principle which he takes to be at the heart of egalitarianism, the abstract principle of equal concern<sup>1</sup>. He sees attaining resource equality as a two-step process. The first step of the theory establishes and the second step maintains an equal distribution. For this reason Dworkin's is not (theoretically) a one-stop process in the way that many opportunity-egalitarian alternatives, with which his theory has been classed, are. This is a point that I shall come back to in later chapters.

The first step, then, is to establish an equal distribution. Doing so requires answers to two questions: first, what constitutes an equal distribution?; and second, how ought we to create one? Dworkin's answer to the first question is 'the envy test'. This stipulates that "[n]o division of resources is an equal division if, once the division is complete, any immigrant would prefer someone else's bundle of resources to his own bundle"<sup>2</sup>.

That leaves the second question undecided, however. One answer might be to have one person ('the divider') divide the available resources into bundles, tinkering with them until through trial and error the resources were distributed so as to meet the envy test. But this will not do, Dworkin argues, for there remain "two distinct foci of arbitrariness and possible unfairness"<sup>3</sup> which we will call the unfairness of an

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<sup>1</sup> See *Sovereign Virtue*, 131.

<sup>2</sup> *Ibid.*, 67. Dworkin's talk of immigrants here refers to the example he uses throughout of a community shipwrecked on a desert island, aiming to divide the island's resources fairly among themselves.

<sup>3</sup> *Sovereign Virtue*, 68.

arbitrary resource trade and the unfairness of a dictatorial division. The unfairness of an arbitrary resource trade arises if, for example, the divider trades all available resources with some other community in return for just one type of resource which can be divided easily into equal shares. Different members of the divider's community might care for the new resource in different degrees; someone who does not care for it at all "will feel that he has not been treated as an equal in the division of resources"<sup>4</sup> even though he does not envy anyone else her bundle. The unfairness of a dictatorial division arises if although the distribution created by the divider meets the envy test, some people would prefer it if the bundles had been composed differently (though still such as to meet the envy test).

These unfairnesses are enough to show that the envy test alone is not sufficient to determine a distribution which satisfies the abstract principle of equal concern. What is it about them which violates that principle? In the case of an arbitrary resource trade, the unfairness consists in the fact that the divider arbitrarily puts some islanders at a disadvantage in buying an array of resources with the array initially available, which those islanders preferred. In the case of a dictatorial division, since other bundle compositions would have satisfied the envy test and any one composition will arbitrarily favour some, it is as if islanders had not been given an equal say in the choice of which composition is ultimately chosen.

Dworkin's ostensible response to the twin unfairnesses is the device of an auction. Each member of the community is given an equal amount of some intrinsically worthless currency (clamshells, in Dworkin's island example) with which to bid in an auction of society's resources. An auctioneer proposes a set of prices for the lots and the auction is run. Then it is re-run if necessary with new sets of prices, until all markets are cleared and everyone is satisfied with the results. The envy test

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<sup>4</sup> *Ibid.*, 67.



will have been met – “[n]o 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”<sup>5</sup> – and the sources of possible unfairness, Dworkin claims, will have been eradicated:

Many people will be able to imagine a different set of bundles meeting the no-envy test that might have been established, but the actual set of bundles has the merit that each person played, through his purchases against an initially equal stock of counters, an equal role in determining the set of bundles actually chosen ... Of course, luck plays a certain role in determining how satisfied anyone is with the outcome, against other possibilities he might envision. If plovers’ eggs and old claret were the only resources to auction, then the person who hated these would be as badly off as in our earlier example. He would be unlucky that the immigrants had not washed up on an island with more of what he wanted (though lucky, of course, that it did not have even less). But he could not complain that the division of the actual resources they found was unequal.<sup>6</sup>

It seems clear enough that the unfairness of a dictatorial division is ruled out by the division of resources through auction. But how is it that the auction is supposed to have dealt with the unfairness of an arbitrary resource trade? According to Dworkin, after the auction no one could “complain that the division of the actual resources they found was unequal”. But nor could someone who suffered the unfairness of an arbitrary resource trade complain *that the division was unequal*. The complaint would be rather that the divider’s actions did not treat him as an equal. And it seems that if this unfairness has been eradicated in the auction Dworkin describes, that is not because of the auction procedure itself, but merely because the auctioneer does not make any (bad) pre-distribution trades.

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<sup>5</sup> *Ibid.*, 68.

<sup>6</sup> *Ibid.*, 68-9.

Indeed, it becomes explicit in chapter 3 of *Sovereign Virtue* that it is not after all the auction device that eradicates the unfairness of an arbitrary resource trade. It is instead the ‘principle of abstraction’. The principle of abstraction is the upshot of what Dworkin calls his ‘bridge strategy’, which requires that auction parameters be the best bridge between the abstract principle of equal concern and the best interpretation thereof, namely, resource equality. Officially, the principle “insists that an ideal distribution is possible only when people are legally free to act as they wish except insofar as constraints on their freedom are necessary to protect security of person and property, or to correct certain imperfections in ... distributive mechanisms”<sup>7</sup>. (It is important to note that an ideal distribution is ideal not because of any prior liberty-related desiderata but because it is the best interpretation of the abstract principle of equal concern.) Why does this principle eradicate the unfairness of an arbitrary resource trade? Well, we are told that it requires that the auction reflect the ‘true opportunity cost’ of resources, defined as “the price others would pay for it in an auction whose resources were offered in as abstract a form as possible, that is, the form that permits the greatest possible flexibility in fine-tuning bids to plans and preferences”<sup>8</sup>. Dworkin argues that this means the auctioneer must actually *make* certain trades that are available to him:

The trade [of all the island’s resources for plovers’ eggs] was offensive to equality not because it disturbed the original array of goods, but because it violated the principle of abstraction in a fundamental way. It made the array much less sensitive ... to the plans and preferences of the parties. If the auctioneer had found only plovers’ eggs on the island, and had alone been able costlessly to trade these for a mix of goods from other islands, which would have allowed bids in the auction to be more sensitive to the discrete tastes, plans, and ambitions of

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<sup>7</sup> *Ibid.*, 148.

<sup>8</sup> *Ibid.*, 151.

the bidders, the principle of abstraction would have required, not forbidden, him to do this.<sup>9</sup>

This passage explains why the unfairness of an arbitrary resource trade *is* an unfairness, or, which is the same thing, why the principle of abstraction condemns it. It is because the arbitrariness of the resource trade consisted in the fact that it made the array less sensitive to the plans and preferences of the parties. Since the principle of abstraction is the (result of the) best bridge from the abstract principle of equal concern, its violation constitutes a failure to treat everyone according to this abstract principle. Other (I shall call them ‘advantageous’) resource trades are not arbitrary in this way, because they are sensitivity-increasing. For that reason, they are not unfairnesses either – indeed, *not* to make them would be arbitrary and unfair for exactly the same reasons.

This notion of ‘sensitivity’ is clearly doing some work in the explanation of the unfairness of an arbitrary resource trade: failures of sensitivity constitute violations of abstraction. I shall examine it further on in this chapter. Before that, let us look a little more closely at the role played by the principle of abstraction. We have already established that the auction answers the second of our two initial questions, viz. how to create an envy-free distribution, in such a way as to eliminate the unfairness of a dictatorial division, since, as Dworkin says, each person plays an equal role in determining the set of bundles actually chosen. The auction, let us say, provides us with a way to create an *equal* distribution of a given array of resources. Insofar as that auction-created equal distribution is concerned, Dworkin writes that

the contingent facts of raw material and the distribution of tastes are not grounds on which someone might challenge a distribution as unequal. They are rather

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<sup>9</sup> *Ibid.*, 151-2.

background facts that determine what equality of resources, in these circumstances, is. Under equality of resources, no test for calculating what equality requires can be abstracted from these background facts and used to test them. ... Equality of resources supposes that the resources devoted to each person's life should be equal. That goal needs a metric. The auction proposes what the envy test in fact assumes, that the true measure of the social resources devoted to the life of one person is fixed by asking how important, in fact, that resource is for others. It insists that the cost, measured in that way, figure in each person's sense of what is rightly his and in each person's judgment of what life he should lead, given that command of justice.<sup>10</sup>

The fact that an auctioneer might be able to trade the given array of resources for a completely different one, however, reveals to us a limitation of the auction: it cannot arbitrate for us between equal distributions of different arrays of resources. The principle of abstraction, favoured by the bridge strategy as the best elaboration of the connection between equality of resources and abstract equal concern, is what performs that task, deciding in favour of one equal distribution or another on the basis of sensitivity to the plans and preferences of a single set of bidders. The principle fills a gap between the equal distributions resulting from various possible auctions and what we can call the *ideal* distribution which best reflects the abstract principle of equal concern. It does so by telling us which distribution from the set of equal distributions available to us best matches the ideal (and not just by requiring advantageous trades, as we shall see shortly).

Now we can go on to ask which considerations are employed by the principle of abstraction in performing this task. We have already seen that the notion of sensitivity to the plans and preferences of bidders is involved somehow. On the surface of it, it seems that that might be a welfarist or perfectionist measure.

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<sup>10</sup> *Ibid.*, 69-70.

## II. *Sensitivity as welfare-maximisation*

A reading of the requirement that constraints on an auction be such as to make it maximally sensitive which takes that requirement to be some sort of welfare (preference-satisfaction) maximisation condition might seem plausible, particularly given Dworkin's stipulation that an advantageous trade must also be costless (see the passage quoted on page 3 above). Since we have no measure, pre-auction, of the value of the resources we trade, we cannot simply understand 'costless' as 'having no transaction cost'. It might seem that what Dworkin wishes to rule out are trades which, though they increase welfare overall, involve the sacrifice of some bidders' prospects to that increase. So, for example, if a minority of bidders *love* claret, but an array consisting of just these is traded for one including *no* claret, then these bidders' prospects of satisfying their preferences will be sacrificed to everyone else's prospects of satisfying *their* preferences<sup>11</sup>. On this reading, the principle of abstraction's twin requirements of sensitivity and costlessness would amount to a single requirement of Pareto optimality with respect to bidder preference-satisfaction. So, to spell it out, the best bridge between the abstract principle of equal concern and the auction-created equality of resources which is the best interpretation of that principle would be a further principle requiring that Pareto optimality with respect to preference-satisfaction dictate the auction constraints.

But reading sensitivity as welfare-maximisation in this way, even constrained by the stipulation of costlessness, runs counter to Dworkin's contention in his justification of the principle of abstraction that

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<sup>11</sup> Of course it may well be that *any* trade of a completely homogeneous resource-set will involve *some* sacrifice of some bidders' preference-satisfaction prospects, since even if the new array includes some of the traded resource type, it will be more expensive. The same applies, in fact, for almost any trade at all. I ignore these considerations, and assume that the point is not so much cost as *availability*.

[e]quality of resources prefers more abstract to less abstract auctions, not because costs of particular resources will be either higher or lower in more abstract auctions, nor because welfare will be overall greater or more equal, but rather because the general aim of that conception of equality, which is to make distribution as sensitive as possible to the choices different people make in designing their own plans and projects, is better achieved by the flexibility abstraction provides. That is the case for the principle of abstraction. The principle recognizes that the true opportunity cost of any transferable resource is the price others would pay for it in an auction whose resources were offered in as abstract a form as possible, that is, in the form that permits the greatest possible flexibility in fine-tuning bids to plans and preferences.<sup>12</sup>

So perhaps the equation of increased sensitivity with higher levels of preference-satisfaction is too hasty. The justification of the principle of abstraction here appeals to 'flexibility', which, sensitively, enables people to fine-tune their bids to their preferences – but not because welfare is maximised (or equalised) thereby. Rather, it is because the 'true opportunity cost' of a resource is its price in the most flexible – and therefore sensitive – auction. So an alternative understanding of sensitivity is suggested: an auction is maximally sensitive not when preferences are satisfied to the greatest extent possible but when the prices of resources are as close as possible to their true opportunity costs. A maximally sensitive auction would be desirable, then, because *prima facie* it seems that such an auction would most accurately translate equality of clamshells into equality of resources.

If this provides Dworkin with a fully resourcist justification of the notion of sensitivity, he must nevertheless drop the stipulation that an advantageous trade be costless, for the following reason. An advantageous trade (we are supposing) makes it easier for some to satisfy their preferences; but that is merely a by-product of the fact that in increasing the sensitivity and flexibility of an auction it brings auction

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<sup>12</sup> *Ibid.*, 151.

prices nearer to their true opportunity costs. By definition, any advantageous trade will lead to truer opportunity costs in this way. The fact that a 'costly' advantageous trade does not have the happy by-product of making it harder for *none* to satisfy their preferences cannot detract from this fact. The conceivability of a trade which does have such a by-product is no reason to reject a lesser but nonetheless advantageous one. The appeal to opportunity costs cannot work to support the stipulation of costlessness, for although a trade's making it harder for some to satisfy their preferences might create some distortion in auction opportunity costs, the trade *ex hypothesi* provides us with a set of resources which are sold at a price closer to their truer opportunity costs than the original set of resources would have been. So if true opportunity costs are what justifies the notion of sensitivity, *all* advantageous trades must be made, whether costly or not.

### III. *Sensitivity and true opportunity costs*

According to the line of argument we are examining, "[e]quality of resources prefers more abstract to less abstract auctions"<sup>13</sup> because the most abstract auction results in a distribution which is "as sensitive as possible to the choices different people make in designing their own plans and projects"<sup>14</sup> and so in opportunity costs which are as 'true' as possible. An auction is more or less abstract according to the form in which resources are sold. We can think of the trades we have been using as examples as alterations of the form of the set of resources available to be auctioned. A simpler way to alter that form is to vary lot-size. Suppose land is auctioned in lots no smaller than the size one would require if one wanted to build a football stadium<sup>15</sup>. In that

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<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> And the division of those lots later into smaller sizes is forbidden.

case, Dworkin points out, “someone must pay the same price for land whether his tastes and ambitions are limited to a small cottage or run to a sizeable estate. How much he has left for other resources is not affected by his preferences about housing”<sup>16</sup>. As with a disadvantageous trade, this makes the auction less sensitive than it might be, and once again, the “failure of flexibility”<sup>17</sup> distorts opportunity costs: the price of land at this auction will be different from the price the same land would be were it auctioned in smaller lot sizes.

But at this point the notion of a ‘true’ opportunity cost itself becomes problematic as a grounding for the notion of sensitivity. Consider Dworkin’s claim that “the true opportunity cost of any transferable resource is the price others would pay for it in an auction whose resources were offered in an abstract a form as possible”<sup>18</sup>. This means that if smaller land lot sizes lead to a more abstract auction, then smaller lots of land are sold at a price which more accurately reflects the true opportunity cost of land than does the price larger lots of land fetch at an auction in which land lot sizes are larger. But the price a lot (of any size) fetches at auction just is its opportunity cost in that auction: the auction is what sets the opportunity cost of a good. Dworkin insists that this is not an accidental feature of the auction, but a fundamental one<sup>19</sup>. So we have auction-set opportunity costs for a resource which vary from auction to auction, and we are supposed to be able to compare these to the ‘true’ opportunity cost of a good. But how are we to know what *that* is? Dworkin’s answer is that it is the price of the good as it is sold in a maximally sensitive auction. But if the explanation runs that way, we cannot appeal to the idea of a true opportunity cost to justify trades which increase auction sensitivity, as we did above in defending the claim that an advantageous trade is advantageous not

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<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> See *ibid.*, 70.



because of welfare-maximising considerations but because it leads to truer opportunity costs.

So we have a dilemma. Either a sensitive auction is desirable because opportunity costs in it are 'truer'; or opportunity costs are 'truer' in a more abstract auction because it is more sensitive. Suppose we take the first horn, and say that auction sensitivity is desirable because it leads to the auctioning of goods at prices closer to their true opportunity costs. This forces once more the question: how are we to pick the 'truest' from among various auction-set opportunity costs? Recall what Dworkin says about the man who wanted to build a house in an auction of stadium-sized lots of land: "someone must pay the same price for land whether his tastes and ambitions are limited to a small cottage or run to a sizeable estate. How much he has left for other resources is not affected by his preferences about housing"<sup>20</sup>. The opportunity costs in this auction are set by how much this man has to pay for a lot. The implication here seems to be that we should measure that cost against that of land in a different auction by measuring the cost of that cost – how much someone has left over for the satisfaction of other preferences after purchasing land. But we cannot measure that in clamshells, since no inter-auction comparison of clamshells is possible: they have value only insofar as they purchase resources at auction, and what we are trying to decide is how much of some resource they *should* purchase at auction. In any case, just as in the trade cases we examined, the loss of some will be the gain of others: "If the auctioneer sells land in lot-sizes no smaller than exactly the size needed for a stadium ... the stadium builders will almost certainly pay less than if the auctioneer offered lots in as small a size as anyone else wanted"<sup>21</sup>. So it is not clear that this horn of the dilemma could work.

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<sup>20</sup> *Ibid.*, 151.

<sup>21</sup> *Ibid.*, 150.

If we take the second horn, we say that opportunity costs are 'truer' in a more abstract auction because it is more sensitive. But this brings us back to our earlier difficulty: how are we to explain an appeal to sensitivity? Once again, the suspicion is that the requirement of maximal auction sensitivity is grounded in the fact that such sensitivity makes it generally easier for bidders to satisfy their preferences. But Dworkin rules this out: "[i]t is no answer, within equality of resources, to say that welfare will be higher on average, or more nearly equal, under the second auction [with smaller lot sizes] than the first"<sup>22</sup>.

#### IV. *The principle of translation*

So is there another way to explain the appeal to sensitivity? Well, the beginnings of a justification are present in the thought that the true opportunity cost of a good is true because the auction which reflects that cost offers the most accurate translation of pre-auction clamshell equality into post-auction resource equality with respect to that good. We can fill out the notion of sensitivity by positing a 'principle of accurate resource translation' which holds that a more sensitive auction is more sensitive – and therefore desirable – because it is a better preserver of equality as we move from clamshell distribution to resource distribution. The principle would not draw on welfarist or perfectionist grounds, and so a resourcist construal of sensitivity would be vindicated. Dworkin never refers to any such principle, but something like it might be understood to ground the claim that "an auction is fairer – [...] it provides a more genuinely equal [i.e. closer to what we have been calling the ideal] distribution – when it offers more discriminating choices and is thus more sensitive to the discrete

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<sup>22</sup> *Ibid.*

plans and preferences people in fact have”<sup>23</sup>. And it might be thought to be implicit in the condemnation of the market insensitivity of the case in which a man must buy stadium-sized lots in order to build a small house: “[h]ow much he has left for other resources is not affected by his preferences about housing ... [this] failure of flexibility is a general defeat for the program of equality of resources”<sup>24</sup>.

A principle of accurate resource translation would best be articulated in counterfactual terms. If our house-builder had had instead of his preference for house-building a preference for stadium-building, he would have had to pay no more for the land on which to build a stadium than he did in fact pay for the land on which to build his house. Dworkin claims that this is unfair. Why? Because the following seems correct: if our house-builder had had different preferences requiring more land for their satisfaction than his actual preferences required, then he ought to have had to pay more for it than he paid for as much land as he did in fact purchase. Conversely, if a stadium-builder had had different preferences requiring less land to satisfy than his actual preferences for stadium-building required, then the fact that he required less land ought to have been reflected in the price he paid for it – i.e. he ought to have paid less.

These considerations suggest a principle along the following lines:

- (T) An auction  $P$  is more sensitive than another auction  $Q$  if the range of  $x$  for which the claim ‘If some member of society were to have a preference for  $x$  rather than the preference she in fact has, where  $x$  is a different quantity of, or something that requires a different quantity of, the same type of resource as her

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<sup>23</sup> *Ibid.*, 150-1.

<sup>24</sup> *Ibid.*, 151.

current preference, she would pay a different amount in auction to satisfy it' is true is wider in  $P$  than in  $Q$ <sup>25</sup>

This principle in effect holds that if my preferences vary such that I require more or less of some specified resource, I should pay more or less<sup>26</sup> for as much of the resource as I require to satisfy my preferences<sup>27</sup>.

This provides Dworkin with an explanation of the principle of abstraction in the land lot size case, as follows. A more abstract auction of land requires that it be sold in "indefinitely small units of each resource (though not, of course [in] units so small that no single unit can serve any purpose"<sup>28</sup>. This is because in such an auction, the price land fetches is as close as possible to its true opportunity cost, which is the result of the auction's maximal sensitivity to the plans and preferences of the bidders. Such sensitivity is itself the result of the fact that the auction provides us with the best (most accurate) means of translating clamshells into resources, in the sense that it comes as near as possible to the ideal of translating each different possible number of clamshells bid into a different amount of land. So there is no appeal made to welfarist or perfectionist considerations: the principle of abstraction, in this case, dictates that the ideal distribution is one which best preserves the equality established

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<sup>25</sup> Assume for the moment that there are enough members of society for it to be true that if one member changes her preference in this way, the prices of goods are not greatly affected. The sub-clauses relating to the nature of  $x$  prevent an auction in which two different types of good have the same cost per unit being condemned as less sensitive than one in which they have different costs per unit just in virtue of that fact.

<sup>26</sup> Although not necessarily correspondingly: see n. 27 below.

<sup>27</sup> (T) leaves room for the possibility that an auction in which more land cost fewer clamshells, and less land cost more, for example, would be more sensitive than one in which cost increased with size. But this is not a reason to reject (T), since stipulations that more land ought to cost more will import independent judgments about the worth of land which go beyond what principles of equality of resources alone can offer.

Two difficulties which would need to be dealt with in a more complete formulation of (T) are as follows: first, it cannot rank for us auctions at which more than one type of good is available without a ranking of the worth of sensitivity with respect to each type of good; and second, it ranks auctions in which resource prices increase up to a certain unit size and then fall beyond that (for example, Christmas trees) lower than auctions in which the price increases even beyond any useful unit size. I only flag these difficulties here, without suggesting further amendments: the basic sense of the principle is clear enough.

<sup>28</sup> *Ibid.*, 152

initially, in the currency of clamshells, through the bidding process. Here, most abstract simply means finest-grained.

#### V. *Advantageous trades and the principle of translation*

The principle of translation can provide us, then, with an alternative understanding of the notion of sensitivity in at least the case of auction lot sizes. It remains to be seen, however, whether that understanding will give us a non-question-begging explanation of the notion of sensitivity in other cases. Let us start by attempting to apply it to advantageous trades.

Consider resource-sets A and B. In A, there are 100 plovers' eggs and 100 bottles of claret; in B, there are 40 hens' eggs, 40 bottles of water, 40 goose eggs, 40 bottles of squash, 20 plovers' eggs and 20 bottles of claret. We can see these as alternative forms in which to auction an island's resources. Trading A for B seems to fit Dworkin's description of the type of trade required by the principle of abstraction, in which he argues that such a trade would make the auction more sensitive to the bidders' plans and preferences<sup>29</sup>. But (T) cannot explain why this is a sensitivity-increasing move. (T) holds that sensitivity is increased when changes in preferred *amount* of some good are more closely tied to changes in number of clamshells required to purchase that amount. But this tells us nothing about the putative increase in sensitivity from A to B. The only applicable counterfactual here is of the form 'if S had preferred  $x$  rather than what she does in fact prefer, she would have been able to purchase it at auction', and it applies for a wider range of  $x$  in B than in A. This might guide us in formulating a principle like (T2):

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<sup>29</sup> See *ibid.*, 151-2.

(T2) An auction  $P$  is more sensitive than another auction  $Q$  when the claim 'if  $S$  had preferred some other resource  $x$  over the resource  $y$  she does in fact prefer, she would have been able to purchase it at auction' is true for a wider range of  $x$  in  $P$  than in  $Q$

But there is no sense here to the idea that an auction is a more accurate translator of clamshells into resources the wider the range of  $x$ . So if this is how the notion of sensitivity is filled out for trades cases, it is not the same notion that is at work in lot-size cases. However, (T2) is not obviously grounded in welfare-maximising or perfectionist considerations either: one implication of (T2) is that our auctioneer is in all cases required to trade  $A$  for  $B$ , even if the immigrants all prefer plovers' eggs and claret to anything else and even if these are somehow objectively better than any other type of resource. Another is that the auctioneer would also be required to trade a third resource-set,  $C$ , which consisted of 1000 bottles of claret and 1000 plovers' eggs, for  $B$ , if, although most islanders would prefer a hen's egg to a plover's egg, such an abundance would lead to higher welfare levels for all. (T2), then, would be grounded in some endorsement of diversity in resources *tout court*. But Dworkin never suggests any argument in favour of choice for choice's sake which might support this, and he is scathing about arguments in favour of liberty for liberty's sake, which are not dissimilar<sup>30</sup>. So if the notion of sensitivity is not grounded for trades cases in a principle like (T2), it continues to look likely that it is ultimately going to cash out in welfarist or perfectionist terms.

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<sup>30</sup> See *ibid.*, 128: "liberty cannot ... have intrinsic value apart from the role [it] plays in the lives of those that have it."

## VI. *Another application of the principle of abstraction*

The most important application of the principle of abstraction has to do with what Dworkin calls the 'baseline liberty/constraint system' which governs an auction. Such a system "stipulate[s] what one acquires in acquiring something at the auction in question, that is, what one can and cannot do with or about it"<sup>31</sup>. The principle of abstraction fixes the baseline liberty/constraint system of the auction leading to the ideal distribution thus:

legal constraints beyond those necessary for security obviously compromise abstraction: clay is not auctioned in its most abstract form if the baseline system forbids satirical sculpture, because people anxious to express themselves in that way cannot tailor their resources to their plans as effectively with that constraint as they could without it. So the principle of abstraction insists that people should in principle be left free, under the baseline system, to use the resources they acquire... in whatever way they wish, compatibly with the principle of security.<sup>32</sup>

This passage follows the passages focusing on land size (pp. 150-1) and on advantageous trades (pp. 151-2). We saw above that while it seems that the notion of sensitivity can be elaborated as fully resourcist in the case of land lot size, the same cannot be said in the case of advantageous trades (though the order of the relevant passages tends to suggest that the resourcist notion of sensitivity used in the land case is being used throughout). So is the notion of sensitivity adduced in favour of minimising constraints in the passage above the apparently resourcist notion from the lot-size case or the as yet somewhat mysterious notion which is all that is available in the trades case?

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<sup>31</sup> *Ibid.*, 143.

<sup>32</sup> *Ibid.*, 152.

The principle (T) which we appealed to in the land lot-size case cannot provide us with an understanding of the sort of sensitivity which is increased when an auction has fewer constraints on what bidders can do with their acquisitions. If an inoffensive pot-sculptor had been instead a satirical pot-sculptor, it is true that in a minimally constrained auction she could have satisfied her sculpting preferences at some price, whereas in a less free one she could not have done so at *any* price; and so by (T) the first auction is more sensitive than the second. But this does not sound like the operation of a principle of resource translation: it is, if anything, merely grounds for further amendment to the principle to rule out such conclusions.

If a principle of translation is at work in justifying the minimum constraints requirement, it is a different sort of translation: in auction *P*, we might say, resources may be translated not more accurately but into a wider variety of (uses for) resources than in auction *Q*. But as with the requirement that advantageous trades be made, this cannot be used to show that auction *P* is better than auction *Q* without a principle like (T2) or determining desirable levels of liberty in advance.

So it seems that resourcist considerations alone cannot fill out the notion of sensitivity grounding a requirement of the principle of abstraction. And once again, therefore, the possibility that welfarist or perfectionist considerations are at work looms large.

## VII. *Conclusion: explaining sensitivity*

Our argument to date shows that of three requirements of the principle of abstraction – those of smallest feasible/desired lot sizes, widest variety of resources and minimal constraints – Dworkin can justify only one from a fully resourcist standpoint. To support the others, it looks as if he must appeal to considerations



that are either welfarist<sup>33</sup> or perfectionist, or to an implausible theory of the value of choice in itself. Absent such support, in Dworkin's words, "we cannot say that an auction from one baseline, which yields one set of prices and results, comes any closer to the ideals of equality of resources than another, from a very different baseline, that yields very different prices and results. Equality of resources would then be an empty, because hopelessly indeterminate, conception of equality"<sup>34</sup>.

In later chapters I shall defend a moderate perfectionist reading of the notion of sensitivity. But before that, in the next chapter, I shall look at the second step of Dworkin's theory of equality: maintaining the distribution established by auction. I shall refer to the idea of sensitivity to plans and preferences throughout in a way which may suggest a welfarist reading; but readers should not take me thereby to be endorsing one.

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<sup>33</sup> And precariously contingent at that. Appeal to welfarist considerations will make Dworkin's meshing of liberty with equality an example of the interest strategy which, as he makes vivid at page 137, cannot provide us with a secure enough hold on liberties we take to be essential.

<sup>34</sup> *Ibid.*, 149-50.

## Chapter 2: After the Auction

### I. *The second step: maintaining an egalitarian distribution*

In the last chapter I said that Dworkin's theory of resource equality is a two-step process. The first step, as we saw, is to establish a resource-egalitarian distribution by means of the auction – a way to meet the envy test – and applications of the principle of abstraction designed to select the best interpretation of the abstract principle of equal concern from the set of equal auction distributions. The second step, which I shall examine in this chapter, is to maintain that distribution.

It might be objected that no interesting theoretical machinery need be brought to bear on states of affairs following the establishment of a satisfactory egalitarian distribution, since we might think that “if people start in the same circumstances and do not cheat or steal from one another, then it is fair that people keep what they gain through their own skill”<sup>1</sup> (Dworkin calls this the ‘starting-gate’ theory of fairness). Since the auction has created those initial ‘same circumstances’, what more is required?

This is Dworkin's reply:

[T]he starting-gate theory, that the immigrants should start off equal in resources but grow prosperous or lean through their own efforts thereafter, is an indefensible combination of very different theories of justice... Our own principle... is based on the very different idea that the equality in question is equality of resources devoted to whole lives... [it] does not suppose that an equal division of resources is appropriate at one moment in someone's life but not at any other.<sup>2</sup>

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<sup>1</sup> *Sovereign Virtue*, 87.

<sup>2</sup> *Ibid.*, 89.

Dworkin's aim of creating equality of resources devoted to whole lives, then, calls at least for an survey of post-auction states of affairs in order to determine whether any developments ought to be considered threats to the egalitarian distribution established by auction. One reason to think they ought is that post-auction, the result of immigrants' productive efforts, trades, choices and luck will be that the envy test, on the surface of it, fails. As Dworkin writes,

[s]ome may be more skilful than others at producing what others want and will trade to get. Some may like to work ... while others like not to work or prefer work that will bring them less. Some will stay healthy while others fall sick ... For any of these and dozens of other reasons some people will prefer the bundle others have in, say, five years, to their own.<sup>3</sup>

Are such developments consistent with equality of resources? Dworkin sees his egalitarianism not as something to be established at one point in time and then left to turn out as chance and fate direct, but as an enduring ideal which governs a person's whole life. There is obviously the contrast here with starting-gate theories. But there is also a contrast with what Robert Nozick calls 'current time-slice' egalitarian theories such as simple resource or welfare egalitarianism<sup>4</sup>. Such theories continue to reapply one principle over time, so that deviations from states of affairs deemed equal are to be cancelled out immediately by redistribution which restores the relevant distributive pattern, regardless of the causes of the deviation. This sort of theory is vulnerable to a certain type of objection we can make using an example

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<sup>3</sup> *Ibid.*, 73.

<sup>4</sup> See *Anarchy, State and Utopia*, 153.

along the lines of Dworkin's story of the hard-working Adrian<sup>5</sup>. Adrian, a member of a community of equally talented people, chooses to use his talent to produce as much as possible of what others value, while Bruce, a member of the same community, chooses to while away his time enjoying pastimes of one form or another. As a consequence, Adrian's total stock of goods rises year on year, and Bruce's stock falls. If we apply some egalitarian 'current time-slice' principle of justice at the end of every year, the distribution will according to that principle become less just as it deviates further from the preferred egalitarian distribution. But it seems counterintuitive to redistribute without paying attention to the genesis of the offending distribution.

Dworkin's theory establishes resource equality in the first of its two steps. But it does not reapply the same procedures over time (an auction is not held daily, resulting in what we might call a *new* distribution each time); rather, the governing aim of the ideal auction – to establish an envy-free, maximally sensitive distribution – is adhered to through the second step, which is to maintain what we can understand as *the same* envy-free, sensitive distribution that was established through the first. Thus a defence will be available against accusations of 'current time-slice' egalitarianism, since the second step, in determining the compatibility of post-auction developments with equality of resources, will take into account the genesis of inequalities in a way that reapplication of the first step could not.

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<sup>5</sup> See *Sovereign Virtue*, 83. On the reading I am going to endorse we must be careful not to take the example, which points up a difficulty for current time-slice principles, as simply a demonstration that 'the idle' have no claims under justice.

## II. *Threats to equality of resources: option luck and brute luck*

Dworkin distinguishes between two types of possible development – ‘option luck’ and ‘brute luck’ – which we might consider a threat to auction-established equality of resources. He writes:

Option luck is a matter of how deliberate and calculated gambles turn out – whether someone gains or loses through accepting an isolated risk he or she should have anticipated and might have declined. Brute luck is a matter of how risks fall out that are not in that sense deliberate gambles. ... Obviously the difference between these two forms of luck can be represented as a matter of degree, and we may be uncertain how to describe a particular piece of bad luck.<sup>6</sup>

Do these forms of luck pose a threat? We begin with option luck. Dworkin asks us to consider the contrast between the risk-averse and risk-lovers:

The life chosen by someone who gambles contains, as an element, the factor of risk; someone who chooses not to gamble has decided that he prefers a safer life. We have already decided that people should pay the price of the life they have decided to lead, measured by what others give up in order that they can do so [a measure which the auction embodied] ... But the price of a safer life, measured in this way, is precisely forgoing any chance of the gains whose prospect induces others to gamble. So we have no reason to object, against the background of our earlier decisions, to a result in which those who decline to gamble have less than some of those who do not.<sup>7</sup>

The thought here is that the envy the risk-averse might have for gamblers’ winnings ought not to be considered a threat to equality of resources. So simply applying the

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<sup>6</sup> *Ibid.*, 73-4.

<sup>7</sup> *Ibid.*, 74.

envy test to the post-gamble state of affairs will not give us the answer we want, for such an application – which would *prima facie* result in the envy test's failure – would not reflect the fact that equality of resources asks 'that people should pay the price of the life they have decided to lead'. Nor, however, would applying the envy test to the total bundles of resources available to people over the course of their lifetimes without giving thought to the lives they lead. Instead we should find some way to represent the gambler's winnings as part of the gambling life, taken as a whole. This is the approach we identified above as a response to accusations of 'time-slice' egalitarianism. How would it work?

Dworkin's suggestion is that we can represent potential gains (and losses) through gambling as the opportunity to gamble at the relevant odds<sup>8</sup>. The envy test then asks whether the risk-averse person envies the gambler her bundle, which includes that opportunity rather than the consequences of her having taken it. And, since of course the risk-averse person is so in virtue of the fact that she chooses not to take that opportunity (and similar others), the answer must be no. So the envy test is met even though the result of gambles will be differences in resource bundles *ex post* between the risk-averse and the risk-loving.

What, then, do we take the envy test now to involve? In its original formulation, the bundles of resources at each person's disposal over the course of her lifetime is made available for comparison with other people's bundles. Dworkin's suggestion is that to take into account the nature of option luck – in our examples, gambling – what should be made available for comparison should be the bundles of resources at each person's disposal over her lifetime, *less* the resources or resource deficits at her disposal as a result of option luck, *plus* the opportunities to gamble that were available to her over her lifetime. The results of gambles are hidden for the purposes

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<sup>8</sup> See *ibid.*, 76.

of the envy test behind the opportunities to gamble which led to them: envy of gambling winnings when the opportunity was available to all is stipulatively irrelevant to the envy test. Thus we have arrived at Dworkin's desired conclusion: the envy a non-gambler has for a winning gambler is not a threat to equality.

But note that under this interpretation of the envy test, it is not just non-gamblers who will not envy winning ones: nor will losing gamblers, for to do so would be like envying a lottery-ticket owner her ticket before the draw has taken place and despite having one oneself. Now while the aim of surveying resources across the whole of a person's life can make sense of the decision to mask the envy of the non-gambler for the winning gambler, it is not so clear that the envy of a losing gambler who has availed herself of *exactly the same opportunities* as the winning gambler should be masked in the same way. What could justify 'doctoring' the envy test such that not only the former but also the latter cannot cause it to fail?

I will offer two readings of the option luck/brute luck distinction which explain why these sorts of inequalities arising from option luck should not threaten the envy test or equality of resources. The first reading, which has commonly been assumed by commentators on Dworkin's theory, takes choice to be the pivotal notion in our understanding of the distinction. I will reject this reading, endorsing instead the second, which gives sensitivity the key role. This second reading will be a cornerstone of my interpretation of Dworkin. Before I turn to these readings, however, let us consider whether brute luck represents a threat to equality of resources. Here is what Dworkin has to say:

If two people lead roughly the same lives, but one goes suddenly blind, then we cannot explain the resulting differences in their incomes either by saying that one took risks that the other chose not to take ... For the accident was (we assume) nothing to do with choices in the pertinent sense. It is not necessary to the life

either has chosen that he run the risk of going blind without redistribution of funds from the other.<sup>9</sup>

Would the inequalities arising from the bad brute luck of being struck blind threaten equality of resources? Dworkin's answer this time is yes. Again, we must not ask whether at a given point in time the one person envies the other, for that question fails to reflect the point of equality of resources as devoted to lives taken as wholes. We must once more try to represent the chance of blindness as part, insofar as it is part, of each person's bundle and life, and within that understanding explain why Dworkin takes brute luck to threaten equality.

Since resource deficits arising from blindness form part of the bundle of some people's lives and not of others', it might strike us as natural to say that the envy someone who has been struck blind feels towards the sighted should cause the envy test to fail. But the *risk* of blindness (let us assume) forms part of everyone's bundle: in a sense, everyone is necessarily a 'gambler'. So there is no such thing as the envy of the 'losing gambler' (someone who has been struck suddenly blind) for the 'non-gambler' (someone who does not run the risk at all); and so if the envy test is to fail in the case of brute luck, it will have to be because of the envy a 'losing gambler' has for a 'winning gambler'. But under the interpretation of the envy test we developed above, that type of envy is hidden (stipulatively irrelevant) for the purposes of the envy test, so equality of resources is not threatened as a result. Why, then, should it fail when the envy arises as the result of brute luck but not as a result of option luck? We need a way to distinguish the envy a 'losing gambler' has for a 'winning gambler' on the one hand from the envy a losing gambler has for a winning gambler on the other.

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<sup>9</sup> *Ibid.*, 76.



The two readings I am going to offer of the option luck/brute luck distinction explain why we can indeed make this distinction and hence why Dworkin is right to treat the cases differently. Let us turn to the first reading.

### III. *The option luck/brute luck distinction (I): first reading*

This reading takes the passage cited above from page 74 of *Sovereign Virtue* more or less at face value. The reason we stipulate that the envy test should not fail, in the case of option luck, as a result of losing gamblers' and non-gamblers' envy for winning gamblers, is that since the choice to gamble was available to all, their circumstances are the consequence of their own decisions. For that reason it is right to reduce those consequences to their *ex ante* value as opportunities to gamble which are available to all and so enviable by none. Construing the envy test in this way makes the theory 'choice-sensitive'. However, were a losing gambler to be a losing gambler because unlike the winning gambler whose winnings she envies, she had the opportunity to gamble only at unfavourable odds, then her envy would, *ceteris paribus*, cause the envy test to fail. The opportunities in their respective bundles would be different, and the adjustments we have made to the envy test would not mask that. As Dworkin says, "[s]omeone who never had the opportunity to run a similar risk, and would have taken the opportunity had it been available, will still envy some of those who did have it"<sup>10</sup>.

By contrast, no one at all has the choice as to whether or not she runs the risk of being struck blind, and so those who are are not rightly thought of as living with the consequences of their own decisions. Their circumstances, in other words, cannot be traced back to their choices. For that reason we do not 'doctor' the envy test such

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<sup>10</sup> *Ibid.*

that envy arising from brute luck is masked, as we do to mask envy arising from option luck; and therefore the envy someone who is struck blind has for the sighted constitutes a threat to equality of resources in virtue of the fact that it causes the envy test to fail. Not tampering with the envy test at this point makes the theory 'luck-insensitive'.

Brute luck, then, threatens equality of resources. How might we respond to that threat? One suggestion would be that we should redistribute in the face of inequalities arising from brute luck until the envy test no longer fails. An alternative response – and this is Dworkin's – would be to convert brute luck into option luck.

On the first reading, this works as follows. What distinguishes option luck from brute luck is that the former is traceable to choice on the part of the individual and the latter is not. It is this that makes my house being struck by lightning, for example, a paradigm case of bad brute luck: in no way can we understand my resultant disadvantage as arising from my choices. But now consider insurance as a way to make all aspects of a person's life traceable to her choices. Suppose I have purchased insurance against lightning damage. Assuming the cover is sufficient, if lightning strikes my house, I can recover my costs from the insurance company. If I have purchased insufficient cover or none at all, the choice (not) to buy that level of cover explains the disadvantage I suffer as a result of having to make up the difference myself.

Thus the fact that insurance is available – the fact that I *could have* bought cover – means either that no inequalities will arise at all as a result of bad brute luck or that if they do, they will be traceable to choice and so not the consequence of bad *brute* but of bad *option* luck. In principle, then, if we make available at the auction insurance policies offering cover against resource disadvantage arising from every conceivable type of brute luck, we eliminate brute luck altogether by converting it entirely into

option luck. We must add a certain important qualification at this point, however. Some inequalities arising from brute luck are not even in principle such that we could restore a person to their pre-disadvantage state. The best we can offer in these cases is compensation rather than rectification. So, for example, if I am struck blind, the compensation paid to me by even an astronomically high level of cover could only ever partially compensate me for the loss of my sight. I will examine the importance of this later.

#### IV. *The option luck/brute luck distinction (II): second reading*

According to the second reading, we should not be misled by talk of choices and opportunities here. Choice is not the key component in our understanding of option luck and why it does not threaten equality of resources. So on this reading, it would not change the point of the passage cited earlier to rewrite it, eliminating any reference to choice, thus:

The life of someone who gambles contains, as an element, the factor of risk; someone who does not to gamble prefers a safer life. We have already decided that people should pay the price of the life they lead ... But the price of a safer life ... is precisely forgoing any chance of the gains whose prospect induces others to gamble. So we have no reason to object, against the background of our earlier decisions, to a result in which those who do not gamble have less than some of those who do not.

What is important instead is the notion of sensitivity, which, as we saw, played a similarly crucial role in the first step of Dworkin's theory. As yet, of course, we know comparatively little about what sensitivity *is* exactly. For our purposes here, sensitivity is to be elaborated as 'sensitivity to the *identities* of the bidders'. This is,

unfortunately, no less vague than Dworkin's own talk of 'sensitivity to plans and preferences'. In the final chapter I will try to give a concrete filling-in of the notion, which will explain its place both in the first step and here. But for now I hope that it will be enough to say that the thought underlying sensitivity is that a person is committed to costs entailed by the life with which she identifies. So if a gambler identifies with her action – gambling – then she must identify with the risk of loss too. Now if the envy a losing gambler has for a winning gambler were to cause the envy test to fail, then equality of resources would be threatened by inequalities arising from option luck. That cannot necessitate redistribution because redistribution would threaten the possibility of living the life of a gambler. And it would be insensitive to the identities of those whose preferred life includes gambling to rule out the possibility of that kind of life.

This is the argument at work in the following passage:

If [winning gamblers] were made to share their winnings with [losing gamblers], then no one would gamble, as individuals, and the kind of life preferred by both those who in the end win and those who lose would be unavailable. Of course, it is not a good argument, against someone who urges redistribution in order to achieve equality of resources, that redistribution would make some forms of life less attractive or even impossible. For the demands of equality... are prior to other desiderata, including variety in the kinds of life available to people ... [However] the effect of redistribution from winners to losers in gambles would be to deprive both of lives they prefer, which indicates, not simply that this would produce an unwanted curtailment of available forms of life, but that it would deprive them of an equal voice in the construction of lots to be auctioned, like the man who hated both plovers' eggs and claret but was confronted only with bundles of both. Winners and losers all wanted gambles to be in the mix,

either originally or as represented by resources with which they can take risks later...<sup>11</sup>

The gambler in a society which redistributes gambling winnings among the losers is compared here to the man who hated plovers' eggs and claret in our earlier example of the auctioneer trading all available resources for those goods. We saw in the last chapter that this man suffered under a failure of sensitivity. So we see here that the reason the envy test should not fail as a result of a losing gambler's envy for a winner is that allowing such a failure would result in a *less* sensitive auction; an auction which "deprive[d] both of lives they prefer"<sup>12</sup>.

Sensitivity thus provides our second reading's justification for the 'doctoring' of the envy test in the case of option luck. Now, once again, contrast brute luck. Whereas one could not identify with the life of gambling and yet disown – disidentify with – the risk of making a loss, one could disidentify with many of the other risks to which we are exposed in our lives without thereby dissociating oneself from the life with which one identifies. In normal circumstances, a loss made as a result of a risk with which one does not identify in this way is an example of (bad) brute luck. In using the example of blindness to illustrate the idea of brute luck, Dworkin is, on this reading, assuming that no one's identity and the life-plans flowing from that wed her to the risk of blindness. So as with the first reading, the reason we had available to us to justify doctoring the envy test in the case of option luck is not available to us in the case of brute luck. Brute luck is therefore a threat to equality of resources at least in virtue of the fact that it causes the envy test to fail.

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<sup>11</sup> *Ibid.*, 75.

<sup>12</sup> It is clear from this that the envy test, on this reading, is subordinate to sensitivity. But it is subordinate to choice-sensitivity on the first reading; so the fact of its subordinate position within the theory cannot be adduced in favour of one reading over the other.

Once again, we might redistribute to meet the envy test, or alternatively we can appeal to insurance to defuse the threat. To redistribute gambling winnings among the losers would be insensitive because it would frustrate the identified-with plans and preferences of both. Another way in which this could happen would be if gambling one's resources were simply not permitted. As we saw, Dworkin writes that "[s]omeone who never had the opportunity to [gamble], and would have taken the opportunity had it been available, will still envy some of those who did have it"<sup>13</sup>. An auction which denied someone like that that opportunity would be to that extent insensitive: resources would not therefore have been auctioned in the most abstract possible form. An auction which denied that opportunity to *everyone* who identified with a life which included the freedom to gamble would be highly insensitive in that respect. No less insensitive would be an auction in which bundles of resources *had* to be gambled at some set of odds. An auction which neither prohibited nor enforced gambling, then, would be maximally sensitive to a population with a mixture of attitudes in this respect, since it would permit the widest range of preferred lives.

Now we could say that similarly, an auction which prohibited the gambling of one's sight would be insensitive to the preferences of those whose life-plans included such gambling; similarly, it would be insensitive to make the same gamble obligatory. Once more, a maximally sensitive auction would allow both sorts of life-plans. It is part of the point of the idea of brute luck, on the second reading, that the second of these three auctions is the one with which we are in fact presented as regards unpredictable blindness.

This is where insurance comes to play. We can use insurance as a means to increase the sensitivity of the auction. If we offer, at the auction, insurance against

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<sup>13</sup> *Ibid.*, 76.

blindness, we convert – to an extent – the second auction into the (maximally sensitive) third. (The ‘to an extent’ here alerts us to the important qualifications I mentioned earlier.) This is because given that such insurance is available, the gamble of one’s sight ceases to be mandatory, since someone who buys full cover will stand to lose nothing (again, with qualifications) in the event of being struck blind.

Now given that we *can* offer such insurance at auction, there is a sense in which an advantageous (sensitivity-increasing) move is available from an auction at which no such insurance is offered. And for that reason, if the move is not made, someone who is unfortunate enough to be struck blind may well feel that she has not been treated as an equal in the division of resources – just as the man who hated plovers’ eggs and claret felt when an advantageous trade was forgone by the auctioneer. In both cases the principle of abstraction is violated.

If the sensitivity-increasing move to offer insurance at auction *is* made, on the other hand, the principle of abstraction’s demands are met. The envy test, too, is met, since as on the first reading inequalities arising from brute luck are now converted by the availability of insurance into inequalities arising from option luck, which pose no threat. We have converted the auction into one analogous to the maximally sensitive auction in which gambling was permitted but not obligatory.

Insurance, then, on the second reading, is important because it allows bidders to tailor their clamshell-spending to their identities: it enables them to avoid having to carry a risk if they are not wedded to it as they are to the life with which they identify. On the other hand, to insure oneself against losses incurred through risks which are part of one’s preferred life would be to alienate oneself from that life, and consequently the principle of abstraction does not require the availability of such insurance.

A worry surfaces here: are we smuggling choice into this reading? It might appear so, since the reason for thinking that option luck does not threaten equality of resources is that by not seeing it as doing so we preserve a way of life for people to *choose*. And in that sense it is true that choice remains in the picture. But it is not there in the same way as it is in the first reading. We can bring out a difference by considering Dworkin's claim that "the difference between [option luck and brute luck] is a matter of degree"<sup>14</sup>. On the first reading, one reason that this is so is that although there are clear-cut instances of circumstances being untraceable to choice and clear-cut instances of circumstances being perfectly traceable to choice, there are grey areas in between.

But on the second reading, the difference between option luck and brute luck is not one that could be affected by worries about determinism. If the difference is a matter of degree it is because there are less and more clear-cut instances of isolated risks being rightly thought of as tied to the identity of a person taking them. Equality is unthreatened in the case of option luck because the risks are rightly thought of as tied to identity in this way.

If choice remains in the picture it is only in the sense that we want bidders at the auction to be able to bid so as to reflect their identities and the sorts of lives which flow from them. And this sort of choice is misleadingly so described, for it is not so much that we want to preserve the availability of ways of life for people to *choose*; but that we want the equal distribution of resources to be sensitive to the identities – the plans, preferences and ambitions – of the bidders. This is why Dworkin can compare, in the passage quoted above, would-be gamblers whose preferred way of life is made unavailable by the compulsory redistribution of winnings among losers to the plovers' eggs and claret hater. The sort of unfairness is the same in both cases:

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<sup>14</sup> *Ibid.*, 73.



the auction is ~~arbitrarily~~ ~~insensitive~~ to their identities, including their plans, preferences and ambitions. Of course there is more to say about the notion of sensitivity, and I will try to say it further on. But it is clearly not an alias of the notion of choice operative in the first reading.

I said above that I would be endorsing the second reading. Although others will arise, particularly in the next chapter, we have reason already to suggest that it is the better interpretation of the option luck/brute luck distinction. For sensitivity, bound up as it is with the principle of abstraction, is already a vital component of Dworkin's theory. Therefore by taking the second reading we have no need to adduce external and possibly *ad hoc* considerations in order to explain why inequalities arising from option luck should not cause the envy test to fail. The explanation emerges from within the theory we have been constructing. This is not true of the first reading, in which choice takes on an importance that would not be suspected from an understanding of the theory's first step.

#### V. *Hypothetical insurance*

On either of the two readings of the option luck/brute luck distinction, insurance provides us with a way to 'convert' brute luck into option luck. The role of chance is reduced so that it fits into the mould of a gamble: only as much as an individual wishes, within constraints set by equal resource shares, is left vulnerable to fortune. Thus each individual may, for example, have her risk-averseness with respect to blindness reflected in the life she leads. On the reading I endorse, the correct way to interpret this conversion is to say that all inequalities in the distribution of resources are part and parcel of the equal resource bundles which are auctioned at a maximally sensitive equal auction, which is the best possible interpretation of the abstract

principle of equal concern. We would expect the ideal distribution to include different levels of cover for different individuals, since different individuals, with different plans and preferences, will spend different proportions of their initial, equal allocations of clamshells on insurance (and against different contingencies).

Now there is a difficulty here, as Dworkin notes<sup>15</sup>:

[I]f everyone had an equal risk of suffering some catastrophe that would leave him or her handicapped, and everyone knew roughly what the odds were ... then handicaps would pose no special problem for equality of resources. But of course that condition is not met. Some people are born with handicaps, or develop them before they have either sufficient knowledge or funds to insure on their own behalf. ... Even handicaps that develop later in life ... are not randomly distributed through the population, but follow genetic tracks, so that sophisticated insurers would charge some people higher premiums for the same coverage before the event.<sup>16</sup>

Dworkin supposes that this makes the conditions of insuring unfair (this will need to be explained), and he proposes that we avoid this difficulty by appealing to a 'hypothetical insurance market', which gives us an answer to the following question:

If (contrary to fact) everyone had at the appropriate age the same risk of developing physical or mental handicaps in the future (which assumes that no one has developed these yet) but the total number of handicaps remained what it is, how much insurance coverage against these handicaps would the average member of the community purchase?<sup>17</sup>

According to the proposal, we can make the answer to this question the basis for a compensation scheme for those who do in fact have or develop handicaps, financed

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<sup>15</sup> Note that we are restricting ourselves here to consideration of handicaps alone.

<sup>16</sup> *Ibid.*, 77.

<sup>17</sup> *Ibid.*, 77-8.

by a fund collected through taxation which “match[es] the fund that would have been provided through premiums if the odds had been equal”<sup>18</sup>.

But now a second difficulty arises: an individual’s insurance decision will reflect that individual’s judgment about how the possibility being insured against might affect her life-plan; so

in order to decide how much insurance [a handicapped] person would have bought without the handicap we must decide what sort of life he would have planned in that case. But there may be no answer, even in principle, to that question.<sup>19</sup>

This is clearly a serious problem, given the nature of the Dworkinian auction, which places great weight on the fact of bidders’ spending reflecting their plans and preferences. If these constitutively *include* handicaps, how are we supposed to answer the question how they would be affected *by* handicaps?

Dworkin’s reply is that we need not make such ‘embarrassing’ personalised counterfactual judgments. Instead we can follow actual insurance market practice by structuring insurance

through categories designating the risks against which most people would insure in a general way ... It would make sense to suppose, for example, that most people would make roughly the same assessment of the value of insurance against general handicaps ... that affect a wide spectrum of different sorts of lives.<sup>20</sup>

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<sup>18</sup> *Ibid.*, 78.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*, 78-9.

This solution seems to beg the question somewhat by tending towards basing insurance categories on the assessment of a hypothetical 'normal' person – a problem to which I will return later. But in any case these replies create certain conceptual difficulties which Dworkin ignores. Insurance is introduced as something which could be purchased at auction<sup>21</sup>. But of course at auction, as Dworkin notes (this is the first difficulty discussed above), the distribution of and those affected by handicaps are known, and this makes the conditions in which people purchase their insurance unfair. So we appeal to the hypothetical insurance market, in which a veil of ignorance is operative, to create fair conditions for individuals' insurance decisions. But the veil of ignorance creates another problem, that of the 'embarrassing counterfactual judgment'. To avoid this (the second difficulty), we determine general insurance categories using the average person's attitude to the various disadvantages that might befall one. Thus we can derive a one-size-fits-all insurance policy. But what are we supposed to do with that? Offering it in the initial auction is a non-starter, since bidders may not want this Everyman's policy, and whatever they *do* want will be what determines the average policy. In any case, their decisions will take place in exactly the unfair circumstances which motivated the move to the hypothetical insurance market in the first place. Thus that market would be impotent to solve the problems it was brought in to address: it would be theoretically idle.

Using it in the post-auction state of affairs as the basis for a (compulsory) taxation-funded compensation fund will not do either. For insurance is offered as a way to make available at auction to both risk-averse and risk-loving bidders bundles which reflect their identities; but compulsory taxation, being compulsory, makes it the case that the risk-loving lifestyle is one which bidders cannot have reflected in

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<sup>21</sup> See *ibid.*, 76: "For suppose insurance against blindness is available, in the initial auction..."

their bids. (Choice is removed from the picture too, so the first reading cannot help.)

So the hypothetical insurance market cannot be used this way either: it subverts the very reasons which led to its creation.

Dworkin never clearly distinguishes between the theoretical and practical applications of the hypothetical insurance market; so its theoretical impotence passes for the inevitable and unobjectionable compromise which will always be involved in rendering a theoretical process in reality (it is supposed to be simply a problem with the transition from theory to reality that we cannot exact contributions to the handicap insurance scheme from only those who would in theory have purchased cover at auction). But we have seen that the hypothetical insurance market is incapable *even in theory* of doing the work we need it to do. That is to say: since we have no *theoretically satisfactory* way of offering cover at or after the initial auction *which can then be translated* using an admittedly second-best averaging procedure (and *this* would be the unobjectionable compromise) into a real-life compulsory taxation scheme, Dworkin can only apply such a scheme in real life on pain of obliterating the very point which he takes himself to be making in introducing the idea of insurance in the first place.

This is a very serious problem. On either of our two readings, the hypothetical insurance device as Dworkin develops it seems to run counter to the aims of equality of resources. I will argue in chapter 5 that we can solve the problem by addressing the question exactly whose identities the principle of abstraction requires sensitivity to. But the text of *Sovereign Virtue* offers us no solution at all.

## VI. *Summary: option luck, brute luck, compensation and insurance*

In the next chapter I shall consider G.A. Cohen's criticism, in 'On the Currency of Egalitarian Justice', of Dworkin's egalitarianism, and try to show how that criticism misses its mark in the light of what we have said so far. First I will try to summarise the way in which the concepts of brute luck, option luck, compensation and insurance interact in Dworkin's theory. Much of the force of Cohen's critique, I will argue, derives from a failure to appreciate the roles these concepts play.

In particular, it is important to see how compensation and insurance are related. It can seem that insurance is merely theoretical support for intuitions as to who is owed compensation. There is textual evidence to support the claim that that is Dworkin's view. But we can reach a more satisfying understanding of the relations between them if we think about them in the context of our reading to date. If calls for compensation are calls for redistribution as a result of a failure to establish or maintain equality, the question we asked in section II can be construed as follows: do inequalities arising from option luck justify such calls? Dworkin's answer was that they do not, and we offered two different readings explaining that answer. In section III we asked whether inequalities arising from brute luck could ground a claim for compensation. Dworkin's answer was that they do, and we offered the two readings here too, endorsing the second. The device of insurance is introduced as a way to convert brute luck – inequalities arising from which would *otherwise* threaten equality and so ground compensation claims – into option luck, which does *not* threaten equality. The availability of insurance represents the availability of a wider range of choice (on one reading) or ways of life (on the other) whose presence at auction entails that all inequalities once the auction is over are the result of option, not brute, luck, and so are fully compatible with equality of resources. So far so good.

Now if insurance against some type of brute luck *is* available at auction and a bidder *does* take out that insurance, then in the event of it turning out that that type of brute luck affects that bidder, the cover she has purchased will mean she is compensated. But this compensation is *not* an instance of redistribution called for by equality of resources. It is simply part of the practice of insuring oneself against bad luck; and that practice is introduced, as we saw above, because it removes a threat to equality of resources – brute luck – by converting it into option luck. If someone who has *not* taken out such insurance – despite its availability – is affected by an instance of the same type of luck, she will not in theory receive any compensation. But because that luck is, in virtue of the availability of insurance, option luck, any inequalities arising as a result will not threaten equality.

Towards the end of this chapter I highlighted a problem with the way the insurance device is supposed to work. Dworkin argues that we should model our tax practices on the average level of cover purchased in a hypothetical insurance market in which the theoretical bidders are behind a veil of ignorance. But the averaging process here is not the inevitable result of trying to render in practice the behaviour of bidders in what we might call the theoretical *actual* insurance market; it is the direct application of results from what we might call the theoretical *hypothetical* insurance market. But the results of this latter market ought to be applied at the theoretical *actual* level before *that* is translated into imperfect practice; and Dworkin does not tell us how we could do that. I shall try to suggest a solution in chapter 5. Until then, suppose we have some way to determine *in theory* individual bidders' hypothetical insurance decisions regarding afflictions whose distribution is already known at auction. This supposition will be important to an understanding of the error of criticisms of Dworkin that we shall be looking at in the next chapter.

It should be clear anyway that in claiming that we ought in practice to compensate all victims of brute luck, Dworkin is simply assuming that most people in the theoretical situation would take out cover against brute luck; and so he takes it to be not massively awry to levy a tax on all members of society so as to be able to compensate any of them, given the difficulty that we would have finding out the level of cover that each real individual would purchase if she were a bidder in the theory. And so the claim that we ought to compensate all victims of brute luck is not the claim that brute luck merits compensation in the name of equality, but the result of a theoretical device – insurance – which removes brute luck from the picture altogether, leaving nothing in play to threaten (auction-established) equality at all. Cohen, as will emerge in the next chapter, misses this important point entirely<sup>22</sup>.

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<sup>22</sup> Arguably, Dworkin misses it entirely as well. See the following chapters for more on this.



## Chapter 3: Cohen's Critique

### I. *The structure of Cohen's critique*

Consider the following objection to straight equality of welfare. Imagine Louis. Louis likes Fanta, and derives a certain level of welfare from drinking it. But he is sorry to like Fanta, because it is not a particularly refined taste, and Louis, an aspirant snob, wants to have refined tastes. So he picks a drink – champagne – which costs much more than Fanta, and cultivates a taste for it. Having done so, Louis no longer derives from Fanta the level of welfare he once did; now he can only attain that level by drinking champagne.

Now under a system of justice which created equality of welfare, redistribution would be required as a result of the inequality which developed because of Louis's actions, for the amount of money that sustained his Fanta-era welfare levels will not suffice in this new champagne-era to keep them as high. Everyone's welfare levels will fall slightly when equality is restored, since the average cost of welfare will have gone up when Louis cultivated his new taste.

This objection is one of the two main reasons Dworkin rejects a welfarist egalitarian metric in favour of a resourcist one. (The second is grounded in objections to the concept of welfare itself.) Cohen also rejects straight equality of welfare; but he takes the point of the expensive tastes objection to be that egalitarian distributive justice should not compensate disadvantages (in welfare or resources) for which the sufferer can be held responsible. He argues for a theory of 'equality of access to advantage', which is an elaboration of "the right reading of egalitarianism ... [namely] that its purpose is to eliminate *involuntary disadvantage*," which is

“disadvantage for which the sufferer cannot be held responsible”<sup>1</sup>. He takes this position to be in part “the product of an immanent critique of Ronald Dworkin, one, that is, which rejects Dworkin’s declared position because it is not congruent with its own underlying motivation”<sup>2</sup>. That underlying motivation is Cohen’s ‘right reading’; and Dworkin’s theory, according to Cohen, includes inegalitarian conclusions which seem plausible only because they appear to draw on this undeclared source.

Cohen’s key interpretive claim is that the grounding idea of Dworkin’s egalitarianism is that no one should suffer because of bad brute luck<sup>3</sup>. He contends that Dworkin’s theory is plausible only insofar as it suggests this claim. From here Cohen argues that since Dworkin does not put absence of responsibility in the foreground as a condition of compensation, and since to do so would be more faithful to the grounding idea than Dworkin supposedly is, Cohen’s own reading of egalitarianism is truer to the grounding idea than Dworkin’s is, since it compensates people in *all* dimensions for disadvantages for which they are not responsible.

I think that Cohen’s critique fails, primarily for two reasons. The first is that he misunderstands the role of the option luck/brute luck distinction, of which he takes the first reading which we rejected. At the heart of Dworkin’s theory is the view that a fair distribution of resources is one which can be tailored maximally to bidders’ ends; brute luck poses a threat to such tailoring, and so must be converted to option luck (by *offering* – not imposing – insurance), which does not. Cohen takes the fundamental idea to be that involuntary disadvantages are a threat to justice, losing sight of the fact that on any reading of Dworkin, brute bad luck threatens justice because it threatens the fairness of equal *resource* shares. With involuntariness taking centre stage in this way in his interpretation, Cohen naturally finds Dworkin’s

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<sup>1</sup> ‘On the Currency of Egalitarian Justice’, 916.

<sup>2</sup> *Ibid.*, 906.

<sup>3</sup> See *ibid.*, 922.

emphasis on resources bafflingly blind to welfare considerations, since welfare deficits are as often involuntary as resource deficits.

Cohen's error is encouraged by a tendency (which Dworkin frequently shares) to rush from the idea of insurance to the applicability of tax-funded compensation. This is the second reason for the failure of his critique. It is essential to recognise that the insurance market is paradigmatically *not* hypothetical: it is in theory *actually* run at the same time as the auction<sup>4</sup>, and much brute luck is thereby converted into option luck. The hypothetical insurance market is a response to the problems posed by brute unlucky eventualities being known of at the time of the auction. We are for the time being supposing that it can give us insurance policies concerning these eventualities, individually tailored to each bidder's identity (see chapter 3, section VI, above). If we forget this, and, concentrating on insurance as a hypothesis, assume that what it must be possible to insure against is just what must be compensated in the name of justice, we lose sight of the fact that insurance is in theory a way for individuals to use their equal resource shares. Individual bidders will not all make the same insurance decisions. So justice demands that individuals receive the compensation determined by their insurance policies; it does *not* require either that we compensate them after the auction for disadvantages arising through bad luck, or that we compensate anything not arising directly from their choices in the auction/insurance market (the difference between this latter and what justice does demand derives from restrictions created by the limited resources available to each: see chapter 5, section II, below).

These oversights in place, it can seem that Dworkin's explicit conclusions conflict with his apparent motivations, and Cohen's theory then presents itself as a much more plausible rendering. But it is not, as I will show.

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<sup>4</sup> See *Sovereign Virtue*, 77.

## II. *Cuts (I): personal and impersonal resources*

Cohen's arguments make much of the idea of 'cuts' which divide sphere(s) of disadvantage into the opposed realms of the compensable and the non-compensable. He holds that his 'cut' is truer to Dworkin's grounding idea than is Dworkin's own. Yet so far in this thesis no mention of any such thing has been made. Where should we look for the 'master distinction' with which Cohen takes issue?

We get to the master distinction via a different one: that between impersonal and personal resources. Impersonal resources are those resources which we can transfer from person to person: clamshells, money, land, goods, and so on. Personal resources, on the other hand, are not transferable in this way: mental and physical powers are resources, as are talents. Of these, Dworkin writes that

People's powers are indeed resources, because these are used, together with material resources, in making something valuable out of one's life. Physical powers are resources for that purpose in the way that aspects of one's personality, like one's conception of what is valuable in life, are not.<sup>5</sup>

Now if personal resources are resources, then equality of resources will be concerned with the distribution of these as well as that of impersonal resources. (This is why the important qualifications I mentioned in chapter 3 in connection with the limitations of compensation for blindness, for instance, are important.) One way to respond to inequalities in the distribution might be to enforce pre-auction transfer payments in order to allow people who have initial personal resource deficits to

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<sup>5</sup> *Ibid.*, 80.

‘catch up’, before going ahead with what would only then, according to the suggestion, be an equal auction. Dworkin rejects this response, because

[t]hough powers are resources, they should not be considered ... resources for the theory of equality in exactly the sense in which ordinary material resources are. They cannot be manipulated or transferred, even so far as technology might permit ... it misdescribes the problem of handicaps to say that equality of resources must strive to make people equal in physical and mental constitution so far as this is possible. The problem is, rather, one of determining how far the ownership of independent material resources should be affected by differences that exist in physical and mental powers, and the response of our theory should speak in that vocabulary.<sup>6</sup>

The correct method for determining how far the ownership of impersonal resources should be affected by personal resource inequalities is, according to Dworkin, the insurance market. As we saw, inequalities in impersonal resources arising through brute luck are eradicated or converted into inequalities arising from option luck by the availability of insurance. Dworkin’s solution to the problem in hand is to say that the same goes for inequalities in personal resources. The availability of insurance against possible personal resource deficits makes any such deficits a matter of option luck or (and this is where the qualifications apply) eradicates them altogether.

In the case of impersonal resources, we decided that insurance against deficits to which a person was wedded in virtue of her identity would not be coherent. Since sensitivity to the identities of the bidders is what motivates the insurance device in the first place, the principle of abstraction will only mandate insurance which increases sensitivity, and such ‘incoherent’ insurance does not. Now the same restriction is operative in the case of personal resources; here it is built into their

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<sup>6</sup> *Ibid.*

definition. When a person is wedded to a resource deficit such as to make insurance against it incoherent, that resource deficit is not a deficit in means but an essential component of the person's ends, which are what informs insurance decisions. But by definition personal resources *are* means; any aspect of a person which is constitutive of a her ends – her 'conception of what is valuable in life' – is *ipso facto* not a personal resource. Thus, since insurance is available only for personal resource deficits, the incoherence of insuring against being oneself is not a possibility.

So although there is an intuitive sense to the notion of a personal resource, which explains the intuitive contention that handicaps are personal resource deficits, Dworkin's theory fills out that sense in a semi-technical way: personal resources are those aspects of a person – means to a valued life – in which deficits are not subject to the sensitivity-motivated restriction on the availability of insurance that is otherwise required. If an aspect of the person can be coherently insured against, it is thereby a personal resource.

### III. *Cuts (II): persons and circumstances*

Dworkin considers the question whether his understanding of personal resources

places too much weight on the distinction between handicaps, which the immigrants treat in this compensatory way, and ... accidents touching preferences and ambitions (like the accidents of what material resources are in fact available and of how many other people share a particular person's taste)?<sup>7</sup>

He concludes, however, that it does not:

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<sup>7</sup> *Ibid.*, 81.

Someone who is born with a serious handicap faces his life with what we concede to be fewer resources, just on that account, than others do. This circumstance justifies compensation, under ... equality of resources, and though the hypothetical insurance market does not right the balance – nothing can – it seeks to remedy one aspect of the resulting unfairness. But we cannot say that the person whose tastes are expensive, for whatever reason, therefore has fewer resources at his command. For we cannot state (without falling back on some version of equality of welfare) what equality in the distribution of tastes and preferences would be. ... If the auction has in fact been an equal auction, then the man of eccentric tastes has no less than equal material resources, and the argument that justifies a compensatory hypothetical auction in the case of handicaps has no occasion even to begin. It is true that this argument produces a certain view of the distinction between a person and his circumstances, and assigns his tastes and ambitions to his person, and his physical and mental powers to his circumstances. That is the view of a person I sketched in the introductory section, of someone who forms his ambitions with a sense of their cost to others against some presumed initial equality of economic power, and though this is different from the picture assumed by equality of welfare, it is a picture at the center of equality of resources.<sup>8</sup>

It is from this passage, I think, that Cohen takes his reading of Dworkin's 'cut', specifically from Dworkin's invocation of a distinction between a person and her circumstances, with tastes and ambitions assigned to the former and powers assigned to the latter. But before we consider Cohen's contention that the distinction is not faithful to Dworkin's grounding idea, let us briefly inspect the passage a little more closely.

In the passage immediately preceding it, Dworkin discusses the thought that perhaps since handicaps are treated "in [a] compensatory way", it would be fair also to "compensate those who have [expensive] tastes"<sup>9</sup>. But as I have stressed, there is

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<sup>8</sup> *Ibid.*, 81-2.

<sup>9</sup> *Ibid.*, 81

no 'compensatory way' in which we treat personal resource deficits such as handicaps. We must offer insurance against them; but such compensation as there is for handicaps will be merely the consequence of a person's having taken out that insurance.

Now Dworkin's suggestion as to why we should not compensate someone in the name of equality for the fact that his tastes are expensive seems to be that because of the role that tastes play in determining an equal distribution (they are, in some sense, auction inputs), we cannot think of them as resources – for then the auction would create a new resource distribution partly on the basis of an arbitrary old one. Therefore they cannot be compensable. Since Dworkin has *already* asserted that handicaps are resources, we get a distinction – a 'cut' – between resources and non-resource inputs to the auction; and then all that remains, it seems, is to assign ways in which people differ to one category or the other, compensating only resources accordingly.

But this line of argument fails. Since it is *not* the case that the mere fact of having a handicap justifies compensation under Dworkin's theory, the question whether we ought to compensate people, in the name of equality, for circumstances which are themselves part of the auction's inputs does not arise. The question that does arise is whether insurance ought to be available at auction. And to answer that, we must answer this: would offering insurance increase the sensitivity of the auction? An argument that it would not would have to be along the lines of the argument against insurance cover for option luck: it would have to show that it would be incoherent, and therefore not sensitivity-increasing, to offer insurance against tastes. Dworkin argues in this way elsewhere in *Sovereign Virtue*. But he misses his mark here.

We have seen, then, where Cohen might find Dworkin's 'cut', which he thinks fails to deliver on the promise of Dworkin's supposed underlying motivation. The



importance of the question whose cut best maps onto that motivation, for Cohen, rests on the equation of those cuts with the cut between inequalities which are and inequalities which are not to be compensated in the name of equality. One of the reasons Cohen finds Dworkin's cut unappealing is that according to Dworkin's apparent statement of it, some aspects of a person's life for which she cannot be held responsible fall on the 'person' side of the person/circumstances distinction; and for Cohen that just has to mean that they are not to be compensated in the name of equality. But as I have explained, there is, at least at the level of theory, *no* cut between what is and what is not to be compensated *in the name of equality*. There is only the cut between that for which it is and that for which it is not necessary to offer insurance in order to maintain equality of resources. That cut is the cut between brute and option luck, and it is based on the notion of sensitivity. Any compensatory payments made after the auction, according to the theory, are merely insurance payouts, justified not directly by equality of resources but by the fact that the person so compensated bought a policy to cover her against the eventuality grounding the compensation claim. It is entirely consistent with this that someone should suffer a physical handicap and yet not be compensated because she had not purchased any insurance, for example.

So if Cohen's critique of Dworkin is that Dworkin's cut ought to be between that which is involuntary and that which is voluntary – “we should not ... draw a line between unfortunate resource endowment and unfortunate utility function”<sup>10</sup> – then we should be aware that insofar as it is a reading of *Dworkin's* cut, and contrary to what Cohen assumes, that entails nothing about whether someone suffering from some setback will in practice receive compensation for it. In fact, it merely entails that Dworkin ought to offer insurance to bidders against (bad) brute luck, where

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<sup>10</sup> 'On the Currency of Egalitarian Justice', 922.

brute luck is understood to be anything for which the sufferer is not responsible. And this is of course the rejected first reading of the brute luck/option luck distinction. So even if Cohen's arguments are sound and his criticisms of Dworkin are of the first reading, all other things being equal the availability of the second reading will constitute the availability of a defence against Cohen. A successful attack would need to include reasons to think the first reading is the right one.

#### IV. *Against Dworkin's cut (1): welfare deficits and expensive tastes*

Let us turn to the substance of those arguments. They are in three parts. In the first part, Cohen suggests a cut turning on the presence or absence of choice across all dimensions of disadvantage and offers counterexamples which he takes that cut to be better able to deal with than Dworkin's supposed cut between person and circumstances is. In the second part, Cohen discusses Dworkin's treatment of a subclass of expensive tastes, namely those which Dworkin is prepared to treat as handicaps. In the third and final part, Cohen examines the way Dworkin formulates his cut, and argues that none of them are satisfactory.

We begin the first part with the counterexample posed by a man Cohen describes as follows.

There is ... something wrong with his arms. He is not less able to move them than most people are ... [but] after he moves them, he suffers severe pain in his arm muscles.

[...] [Egalitarian compensation for this man] cannot be represented as compensation for a resource incapacity. The man's incapacity to move his arms is, *in the relevant sense*, better (so I stipulated) than that of most people.

[...] I can ... agree that it is his lack of [a] capacity which is the egalitarian ground for compensating him. *But compensating for a lack of capacity which needs to be described*

*in [welfare terms] for the ground of the compensation to be revealed cannot be represented as compensating for incapacity when that is opposed to compensating for welfare opportunity deficiency.* A would-be resource egalitarian who said, “Compensation is in order here because the man lacks the resource of being able to avoid pain” would be invoking the idea of equality of opportunity for welfare here even if he would be using resourcist language to describe it.<sup>11</sup>

Dworkin responds to this in chapter 7 of *Sovereign Virtue* by claiming that “[a] pain-producing infirmity is a canonical example of a lack of personal resources for which equality of resources would, in principle, provide compensation”<sup>12</sup>. But this seems flatly to ignore Cohen’s last point. Moreover, we see once more here Dworkin’s misuse of the notion of compensation as it features in his theory, for in principle we do *not* know whether the man would receive compensation: the answer depends on his insurance decisions. In distinguishing between the principle and practice of the case Cohen describes, Dworkin argues that we would need “many more facts” in order to decide “whether [such people] would have wished to secure insurance against these misfortunes at the premium that such insurance would cost”<sup>13</sup>. But if the answer to the question of principle is that a capacity to avoid pain is a resource and that therefore a lack of it is to be compensated, what does it matter whether in practice someone who *does* lack it would have wished to insure against it or not?

We avoid both the appearance of having ignored Cohen’s point and this confusion if we follow Dworkin as I have been recommending. In the first place, we can deny that to call a capacity to avoid pain a resource is tacitly to invoke equality of opportunity for welfare. Resource equality remains at the heart of the theory; and welfare considerations like these appear as aspects of a person which can be insured against, which makes them, in the semi-technical sense we identified above,

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<sup>11</sup> *Ibid.*, 918-9.

<sup>12</sup> *Sovereign Virtue*, 297.

<sup>13</sup> *Ibid.*

resources. We can see this reasoning at work in Dworkin's justification for calling the condition a resource deficiency and an argument he gives against considering the presence of welfare considerations an invocation of welfare:

Someone with such an infirmity did not choose it; he would cure it if he could, and none of his beliefs, judgments, convictions, or commitments would argue against such a cure.<sup>14</sup>

If the community gives someone money to relieve pain, it does so not in order to make his welfare or well-being equal to anyone else's, but because his physical constitution handicaps his ability to lead the life he wishes to lead.<sup>15</sup>

The confusion, meanwhile, can be cleared up thus: the importance of asking whether people actually so afflicted would have taken up insurance is that the answer will help us to decide two further questions: first, whether in theory people would be likely to take up insurance; and second, whether, based on our answer to that, we ought actually to use taxes to compensate people suffering from the condition. I will go into more detail about this in the next chapter. But the answers to these questions will give us a perfectly satisfying way of dealing with Cohen's example – a way which will not involve welfare in any sense which threatens the fundamental resourcism of Dworkin's theory, and of which there is no reason to think in advance that it will involve somehow ignoring the difficulties with which the man described faces his life.

Cohen's second counterexample is that of Paul, who involuntarily loves photography and hates fishing. Photography is expensive; fishing is cheap. So Paul's tastes are more expensive than those of Fred, who loves fishing. Someone with

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<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*, 491.

expensive tastes in this sense is someone, in Dworkin's words, "who need[s] more income simply to achieve the same level of welfare as those with less expensive tastes"<sup>16</sup>.

We saw above that Dworkin rejects the suggestion that someone with expensive tastes ought to be treated as we treat someone with a handicap. We rejected one explanation that Dworkin offers for this, namely that "[i]f the auction has in fact been an equal auction, then the man of eccentric tastes has no less than equal resources"<sup>17</sup>. For all we have seen so far, tastes are no different from handicaps, which threaten equality because the fact that everyone must be exposed to the risk of handicap is a respect in which the auction is insensitive; those who suffer from handicaps are merely those with perhaps most reason to complain<sup>18</sup>. So Dworkin must either concede the possibility of insuring against expensive tastes – which would not be to concede the correctness of compensating them as a matter of policy – or provide another argument against doing so. He provides such an argument, this time one which is very much in tune with the reconstruction of his theory that I have been offering. It is, in short, the argument that it would be incoherent to insure against one's own tastes being expensive:

Ordinary people ... take consequential responsibility for their own personalities. ... It would strike us as bizarre for someone to say that he should be pitied, or compensated by his fellow citizens, because he had the bad luck to have decided that he should help his friends in need, or that Mozart is more intriguing than hip-hop...<sup>19</sup>

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<sup>16</sup> *Ibid.*, 48.

<sup>17</sup> *Ibid.*, 81.

<sup>18</sup> Anyone might complain of it, however, since everyone must run a risk which will in most cases be no part of anyone's life plans. To make this vivid, imagine someone who cannot get on with her life because she worries so much about the possibility that she will be struck down by blindness, even though she never is.

<sup>19</sup> *Ibid.*, 290

The thought is that since it is self-alienating to insure against one's own tastes, the availability of insurance against them is not required by the principle of abstraction as a sensitivity-increasing move; and thus compensation *is* ruled out in principle for expensive tastes (except in special cases, on which more below).

The response fails altogether to meet Cohen's objection, however, as Cohen explains:

Dworkin [argues] that although [Paul's expensive taste] is indeed unchosen, [he] cannot regard it as bad luck for which he should be compensated, on pain of incoherently repudiating his own personality... But this move is entirely unpersuasive, since what is bad luck here is not the mere having of the preference ... the person regards the relevant taste as bad luck only in the light of its price. ... [T]here is nothing weird or self-alienating in regretting precisely this [for example]: that the kinds [of books] one wants to read are expensive.<sup>20</sup>

Dworkin must concede the distinction between a taste and its cost, for even within his auction set-up we can make perfect sense of the thought that bidders, their tastes and preferences known to them, might wonder how expensive they will turn out to be to satisfy given the mixture of resources available and the preferences of their fellow immigrants. (Whether they can come up with a workable measure of expense is a separate question.) And we can just as easily make sense of the possibility that some bidders might wish to insure themselves against their tastes turning out to be expensive. Such insurance would be sensitivity-increasing, since it would allow bidders not to carry a risk with which they did not identify; so the principle of abstraction endorses an auction with such insurance available over one without.

But to repeat: this is not to concede that we should compensate the bearers of unchosen expensive tastes as a matter of egalitarian justice. Cohen's objection has

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<sup>20</sup> 'Expensive Taste Rides Again' (rough draft), 10.

not the force he thinks it has because Dworkin's cut has a much more limited scope than Cohen assumes (he makes explicit his mistake when he writes that "[Dworkin] fails to say which feature makes [obsessive tastes] handicaps, or, *equivalently, endows their owner with a claim to compensation*"<sup>21</sup>). Conceding the distinction is not conceding that justice is about compensating involuntary disadvantage, but that bidders can coherently insure against the expense of tastes. This does not even give us evidence for the first reading of the option luck/brute luck distinction, let alone evidence that the chosen/unchosen cut is at the heart of Dworkin's theory.

#### V. *Against Dworkin's cut (II): obsessive tastes*

The distinction between a taste and its cost is put to use by Cohen in the second part of his argument as well. Here he aims to show that aligning the chosen/unchosen cut with the non-compensable/compensable cut is truest to Dworkin's own motivation. Given that what Cohen takes to be a cut of this latter type in Dworkin is in fact the more limited non-insurable/insurable cut, we should treat this as an argument for the alignment of the chosen/unchosen cut with that cut instead, or in other words, an argument for the first reading of the option luck/brute luck distinction.

Cohen, then, takes issue with Dworkin's treatment of 'handicap' tastes, which Dworkin discusses as follows:

Suppose someone finds he has a craving ... that he wishes he did not have, because it interferes with what he wants to do with his life and offers him frustration or even pain if it is not satisfied ... it makes perfect sense to say that he would be better off without it. For some people these unwanted tastes include

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<sup>21</sup> 'On the Currency of Egalitarian Justice', 926 (my italics).

tastes that they have (perhaps unwittingly) themselves cultivated ... They regret that they have these tastes, and believe they would be better off without them, but nevertheless find it painful to ignore them. These tastes are handicaps; though for other people they are rather an essential part of what gives value to their lives.<sup>22</sup>

One way of reading Dworkin here is as saying that a person who *regrets* her taste can be said to disidentify with it, such that it is an impediment to a successful life. As against this, Cohen once more stresses the distinction between a taste and its cost, and argues that one might regret (and disidentify with) the latter without disidentifying with the former. By Dworkin's own reasoning, it would therefore be right to say of the cost of an expensive taste that it might form an impediment to a successful life and may therefore be "assigned to the person's circumstances"<sup>23</sup>. As I have been recommending we understand the distinction, that would make the cost of tastes in principle insurable. That is of course the conclusion we reached at the end of the last section, and it is not a particularly damaging one.

Cohen further suggests here that Dworkin's treatment of handicap tastes implies that a distinction between chosen and unchosen underlies Dworkin's cut, which is ostensibly between person and circumstances. This would be an argument for the first reading of the option luck/brute luck distinction. Cohen has two reasons for this suggestion. The first is that

Dworkin's music craver prefers not to have his unfortunate preference yet, by hypothesis, persists in having it. That rather suggests that he cannot help having it, and that in turn raises the suspicion that it is its unchosen and uncontrolled,

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<sup>22</sup> *Sovereign Virtue*, 82.

<sup>23</sup> *Ibid.*



rather than its dispreferred, character, which renders compensation for it appropriate.<sup>24</sup>

The second is that

[s]uppose we offer [someone with an expensive taste] an inexpensive unrepugnant therapy which would school him out of it. If he agrees to the free therapy, then, so I believe, the ideal of equality says that he should get it, regardless of whether he says farewell to his taste with unmixed relief or, instead, with a regret which reflects some degree of identification. This suggests that identification and disidentification matter for egalitarian justice only if and insofar as they indicate presence and absence of choice.<sup>25</sup>

To begin with the first: is it true that Dworkin's example suggests that it is the unchosen nature of the craving that justifies egalitarian action – not compensation, *pace* Cohen, but offering insurance against it? It seems right to say that the music craver cannot help having his craving, and it is true that he would prefer not to have it. But this does not entail that it is the unchosen nature of the taste which justifies making insurance available. Indeed, in the passage quoted above, Dworkin is prepared to admit tastes which people *have* chosen – which gives us another reason to reject the first reading of the option luck/brute luck distinction. But even with respect to unchosen handicap tastes alone, is it their unchosen rather than their disidentified-with nature which justifies making insurance available for them?

Not necessarily. On the second reading of the option luck/brute luck distinction, the point is *precisely* the disidentification. What is required is that the taste must be something which someone could coherently insure against – that having to cater to that taste must be something which could get in the way of her plans for her

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<sup>24</sup> 'On the Currency of Egalitarian Justice', 927.

<sup>25</sup> *Ibid.*

life. Now given that we have already conceded that there is no reason that Dworkin should prohibit insurance against the possibility of a taste – with which its bearer identifies – turning out to be very expensive, it might not look as if there is any room for us to make a distinction within the Dworkinian picture between a taste which is expensive but identified with and a taste-as-handicap, which, given that it is a distinction we can easily make sense of, could represent a failure in that picture. (It would be a mistake to treat a drug addiction as on a line with a love of jazz.) But in fact we can make the distinction. Insurance against the former would simply be insurance against the possibility that a taste that one identified with might be expensive to satisfy. What the cover would provide would be some sort of subsidy for that taste. Insurance against the latter, on the other hand, would not provide cover for the taste so much as cover for the expense of schooling oneself out of the taste (though it might subsidise it in those cases where there was no possibility of that).

With this in mind, consider Cohen's second point, the intuition that egalitarians should grant someone the means to school herself out of her expensive taste if she agrees to do so, even if she identifies with it. Now in response to this we might ask: can she really identify with her taste, in the sense which matters for Dworkin, if she agrees to be helped to rid herself of it? A person's non-fraudulent application for her insurance cover to pay for her to be schooled out of a particular expensive taste is evidence enough that she does not identify with that taste, for if she did identify with it, it would be a different insurance policy which was triggered (assuming she has both types). Cohen's intention is to offer an example in which identification pulls a person in the opposite way to choice, and argue that it is the choice that counts from the point of view of egalitarian justice. But on Dworkin's view, choices like these track high-order preferences, which are (part of) what determines what it is about her

life that someone identifies with<sup>26</sup>. So the putative counterexample is no counterexample at all.

It might be objected that Cohen does not say that the agent completely identifies with the taste, but that we should give her the schooling-out therapy – that is, we should compensate her – even if she “says farewell to [the] taste ... with a regret which reflects some degree of identification”<sup>27</sup>. For example, when I decide to buy myself some nicotine patches and hypnotherapy to help me give up smoking, my decision may be tinged with regret as I reflect on how much a part of me cigarettes have become, even though I choose to school myself out of them. But as this example makes clear, the very fact that I choose to give up is evidence for a fundamental disidentification with smoking. My choice is not at variance with my identity here. So we cannot separate the two enough to say, as Cohen does, that choice alone counts and “identification and disidentification matter only if and insofar as they indicate presence and absence of choice”<sup>28</sup>. And so Cohen has not succeeded in making the first reading of the brute luck/option luck distinction compelling.

## VI. *Problems with Cohen*

In ‘On the Currency...’ Cohen considers the different case of someone who would refuse schooling-out therapy for some burdensome taste because of certain deeply-held convictions which were nevertheless unchosen. Because this taste is an

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<sup>26</sup> Frankfurt’s account of what it is to be a person (as contrasted with a ‘wanton’) in ‘Freedom of the Will and the Concept of a Person’ aligns identity with high-order volitions rather than first or second order desires. The latter define what someone wants and what she wants to want. The former, by contrast, define which desires she wants to move her. On Frankfurt’s account, someone with free will could not desire to be moved by her desire not to smoke and yet not identify with that higher-order desire. If Dworkin adheres to a similar account, then Cohen’s counterexample fails as I argue that it does.

<sup>27</sup> ‘On the Currency of Egalitarian Justice’, 927.

<sup>28</sup> *Ibid.*

unchosen burden, it would seem that Cohen will want it to fall on the compensable side of his cut. But because the person refuses the offer of therapy, it is not clear that compensation would be in order, even for egalitarians of Cohen's creed. Cohen's response is to alter the conditions triggering compensation: "[i]nstead of saying, 'compensate for disadvantages which are not traceable to the subject's choice,' say, 'compensate for disadvantages which are not traceable to the subject's choice *and* which the subject would choose not to suffer from'"<sup>29</sup>. The amendment is necessary because "some of the costs of unchosen commitments ... are not bad luck when they are so *intrinsically connected* with his commitments that their bearer would not choose to be without them"<sup>30</sup>. That is to say: a disadvantage is not bad luck – and so not compensable – if the bearer of the taste which *intrinsically* creates that disadvantage identifies with the taste. This distinguishes such a taste from 'unfortunately' expensive tastes such as a love of jazz.

First, let us note that Dworkin, on my reading, can take this type of example in his stride. It makes no sense to insure against a burden with which one identifies, as one does if it is intrinsic to a taste with which one identifies. So there is no chance of insurance payouts being triggered by such a burden, such that we must amend the theory to stop this happening. On the other hand, there is no incoherence in insuring, as we have seen, against the possibility of one's tastes turning out to be very expensive to satisfy. So the distinction which Cohen requires an amendment to cope with comes ready catered for in Dworkin's theory as we have been reading it.

Second, recall Cohen's contention that 'identification and disidentification matter only if and insofar as they indicate presence and absence of choice'. Cohen's amendment presumably means that at least disidentification matters only if and insofar as it indicates absence of choice *and counterfactual choice*. In Cohen's terms, that

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<sup>29</sup> Ibid., 937.

<sup>30</sup> Ibid., 937.

is to say that we should compensate people who disidentify with a taste only insofar as that disidentification signals the fact that they did not choose and *would* not choose that taste. But what motivated the amendment? The example of someone who undoubtedly had not chosen her taste, but who identified strongly with it all the same. The fact that Cohen did not opt for his strategy 2 – compensating the person anyway because she did not choose her taste<sup>31</sup> – suggests that contrary to his claims, absence of choice matters only insofar as it indicates disidentification, not vice versa.

Third, reflect on what Cohen takes his amendment to allow him to do, namely, to distinguish between burdens that are identified with and ‘unfortunate’ burdens that are merely the by-product of a taste that is identified with. He writes:

[T]hat Berg is more expensive than be-bop ... is just an unfortunate fact, and Berg lovers consequently do not break faith with their commitment to what they think is good music when they campaign for a Lincoln Center in which to hear it. Most would not choose to lack their esoteric taste, but they would certainly choose not to sustain the frustration that happens to accompany it, and that produces a relevant disanalogy with the [intrinsically burdensome taste]. It means that we might think it right to provide a Lincoln Center even for those who forgo an offer to be schooled out of their high-brow musical tastes.<sup>32</sup>

The thought is that the introduction of counterfactual choice allows us to put to use the distinction between a taste and its cost such as to make room to compensate even those who *choose* their high-brow tastes – the reason being that they did not, or would not, choose the *cost* of those tastes. But that is exactly what we did earlier in pointing out the significance of the distinction for Dworkin’s theory. Counterfactual choice is not a necessary component for Dworkin, however, because at least in theory the availability of insurance means Cohen’s counterfactual is Dworkin’s actual.

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<sup>31</sup> See *ibid.*, 936-7.

<sup>32</sup> *Ibid.*, 938.

Cohen's amendment leaves his theory looking at best like a confused version of Dworkin's: choice is supposed to be of paramount importance but then counterfactual choice is added when choice doesn't seem to give the right answers (the difficulties and subtleties of determining what people *would* choose ignored, however); chosen expensive tastes are supposed not to be compensated, but then the addition of counterfactual choice means they might be anyway; the refusal of an offer in the name of egalitarianism to school oneself out of an expensive taste is supposed to show that the taste is chosen, but then it turns out that it might not be anyway, and even if it is, the cost might not be. It might be wondered exactly how Cohen's revised picture avoids the expensive tastes objection which the central place of the notion of choice was supposed to help it avoid<sup>33</sup>. The only tastes which clearly are *not* eligible for subsidy are those chosen for their cost alone. And they were hardly the only target of the original objection<sup>34</sup>.

#### VII. *Against Dworkin's cut (III): two formulations*

The final part of Cohen's argument against Dworkin's cut is the charge that neither of two formulations that he gives in fact align with the compensable/non-compensable distinction the cut is supposed to ground. Since some handicaps are in ordinary language without doubt part of the person, the person/circumstances distinction requires some explanation (which I have been offering). Cohen finds two different explanations in *Sovereign Virtue*. The first comes from Dworkin's discussion of whether or not to treat expensive tastes as handicaps. There, he writes that his

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<sup>33</sup> The "centrality of choice of choice" upon which there was supposed to be "a proper insistence" (ibid., 933) seems to have lost some of its centrality after the amendments.

<sup>34</sup> Our Dworkinian picture, on the other hand, because it should not rush from the question of insurance to the question of compensation, will, as we shall see below, be perfectly able to avoid the expensive tastes objection.

argument produces a distinction between person and circumstances, and assigns tastes and ambitions to the person, while mental and physical powers are assigned to circumstances. “That is the view of a person I sketched in the introductory section,” he says, “of someone who forms his ambitions with a sense of their cost to others against some presumed initial equality of economic power”<sup>35</sup>. Cohen argues that in view of the way we ordinarily use language, the person/circumstances cut must be a technical distinction which can be expressed in another way. The passage in question, he claims, lends support to the view that one such way “has to do with the suggestion that people *form* their preferences but not, presumably, their powers”<sup>36</sup>. But people certainly do *not* form all of their tastes, and they *do* form some powers; so the suggested alignment between the person/circumstances and chosen/unchosen is false. Cohen therefore concludes that “it is only because Dworkin’s preference/resource distinction *looks* alignable with the one it cannot in the end match [between chosen and unchosen] that it commands appeal”<sup>37</sup>.

But we do not have to take ‘form’ to mean ‘choose’ as Cohen does. In these passages, Dworkin has missed the taste/cost distinction, and for our purposes that means he assumes one identifies with the cost of a taste as one does with that taste. Tastes so understood cannot be insured against (on pain of self-alienation) and so they are not resources in the way handicaps are. Now one is entitled to an equal resource share which one may tailor to one’s identity: but no more. One is responsible for the *cost* of one’s identity – and here that includes tastes – to others: beyond one’s equal share, one has no further claim to resources in order to raise one’s welfare levels. Thus responsibility for ends flows into responsibility for their cost to others. As Dworkin says, this produces the view of a person as forming his

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<sup>35</sup> *Sovereign Virtue*, 81.

<sup>36</sup> ‘On the Currency of Egalitarian Justice’, 928.

<sup>37</sup> *Ibid.*, 929.

tastes *with a sense of their cost to others against a background of equality of resources*. This contrasts with the welfarist picture according to which one considers one's tastes with no sense of their cost to others. That is the lesson we are to draw from the example of Adrian and Bruce.

The regret of someone who has a handicap or a non-intrinsically expensive taste, by contrast, makes room for the argument that justifies a compensatory hypothetical auction to begin. "The important point is that the idea of an insurance market is available here"<sup>38</sup>: we can imagine someone having the taste without the expense or the life-plans without the handicap. And thus the distinction between persons and circumstances is indeed produced – not, as Cohen contends (and as Dworkin mistakenly confirmed), presupposed<sup>39</sup>.

Now if insurance is available at auction according to the demands of sensitivity, the 'no further claim' argument has comprehensive application. Here, no one has any further claim in the name of equality, even if, because they chose not to insure, compensation for handicaps or the expense of tastes is not forthcoming. People must take responsibility for their plans and preferences and the cost of those plans and preferences against a background of equality. And this is how we should read 'forms' here. Cohen reads the claim that people form their tastes and ambitions as the claim that people are in fact (causally) responsible for them, which is clearly not true. But I think we should read it as the claim that people *take* responsibility for (the cost of) their tastes and ambitions against a background of equality. And this picture really is 'at the center of equality of resources' – throughout his criticism of equality of welfare and construction of an alternative, Dworkin has held the idea of a fair share, defined prior to any question of welfare levels, at the heart of his argument.

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<sup>38</sup> *Sovereign Virtue*, 83.

<sup>39</sup> See 'On the Currency of Egalitarian Justice', 928, n. 41.



Here we have an argument for the second reading of the option luck/brute luck distinction over the first. Cohen complains that Dworkin “assimilat[es] two very different kinds of process, only the first of which straightforwardly embodies choice”<sup>40</sup>, when he (Dworkin) uses the phrases ‘decide what life to pursue’ and ‘decide what sort of life one wants’ interchangeably. If Dworkin’s cut hinges on the presence of choice, then Cohen is right to complain. But on the second reading, it does not matter that one does not choose what sort of life one wants: the point is that one *identifies* with that life, and so cannot coherently insure against it. On the first reading, it looks like Dworkin is arguing that we should not allow insurance against (expensive) preferences because one has the choice as to what sort of life one wants. That is simply not true, and Cohen takes this to be evidence that Dworkin’s arguments against compensation are unfaithful to his own motivation. But if Dworkin is arguing that we should not allow insurance against (expensive) preferences because one identifies with those preferences (the ‘decide’ in ‘decide what sort of life one wants’ being the mark of endorsement rather than free choice), then Cohen’s argument has nowhere to begin: it is not clear that he has Dworkin’s motivation right at all.<sup>41</sup>

The second formulation of the person/circumstances distinction comes from Dworkin’s discussion of ‘handicap’ tastes:

The distinction required by equality of resources is the distinction between those beliefs and attitudes that define what a successful life would be like, which the ideal assigns to the person, and those features of body or mind or personality

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<sup>40</sup> Ibid., 929.

<sup>41</sup> These considerations can help us to make sense of Dworkin’s contention that “Cohen’s argument is actually an argument for simple equality of welfare” because although someone like Louis might have chosen his taste for champagne he will not have chosen his second-order taste for refined tastes. On the first reading, this should be a pressing worry for Dworkin as well: it would not make Dworkin’s an argument for equality of welfare, but it would make every post-auction development a threat to equality of resources. Yet Dworkin responds in this way to Cohen without any apparent worry about his own position.

which provide means or impediments to that success, which the ideal assigns to the person's circumstances.<sup>42</sup>

This formulation fits neatly with the reading of the first formulation we have just offered: 'those beliefs and attitudes that define what a successful life would be like' are obviously part of what makes it true for a person that she identifies with the life-plan that she does. So one could not coherently insure against them or that life-plan, on pain of self-alienation. On the other hand, 'those features of body or mind or personality which provide means or impediments to that success' are evidently the sorts of things which one could perfectly coherently insure oneself against; for one does not identify with means or impediments to what one defines as success. Of course there are problems – which we raised earlier – arising from the fact that there may be no answer even in principle to the question of what someone who is afflicted by such an impediment to her success would have defined as success had she not been so afflicted. But at least on the surface of it, the distinction Dworkin makes here is in line with his other formulations and in line with his (corrected) theory as a whole.

Cohen takes issue with this formulation on the grounds that it cannot deal with the example of cheerfulness. Cheerfulness, he argues, is not only a means but a welfare-enhancer, which makes it difficult for Dworkin adequately to compensate the gloomy<sup>43</sup>. But Dworkin has no reason to ignore the welfare-enhancing role of cheerfulness as part of what makes gloominess a handicap. We have already seen that welfarist considerations at this stage do not make the Dworkinian scheme welfarist: welfare deficits can be recognised as resource deficits. Cohen's intuition is that he has come up with an example which straddles the person/circumstances

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<sup>42</sup> *Sovereign Virtue*, 82.

<sup>43</sup> See 'On the Currency of Egalitarian Justice', 930.

divide. But if we can insure against it, it just is a circumstance, and therefore in principle the possibility of real-life compensation (via the possibility of insurance) is available here.

Cohen further objects that someone who insures against gloominess is not making the person/circumstances distinction thereby. He seems to suppose that the reply 'if we can insure against it, it's a circumstance' implies that a person's *actual insurance decision* determines whether gloominess falls on the person or circumstances side of things. But it is implausible to attribute this thought to Dworkin: it implies that by choosing not to insure against the (remote) possibility that I will contract smallpox, I am thereby placing smallpox on the person side of the person/circumstance distinction. But the fact that my resources are limited by equality means that considerations of priority, rather than of identity, may preclude such insurance (see chapter 5 below). Cohen's misreading of Dworkin's core motivation leads him not to see the possibility of this explanation.

The mistaken attribution carries over to a second further objection, namely that since an insuring individual knows what belongs to her person, and since in deciding whether or not to insure against gloominess an individual is supposed not to know whether she is gloomy, there is a contradiction inherent in the possibility of someone deciding *not* to insure against gloominess, since according to the mistaken attribution, that would be to place gloominess on the 'person' – known about – side of the distinction even as it is *ex hypothesi* not known about. There would be a contradiction here if the attribution were not mistaken, but it is, so there is none.

A more charitable reading of Cohen might take his point to be that insuring individuals are supposed to be ignorant of what they are insuring against, and yet a gloomy person's insurance decisions will surely stem in part from her gloomy nature. But that is just the point that led Dworkin to talk of structured categories of

insurance in the hypothetical theoretical auction for handicaps insurance, in response to the worry that there is no answer even in principle to the question whether a handicapped person would have insured against her handicaps. If this *is* Cohen's point, then he has missed the force of his own insight in applying it only to the case of gloominess.

### VIII. *Conclusions*

Cohen's central positive claim is that the grounding idea of egalitarianism, and specifically of Dworkinian egalitarianism, is that no one should suffer because of bad brute luck. I have argued that this is not Dworkin's grounding idea; insofar as Dworkin subscribes to it at all, it is because bad brute luck is the mark of insensitivity in the equal distribution of *resources*, and the solution is to remove it altogether from the picture by converting it into option luck – *not* to compensate it. Dworkin's 'cut' between person and circumstances merely flows from the possibility of insurance, which itself flows from the presence of bad brute luck and the notion of sensitivity. Dworkin does not put involuntariness in the foreground as a condition of compensation partly because nothing is a condition of *compensation* but at best a condition of the possibility of insurance, and partly because even as a condition of that possibility, on the second reading it is not involuntariness but absence of identification that is important. So Cohen's cut is not *trueer* to Dworkin's grounding idea, and I hope I have shown that nor is it obviously *better*, than Dworkin's own cut is.

## Chapter 4: A Synoptic Conclusion

### I. *Sensitivity and hypothesis*

In chapter 2 we examined the structure and workings of the Dworkinian equal auction. We concluded among other things that at bottom, the notion of sensitivity is doing a great deal of work. The envy test furnishes us with the criteria we need to judge an auction equal; but to choose the *ideal* auction from set of equal auctions, and so avoid the conclusion that equality of resources is a 'hopeless, because indeterminate' theory, we must appeal to something else. That something else turns out to be sensitivity to the plans and preferences (and tastes and ambitions) of the bidders.

In chapter 3 we considered two possible readings of Dworkin's distinction between option luck and brute luck and his treatment of them. The first reading placed the notion of choice at the heart of the distinction: the thought would be that people do not choose to suffer the effects of brute luck, whereas they do choose to suffer the effects of option luck. The second reading put sensitivity in that role: an auction at which people may insure against the effects of brute luck is for that reason more sensitive than one at which people may not; whereas an auction at which people may insure against the effects of option luck is not, for one identifies with the effects of option luck and so cannot coherently insure against them – which is to say that offering insurance would not make the auction more sensitive. In chapters 3 and 4 I argued for this second reading, which helps to fill out the notion of sensitivity uncovered in chapter 2.

But sensitivity remains somewhat mysterious. At the end of chapter 2 I concluded that for Dworkin to justify two of three requirements of the principle of

abstraction – namely, the requirement that constraints on resource-use be minimised and the requirement that the most advantageous available trades be taken – he must offer more than what I called the principle of translation, which is hinted at in *Sovereign Virtue* as a possible explication of the notion of sensitivity and therefore as a possible grounding for the principle of abstraction. The principle of translation cannot fully explain sensitivity and what it entails. I speculated that the required further explanation would have to be either to do with the value of choice for choice's sake, perfectionist, or welfarist. The first is plausibly rejected by Dworkin<sup>1</sup>, and the last, which seems anyway unlikely given Dworkin's discussions of welfare<sup>2</sup>, does not obviously fit the uses of sensitivity we looked at in chapters 3 and 4. That leaves perfectionism. So here I want to sketch an answer in the affirmative to the question: does some form of perfectionism give us what we need?

We have some clues to help us towards an understanding of the notion of sensitivity. Dworkin thinks that maximal sensitivity to bidders' plans and preferences mandates the availability of at least some diversity of resources. That means that an understanding of sensitivity which comes closest to Dworkin's own aims ought to make sense of that thought. We know too that on the second reading of the option luck/brute luck distinction, sensitivity is bound up with identity: an auction is insensitive to the extent that it offers no way for people to escape being forced to carry risks with which they do not identify.

The suggestion I am going to offer as the best understanding of sensitivity is also the key to a different problem that has been raised by our examination of Dworkin's theory. That problem is with the transition Dworkin makes from auction and

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<sup>1</sup> See *Sovereign Virtue*, 128.

<sup>2</sup> Although Dworkin is openly hostile chiefly to welfare *egalitarianism*, his discussion of the concept of welfare in Chapter 1 of *Sovereign Virtue* suggests that he thinks the possibility of coming up with an acceptable measure of welfare at all an impossible task. Well-being does of course come into sensitivity (see below); but it is not measured or used to rate one state of affairs over another.

insurance theory to the everyday realities of taxation and subsidy. In chapters 3 and 4 we noted that Dworkin mistakenly tends to elide theoretical insurance payouts with real-life tax-funded compensatory payments. Insurance payouts are mandated not by the theory of equality of resources but by the practice of insuring, which itself is condoned but not made obligatory by the theory of equality. Tax-funded compensatory payments have no place in the theory except as a second-best implementation of theoretical insurance practice. Importantly, tax-funded compensatory practice appears to have a tendency to counteract the motivation – sensitivity-maximisation – behind the very insurance practice it is supposed to mimic. This made problematic Dworkin’s putative solution to the problem of bidders in the theory buying insurance against outcomes about which they already had information: the hypothetical insurance market reduces sensitivity in theory, but this failure was presented as merely the inevitable result of practical implementation. The transition from theory to practice is supposed to but cannot be insulated from theoretical objections if it involves *creating* solutions to theoretical problems for which no theoretical solution is yet available.

Now there is another difficulty here to which uncovering this error alerts us. Dworkin’s auction theory is supposed to involve the behaviour of people like us. But the practices his theory prescribes ultimately rest on the behaviour of beings who could never exist. Sensitivity, in the final analysis, is supposed to be sensitivity to the plans and preferences of members *our* community. But to find out what that entails, people who *really* exist would have to make insurance decisions about outcomes they already knew to obtain, for example, or would have to answer ‘embarrassing’ questions about what their behaviour might be if they weren’t themselves. So a question arises: who exactly *should* populate the Dworkinian auction theory? Is there a way to keep it anchored in the real world, as Dworkin wants? Much of the theory

we have been reconstructing turns on this population's behaviour – but deciding what that is is not a matter of simple empiricism. We cannot literally look and see.

If we take these two problems together, we find ourselves in a situation which can show us a new way to understand sensitivity. It can be described as follows. The auction theory is supposed to be filled out with the real psychologies of our actual community. But it would not in theory show equal concern to all to base theoretical insurance market conclusions on the decisions of bidders – with our psychologies, remember – who had information in many cases about the outcomes they were insuring against; so we move them behind a veil of ignorance, to the hypothetical insurance market, where decisions are now those of the 'average member of the community'. But then even in finding out that average we face the problem of asking bidders to make insurance decisions based on 'embarrassing' counterfactual judgments; so we avoid doing so by structuring the market through categories. Yet this is apparently insensitive to the bidders in the theory, who were 'averaged out' in such a way as to go against the very point of insurance in the first place. And insensitivity to the bidders in the theory is, since 'they' are 'us', insensitivity to us. So far, this synthesis of the two problems does not look as if it reveals anything new to us.

But note that the problem of 'embarrassing' counterfactual judgments now applies in two different places. As before, it applies in theory, and can motivate the averaging move there. We can express the difficulty like this: putting any imagined (theoretical) community of bidders behind a veil of ignorance creates the problem of embarrassing counterfactual judgments. But the problem now also applies in a different way, for acknowledging that the theory is filled out with 'real' psychologies is acknowledging that questions we ask them in theory are questions we must ask ourselves in reality if we are to extract determinate conclusions from the theory at all.



We can express this difficulty thus: filling in the theory with real psychologies is problematic when the theory asks questions to which the real psychologies offer us no answer. One might assume that filling out auction theory with real psychology is a simple matter – perhaps a matter of ‘looking and seeing’ after all. But now we see that problems with the hypothetical insurance market are problems for this assumption too.

Now Dworkin’s solution to the first version of the ‘embarrassing counterfactual judgments’ problem is an averaging procedure – an appeal to a hypothetical representative member of the imagined community. Applying the same solution to the second version, recast in appropriate terms, can show us the way to the new understanding of sensitivity I mentioned. For now the averaging procedure becomes an appeal to a representative member of our actual community.

This helps us to understand sensitivity because although, as we saw above, taking real people’s counterfactual judgments as a guide to our theoretical community’s behaviour cannot work, we can as an alternative legitimise Dworkin’s appeal to ‘Average Person’ by casting it as an appeal to our actual collectively endorsed ‘best judgments’ instead. To see the contrast, imagine possible answers to the question: ‘would you have insured against being ugly?’ Many people might well answer that they would have. They might even place it fairly high on their list of potential outcomes worth insuring against. At the very least it might be thought, from a third-person standpoint, very likely that they would have. (Although all of these answers are subject to the ‘embarrassing counterfactual’ objection.) But asked instead for their best judgment – perhaps after consultation and deliberation – as to whether *one ought* to insure, in the hypothetical insurance market, against being ugly, I think few people would reply in the affirmative. The contrast is between what we actually do and what we think *matters*. We can come up with all sorts of questions which

provoke this contrast in replies, and many of them will be relevant to the conclusions we draw from the theory of resource equality.

With this new notion of sensitivity in mind, populating the theory with real people takes on a new aspect. Now that hypothetical versions of us populate the ideal auction, with sensitivity defined as *tailored to our democratically constructed and collectively endorsed hypothetical identities*, there is nothing insensitive about the theoretical move to a hypothetical insurance market. That is just so much more self-understanding, and it is no less sensitive than the original population of the auction with our idealised selves. (Note that we are not somehow corrupting Dworkin's much more grounded theory by elaborating sensitivity in this way: as I have been emphasising, he had a tacit appeal to 'Hypothetical Average Person' already<sup>3</sup>.)

So now the picture is this. We imagine the outcome of an auction populated by a community whose identities are a version of ourselves agreed upon by us – our selves as we want us to be as well as as we are. Since our – by which I mean our liberal western society's – best vision of our diverse community will include people who must make insurance decisions about afflictions they already know themselves to have, we must further imagine a hypothetical insurance market under a veil of ignorance in the way Dworkin describes, and then ask ourselves about the various decisions that the community, including that section of it, would make. Because at all points here we are constructing these people's identities, we are not embarrassed by counterfactual questions with no answers even in principle. Rather, we create the answers as we create the identities of the participants. Finally we use the theoretical conclusions to guide real-life policy.

Now we will need a theory of deliberative democracy which can supply us with an acceptable procedure for the construction of an identity for the theoretical

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<sup>3</sup> In 'Sovereign Virtue Revisited', Dworkin is more explicit about this appeal. See pp. 111-2.

community which we can all endorse. Crude majoritarianism will not suffice. I have not the space to attempt to describe such a theory here. But supposing we can come up with one, Dworkin's egalitarianism will have distributive consequences which flow from the ethics of the community for which it is designed. The theory is thus perfectionist; but only modestly so, for it is always accountable to the community for which it is created. Naturally, in a liberal society like ours, a liberal theory of distributive justice will result. But the structure of the auction and insurance markets will ensure that whichever society is concerned, the distributive consequences will always be egalitarian.

This new understanding of sensitivity helps to explain certain expectations about the result of equality of resources that Dworkin seems to have. His attitude towards compensation for expensive tastes and the expectation of diversity in resources as a requirement of sensitivity can be seen as flowing from the identities and consequent decisions *we* would collectively endorse as representative of our liberal community. This is the shape of one sort of response Dworkin can make, under my interpretation of his theory, to certain objections which I will turn to later.

## II. *Sensitivity and priority*

An objection which might be advanced against the elaboration I have offered, in chapters 3 and 4, of the relation between sensitivity and the brute luck/option luck distinction is as follows. Brute luck, I have said, is that which can be insured against. The availability of insurance against brute luck converts it into option luck. We identify with, directly or indirectly, the risks we incur when we leave outcomes to option luck; it is for that reason that it would be incoherent to insure against option luck. But brute luck, unconverted by the availability of insurance, is a threat to

equality of resources, because an auction at which insurance against it is not available is insensitive to the extent that it forces bidders to carry a risk which is no part of their life-plans. Compulsory insurance against brute luck is also insensitive to the extent that it forces people to pay *not* to carry a risk which may be part of their life-plans. But now consider the risk of scraping one's knee while playing tennis. Presumably it would be insensitive to make insurance against scraping one's knee in this way compulsory. But, goes the objection, that cannot be because the risk of scraping one's knee is one to which tennis-players are wedded<sup>4</sup>. So sensitivity cannot be explained in terms of identification in the way I have explained it; and it certainly cannot be explained in terms of the identity of our considered, 'best' selves.

This objection misses a point that is a crucial part of the theory of resource equality that we have been reconstructing. It is true that it would (in all likelihood) be insensitive to force people to pay for insurance against scraping their knees during a game of tennis. But there are two reasons for which it might be insensitive. One is quite simply that they are wedded to that risk as part of the life which they plan to lead. It is this type of reason that makes it insensitive to force people to insure against gambling losses: it rules out a way of life with which gamblers identify. The objection presupposes that this is the only sort of reason we can give, and rightly points out that it is inadequate, since it seems unlikely that the reason compulsory knee-scraps insurance is insensitive is that people are wedded to the risk of knee-scraps. But there is the second reason, which is a little more complex. Paying for insurance against scraping one's knee has an opportunity cost. The amount one spends on such insurance is so much not spent elsewhere. If one's top priority in life is to avoid uncompensated knee-scraps, then that does not matter. But where other ways of spending resources take priority over the wish to avoid uncompensated

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<sup>4</sup> Cf. the suggestion above (chapter 4, section VII) that by not insuring against smallpox a bidder places it on the 'person' side of the person/circumstances distinction.

knee-scrapes, it would be insensitive to force people to use their resources in the service of that wish, leaving insufficient resources left over to service the more highly-ranked priorities.

What should be clear from this is that it depends on the fact of bidders having limited resources; and that serves to emphasise that however much the theory takes preference-satisfaction or welfare considerations into account – and as Dworkin says, not to “would be mad”<sup>5</sup> – it is at heart a theory of equal *resource* shares, as Dworkin has maintained. Suppose there were infinite resources available to be devoted to each bidder’s life. In that case, spending money on one insurance policy would have no opportunity cost, except in the sense that it would rule out the possibility of being exposed to the risk being insured against. And then, as the objection presupposes, the only possible reason to say that compulsory insurance against knee-scrapes was insensitive would be that people identified with the risk of them. But in these circumstances that would not be particularly far-fetched.

### III. *The scope of the envy test (I): resources*

In chapter 2 I spoke of islanders’ envy for one another’s bundles of resources as the test for the equality of a division of those resources among them. At that point only impersonal resources were at issue: the second stage of Dworkin’s two-stage theory, in which brute luck is considered as a possible threat to an auction-created envy-free distribution, was not in play. In chapter 3, however, we considered Dworkin’s argument that the goal of equality ought to apply over the course of whole lives, rather than merely at some single moment in them. This led us to ask which post-auction developments might threaten equality of resources. The tool we used to ask

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<sup>5</sup> *Sovereign Virtue*, 490.

this question was, once more, the envy test: which developments would cause the envy test to fail?

Now in the case of option luck, the example we used was of a financial gamble – the gamble of impersonal resources. Losing gamblers might envy winning gamblers or indeed non-gamblers their bundles. But this sort of envy, Dworkin says, should not cause the envy test to fail. We should restrict the scope of the envy test such that the opportunity to gamble but not the outcome of any gamble is represented as part of a person’s bundle. This means that a losing gambler will not envy a winning gambler her winnings. I argued that this ‘doctoring’ of the envy test is motivated by the requirement of sensitivity, as mandated by the principle of abstraction. Thus sensitivity ‘trumps’ the envy test.

In the case of brute luck, by contrast, the example was of the handicap of being struck blind. If the envy test is threatened by this sort of post-auction development, it is not immediately clear whether that is because the envy test takes into account envy of other people’s *personal* resources as well as their impersonal resources, or because this sort of brute luck is taken to lead invariably to a deficit in *impersonal* resources, which leads to envy of other people’s impersonal resources, which threatens the envy test. Dworkin has suggested that the envy test applies both to personal and impersonal resources:

The auction ... is an auction of impersonal resources, and if personal resources are and remain unequal, *the envy test will not be satisfied*, either during or after the auction. Even if my impersonal resources are the same as yours, I will envy your total set of resources, which includes your talent and health as well.<sup>6</sup>

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<sup>6</sup> ‘Do Liberty and Equality Conflict?’, pp. 46-7, my italics.

The clear point is that personal resources are within the scope of the envy test. Yet in *Sovereign Virtue*, there are passages which suggest the opposite. For example:

If the auction is successful as described, then equality of resources holds for the moment among the immigrants. But perhaps only for the moment, because if they are left alone, once the auction is completed, to produce and trade as they wish, then the envy test will shortly fail. Some may be more skillful than others at producing what others want and will trade to get.<sup>7</sup>

Why, we might ask, if the envy test fails when people envy each other's bundles of impersonal *and* personal resources, need we wait until after the auction for it to fail?

So we need to decide whether the envy test includes personal resources or not, and we must examine the consequences of that decision. Before we do that, however, I want to look at a related difficulty also having to do with the scope of the envy test.

#### IV. *The scope of the envy test (II): time*

Throughout this thesis I have been claiming that with certain important qualifications, the availability of insurance fully converts brute luck into option luck. The qualifications have to do with the inadequacy of monetary compensation fully to compensate for various species of disadvantage that one might suffer through brute bad luck. In some cases, the risk against which insurance might be available will be of some quantifiable financial loss. It seems reasonable to say that in these cases, the availability of insurance does indeed fully convert brute luck into option luck. But in many important cases, this will not be so, and we face the problem of the

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<sup>7</sup> *Sovereign Virtue*, 73.

incommensurability of personal and impersonal resources, as Dworkin recognises when he introduces the idea:

Of course, insurance does not erase the distinction [between brute and option luck]. Someone who buys medical insurance and is hit by an unexpected meteorite still suffers bad brute 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.<sup>8</sup>

Take the example of blindness. The availability of insurance against blindness cannot convert the forced gamble of one's sight that would be one's lot otherwise into something which is optional, on the lines of a deliberate gamble, like the purchase of a lottery ticket. For complete conversion would entail that someone who was insured against blindness stood to lose absolutely nothing – as if she had not exposed her sight to chance at all. But in fact unless insurance claims are adequate to pay for the restoration of sight – and let us suppose that they are not, because such an operation is impossible – then even the insured will still be exposing themselves to bad brute luck.

In his paper 'Luck, Insurance, and Equality', Michael Otsuka has pressed Dworkin on this problem. He writes that

it will almost always be possible to transfer enough [impersonal transferable] resources from the able-bodied to the incapacitated so that no incapacitated person would prefer the bundles of the able-bodied to their own ... [I]t is highly plausible to assume that ... such deprivation and transfer that achieves a state of mutually shared misery would more closely approximate an envy-free distribution

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<sup>8</sup> *Ibid.*, 74.



of personal and impersonal than the compensation that Dworkin's insurance would award.<sup>9</sup>

Therefore providing equal opportunities to insure is not enough: we could move closer to an envy-free distribution if we pursued a policy of aggressive redistribution from the able-bodied to the incapacitated.

This is a one pitfall which awaits us if we are prepared to include personal resources within the scope of the envy test. One response, which I will consider below, would be to opt for the obvious alternative, and exclude personal resources from within the scope of the envy test, as is suggested by the passage I quoted in section III above. A worry immediately strikes us about this response, however: it seems to miss the point of the threat that brute luck poses to egalitarian justice – for is it not to ignore the arbitrariness in distribution of personal resources, an arbitrariness that we take to be an affront to equal concern?

A different response would be to treat even only partially converted brute luck as not subject to the envy test in the same way that option luck is not subject to the envy test. This is how Dworkin opts to respond in '*Sovereign Virtue Revisited*', a response to critics of his theory.

My actual claim is that 'the general ambition of equality of resources ... is to make circumstances equal under some appropriate version of the envy test' ... what equality requires is ... that people be put in the position they would probably occupy if they had had a chance to insure against illness or lack of talent on equal terms. The 'appropriate' version of the envy test takes *ex ante* the forms of handicap that Otsuka discusses, in other words, and could not, for that reason alone, require leveling down in response to those handicaps. Leveling down is ruled out, moreover, for an even more fundamental reason. The concrete requirements of equality of resources must be fixed in response to the sovereign

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<sup>9</sup> 'Luck, Insurance, and Equality', 5.

virtue I said government must pursue without compromise or mitigation. It seems as obvious as anything could that equal concern for all does not mean forcing some people to starve when that will do no one else any good.<sup>10</sup>

The central claim in this passage is that the right construal of the envy test is applicable to handicaps *ex ante* rather than *ex post*. What are we to make of this move? Well, in many cases – those where the risk of falling victim to some brute unlucky occurrence is spread evenly throughout the population and no one has already done so – applying the envy test *ex ante* will prevent it from failing. Our treatment of brute luck becomes analogous to that of option luck in that the likely envy of ‘losers’ for ‘winners’ is masked for the purposes of the envy test such that the test is met. But in other cases, where the risk is known to be greater for some than for others, the envy test will still fail, and that fact motivates a move behind the veil of ignorance, where even the spread of risk is unknown. The first move – to *ex ante* application of the envy test – prevents it failing in evenly-spread risk cases. The second – behind the veil of ignorance – prevents it failing in others. Despite Dworkin’s ‘moreover’, nothing inherent in the idea of an envy test (applying to personal and impersonal resources) can motivate this second move: *only* the abstract consideration of equal concern to which Dworkin rather vaguely appeals here can do that, with its unexplained condemnation of the sort of levelling down that Otsuka worries about.

The difficulties with this response to Otsuka’s objection begin with a question: how is Dworkin’s theory different, now, from the starting gate theories of which he was so dismissive? Dworkin talks of the goal of equality over the course of whole lives, rather than at any given moment: yet applying the envy test *ex ante* is applying our criterion for equality at only one moment in bidders’ lives. In the cases where

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<sup>10</sup> ‘Sovereign Virtue Revisited’, 123–4.

risk is to some extent known, we can stretch to seeing it as applying over whole lives in anticipation, as it were; but then the move behind the veil of ignorance removes this feature as well. Indeed, Dworkin's move here leaves his theory looking as if the second step I distinguished in what I called his two-step strategy has been dropped altogether. The auction remains in place, but post-auction developments of which in the second step we asked 'does this threaten the envy test?' now appear only impotently as possibilities which are stipulatively outcomes to the risk of which all are exposed to the same degree.

Of course in the ideal (perfectly sensitive) auction – an auction at which all brute luck is converted *fully* into option luck by the availability of insurance – nothing which arises post-auction can threaten the envy test, and in that sense the envy test has only *ex ante* application, as a criterion to be satisfied by that ideal auction. But by the argument so far, this application would be merely *de facto*: in principle the envy test continues to apply post-auction; it is merely that there is no brute luck to threaten it.

Now potentially threatening envy would on this picture be eradicated *only* by a perfectly sensitive auction like this; yet an auction cannot be completely sensitive. People cannot be *completely* insulated from risks with which they do not identify. And so there will remain some envy post-auction – owing to the 'residue' of brute luck which has not been converted – which we cannot just ignore if we hold the envy test to apply to both personal and impersonal resources. Otsuka rightly points out that the envy test will now require redistribution. Dworkin's response – the restriction of the envy test to *ex ante* application – flouts his own argument that equality, for which the envy test is a necessary criterion, should be an ideal governing the whole course of people's lives, rather than only any one moment in them. Such a restriction does not make it any the less true that insurance does not insulate people

completely from risks with which they do not identify. It merely ignores the consequences of that fact.

#### V. *Sensitivity and envy*

The 'obvious alternative' I mentioned above might offer a way out for Dworkin here. If the envy test applies only to impersonal resources, then the 'residue' of unconverted brute bad luck, which I have been assuming would continue to cause the envy test to fail even in an auction at which insurance was available, would not threaten equality of resources by way of causing the envy test to fail. This is because insurance provides us in principle with a means to convert brute luck fully into option luck insofar as the brute luck is a matter of impersonal resource deficits. Dworkin could in this way acknowledge the applicability of the envy test *ex post* while maintaining that nevertheless the possibility of uninsurable personal resource deficits which formed the base of Otsuka's objection does not present the sorts of difficulties for his theory that we have been considering.

I think this is the right strategy for Dworkin. The filled-out version works as follows. The envy test is a necessary condition of an equal distribution of resources, both at the time of the auction and over the lives, post-auction, of the bidders. It applies to the resources that are shared out at auction – impersonal resources – and its failure requires redistribution until it is met. But not all inequalities in impersonal resources threaten the envy test, for some may arise even after a completely sensitive auction. If the envy test is permitted to fail as a result of these and forces redistribution, the results will be less sensitive than if it is not; and sensitivity therefore deems option luck-related envy irrelevant to the envy test. Brute luck may also cause envy, and where that envy is of impersonal resources it may in theory

cause the envy test to fail. However, because brute luck is insensitive, sensitivity calls for it to be converted into option luck; and since complete conversion of impersonal resource-related brute luck is possible, after a completely sensitive auction, brute luck will never cause the envy test to fail.

But not all brute luck relates to impersonal resources: important cases have centrally to do with what we call personal resources. Personal resource deficits are those things which it is coherent to insure against which are not impersonal (transferable) resource deficits. Although we call them personal resources, they are not resources in the sense in which impersonal resources are, and as Dworkin says, the problem is to determine how far the ownership of impersonal resources should be affected by differences in personal resources. Insurance answers that problem. A completely sensitive auction would allow people to insulate themselves completely from the exposure of personal and impersonal resources to risk. However, insurance policies, conducted as they are in the currency of impersonal resources, cannot fully insulate people from that exposure. The impossibility of complete insulation is the impossibility of complete sensitivity, and therefore there will even after a maximally sensitive auction be a 'residue' of unconverted brute bad luck affecting some people. These people may envy others their personal resource-related good fortune, but that envy will not cause the envy test to fail. It is merely the mark of a less than completely sensitive auction. Were it possible to convert even that residue, sensitivity would require this. As it is, we can point out that the ideal auction is impossible, and endorse the nearest feasible auction to the ideal. This solution acknowledges the incommensurability of personal and impersonal resources while avoiding being sucked down into efforts to equalise bundles including both<sup>11</sup>.

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<sup>11</sup> The solution also explains the sense of Otsuka's point that were a cheap cure to become available for a previously incurable disease, we would be that much nearer to the egalitarian ideal (see *ibid.*, 124, n. 33). The *ex ante* application of the envy test to both personal and impersonal resources that

This acknowledgment is the key to a satisfactory response to the worry I mentioned earlier. The worry was that if we take the envy test to apply only to impersonal resources, we miss the true nature of the threat that brute luck poses to equality because we concentrate on effect (impersonal resource inequality) rather than cause (personal resource inequality). Bad brute luck, in the central cases, takes the form of a deficit in personal resources, and this is why it threatens an egalitarian society. But in the picture I have outlined, this point is not ignored. Sensitivity, the component of Dworkin's egalitarian theory which condemns bad brute luck itself rather than the impersonal resource inequalities it can lead to, recognises that brute unlucky personal resource deficits are a threat to egalitarianism, and moreover it explains why. It is a practical fact that certain deficits cannot be eliminated using impersonal resources, and sensitivity gives us reason to lament that fact. It requires bidders to be free to take out cover in order to be compensated to the level they feel they are compensable, while respecting the fact that no more than a fair share of resources can be devoted to each life. It is right that sensitivity, and not the envy test, should face the problem of incommensurability, for as Dworkin says, the question is of how far the ownership of impersonal resources should be determined by the distribution of personal resources rather than of how to equalise bundles of personal and impersonal resources; and sensitivity provides us with the right way to face the problem while respecting that fact.

The picture of Dworkinian egalitarianism we have now built up involves a recognition that giving people each the same amount of resources is not in itself enough to match what is required by a principle of equal concern for all, for resources are means to ends, and merely giving everyone the same impersonal

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Dworkin suggests in response to Otsuka's paper does not tell us how this could be so. But on my picture, what would have happened in this case is that while the auction remained *equal*, it moved one step closer to the maximally sensitive ideal.

resource bundle may favour some people's ends over others. Division by auction, regulated by the envy test, acknowledges this fact in one way. Making insurance available against brute (not option) unlucky impersonal resource deficits acknowledges it in another way. Underlying this latter is the thought that a sensitive distribution – one which manifests equal concern – allows people to use their equal allocation of resources to insulate themselves from impersonal resource deficits not incurred as part of their preferred lives. That reasoning extends to a recognition that personal resource deficits can also be impediments to a person's ends; and so it should be possible to insure against them as well. Some personal resource deficits are such that no insurance policy could cover them completely. To this extent the auction is not as sensitive as the ideal, and so we do not have perfect equality. (This is different from the fact that some resource deficits are such that no one could afford, with her equal share, to purchase full cover against them; that is not a failure but the consequence of a virtue of resource egalitarianism.) But we should not forget that acknowledging this is merely acknowledging that there is bad brute luck that we cannot do anything about. A failure of sensitivity cannot be addressed in this case by settling the envy test with respect to personal resources: that would be to ignore the nature of personal resources and the distinction between them and impersonal resources. As Dworkin says, "It seems as obvious as anything that equal concern for all does not mean forcing some people to starve when that will do no one else any good."<sup>12</sup>

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<sup>12</sup> Ibid., 124.

## VI. *Dworkin and anti-'luck' egalitarianism*

Many recent critics of Dworkin have taken him to be representative of a group of egalitarian theorists dubbed 'luck egalitarians' by Elizabeth Anderson<sup>13</sup>. These theorists are understood to espouse what Anderson calls 'equality of fortune'.

Dworkin has been lined up alongside, among others, Cohen, Arneson and Kymlicka by egalitarian philosophers who take issue, on egalitarian grounds, with certain ideas that they take to be at the core of equality of fortune and therefore credit to him<sup>14</sup>. I have not the space to attempt a refutation of these philosophers' objections. But I do not think that Dworkin's theory as I have reconstructed it is vulnerable to them: in summary because none of the disputed core ideas can be credited to it. I say nothing about whether or not the criticisms are fairly directed at their proper target; only that Dworkin is not it.

The central objection to equality of fortune is to its definitive characteristics, choice-sensitivity and luck-insensitivity. Choice-sensitivity entails that insofar as advantages or disadvantages accruing to someone are the result of her own choices, inequalities constituted by them are not to be considered a threat to an egalitarian distribution. Luck-insensitivity entails that insofar as advantages or disadvantages accruing to someone are the result of bad luck, inequalities constituted by them are a threat to an egalitarian distribution. It is contended on equality of fortune's behalf that choice-sensitive exceptions to equal distributions allow egalitarians to recruit the traditionally right-wing notion of responsibility to the egalitarian cause. But a number of powerful objections have been made to choice-sensitivity.

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<sup>13</sup> See 'What is the Point of Equality?'

<sup>14</sup> See for example Anderson, 'What is the Point of Equality?'; Wolff, 'Fairness, Respect, and the Egalitarian Ethos'; Shiffrin, 'Egalitarianism, Choice-Sensitivity, and Accommodation'; Hinton, 'Must Egalitarians Choose Between Fairness and Respect?'



It should be clear that for these criticisms to be applicable to Dworkin, we must attribute the first, choice-based reading of the option luck/brute luck distinction that I distinguished in chapter 3. But we rejected that reading: whether a person's circumstance arises as a result of her choice is not salient for the purposes of egalitarian justice. So I conclude that the strand of egalitarian criticism directed at choice-sensitivity only mistakenly includes Dworkin in its target.

A further charge is that equality of fortune can escape some of the objections, but only by appeal to paternalism.<sup>15</sup> I take Dworkin to have escaped them. Is this the result of a paternalistic move? To some extent, of course, given our unabashed acceptance of a degree of perfectionism, we might indeed seem to have embraced something like that move. But the accusation is meant as a criticism because it is understood to imply that equality of fortune sees some citizens as somehow not responsible enough to use their responsibility – a judgment made by some sort of elite. The Dworkinian perfectionism I have sketched is, however, importantly different from an elitist paternalism. The make-up of society which determines the nature and reach of sensitivity is designed, in accordance with a collective and ethically informed set of considered judgments, and endorsed democratically by the society to which the theory is to be applied. Ironically, the fuel for Dworkin's theory is extracted from our real lives democratically in accordance with a definition of democracy which shapes Anderson's alternative to equality of fortune: "Democracy is here understood as collective self-determination by means of open discussion among equals, in accordance with rules acceptable to all"<sup>16</sup>. Such discussion and the rules binding it are bound to be heavily informed by the ethical outlooks of the

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<sup>15</sup> Anderson, 'What is the Point of Equality?', 300-1.

<sup>16</sup> *Ibid.*, 313.

participants, so Anderson's democratic society is no less shaped by perfectionism – that of the participants, as with Dworkin's – than the one I have been developing.<sup>17</sup>

This reply also points us towards the way Dworkin can defuse the criticism of equality of fortune that it interferes with citizens' privacy and autonomy. This takes a number of different forms. On the one hand, there is the simple fact that determining to what extent someone was capable of exercising responsibility is intrusive and can impugn her moral sovereignty. Since, however, the generality of taxation is already built into the population of the theoretical construct of insurance markets and auctions by the fact that it is a democratically created construct, no such judgments will be made – assessments will be made on the basis, for example, of income or need, as they are now.

Choice-sensitivity, as I said above, has been valued as a way to recruit intuitions about responsibility into egalitarian theory, too often criticised for its blindness to those intuitions. I have been dissociating Dworkin from choice-sensitivity theorists. Does that mean that Dworkin's theory as I have been reconstructing it forgoes the chance to appeal to critics of 'responsibility-blind' egalitarianism? No. Choice-sensitivity is only one way in which to incorporate some notion of responsibility into a theory, and, to judge by the volume of recent criticism, it is inequalitarian anyway. Dworkin's theory is sensitive to the thought that we are responsible – but the sort of responsibility it incorporates is not responsibility for our every choice, but, to use Rawls' famous phrase, responsibility for our ends. The notion of sensitivity which is at the heart of Dworkin's egalitarianism is the notion of sensitivity to the identities of

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<sup>17</sup> The modest perfectionism I am advocating ought to have no problem with Anderson's separate criticism that it is not clear why real or hypothetical (counterfactual) choices are relevant to society's obligations. The reason, on my view, that the choices made by hypothetical bidders are relevant to the obligations we have to each other as a society is that they flow from the ethical judgments about ourselves which we make in shaping the population of the auction.

bidders – and it is responsibility for one’s identity and the costs of that identity which the auction and hypothetical insurance market devices encourage.

## VII. *Conclusions*

The majority of this thesis has been spent attempting to reconstruct Dworkinian equality of resources in a way that is coherent and consistent with the central claims he makes for it. Where I have departed from literal readings – such as over the grounding for the brute luck/option luck distinction or the relation between the theory and practice of compensation – it has been either because Dworkin is ambiguous or inconsistent or because he is mistaken in ways I have demonstrated. I have also attempted to make clear how the most defensible version of Dworkin’s theory must be perfectionist, in the sense that it must answer to the collective morality of the society to which it is supposed to be applied. In doing so I do not take myself to have been proposing a radically different grounding for equality of resources, but making more explicit the nature and extent of Dworkin’s appeal to our own (liberal) society’s best judgments in formulating the decisions of hypothetical bidders and insurance purchasers. My intention has been in part to build to a theory from the texts Dworkin has given us which can ground Dworkin’s protestations that he is wrongly classed with Cohen, Arneson *et al*<sup>18</sup>; his defences against their criticisms; and a consequent immunity to the more recent criticisms of egalitarians who dispute the value of choice-sensitivity to egalitarianism. But most importantly I have aimed to show that Dworkin’s equality of resources, whether ultimately defensible or not, is an original, powerful and above all distinctive contribution to the field.

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<sup>18</sup> See ‘*Sovereign Virtue Revisited*’, 107.

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