

# On Dworkin's Brute Luck-Option Luck Distinction and the Consistency of Brute Luck Egalitarianism\*

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Martin E. Sandbu

Center on Globalization and Sustainable Development  
The Earth Institute  
Columbia University

sandbu@post.harvard.edu

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**Abstract:** Egalitarian thinkers have adopted Ronald Dworkin's distinction between brute and option luck in their attempts to construct theories that better respect our intuitions about what it is that egalitarian justice should equalise. I argue that when there is no risk-free choice available, it is less straightforward than commonly assumed to draw this distinction in a way that makes brute luck egalitarianism plausible. I propose an extension of the brute luck-option luck distinction to this more general case. The generalised distinction, called the 'least risky prospect view' of brute luck, implies more redistribution than Dworkin's own solution (although less than called for by some of his other critics). Moreover, the generalised brute luck-option luck distinction must be parasitical on an underlying non-egalitarian theory of which sets of options are reasonable. The presupposed prior theory may be inimical to the claim that justice requires equality rather than some other distributive pattern.

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## On Dworkin's Brute Luck-Option Luck Distinction and the Consistency of Brute Luck Egalitarianism

### I. Introduction

Political philosophers have produced a great many answers to Amartya Sen's question 'Equality of *what*?'<sup>1</sup> Much of the most important work on distributive justice in the past two decades has focused on what Gerald Cohen calls the 'currency of egalitarian justice'.<sup>2</sup> We have been supplied with a plethora of refined proposals of what it is distributive justice should distribute: Utility or welfare, an index of primary goods, Ronald Dworkin's 'resources,' Sen's 'capabilities' and Cohen's 'access to advantage' are just the most prominent examples.

Dworkin's contribution to egalitarianism is particularly noteworthy.<sup>3</sup> By distinguishing between the effects of fortune that should or should not be a concern for justice — between inequalities that are traceable to 'option luck' or 'brute luck' — Dworkin has, in Cohen's words, 'performed for egalitarianism the considerable service of incorporating within it the most powerful idea in the arsenal of the anti-egalitarian right: the idea of choice and responsibility'.<sup>4</sup> Egalitarians were previously vulnerable to what we may call the 'ambition critique.' Because of the moral importance of people's differing ambitions and choices, anti-egalitarians could argue, it must be wrong to eliminate inequalities that result from people's preference for different kinds of lives, some hard-working, others leisurely. Equipped with Dworkin's distinction between brute luck and option luck, egalitarians can respond that what they want to equalise are inequalities caused by differential brute luck, rather than all inequalities. This refinement I call *brute luck egalitarianism*.

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<sup>1</sup> Amartya K. Sen, *Inequality Reexamined* (Cambridge, MA: Harvard University Press, 1992).

<sup>2</sup> Gerald A. Cohen, 'On the Currency of Egalitarian Justice', *Ethics* 99 (July 1989): 906-944.

<sup>3</sup> Dworkin's seminal contributions are collected in Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press, 2000).

<sup>4</sup> Cohen, 'On the Currency of Egalitarian Justice', p. 933.

Dworkin's distinctive approach to luck and justice has attracted renewed attention since the publication of his collected arguments for brute luck resource egalitarianism.<sup>5</sup> Many commentators are sympathetic to his general approach; indeed they are more Dworkinian than Dworkin to the extent that they criticise Dworkin for not correctly tracing out the detailed implications of his own view. An important target of criticism has been the brute luck-option luck distinction and its most important application, *viz.* Dworkin's argument that an egalitarian government should try to replicate the contracts that would be entered into in a hypothetical market for insurance against differences in talents and earnings abilities.<sup>6</sup>

This essay falls into the same camp of sympathetic commentaries, as my arguments mostly take for granted Dworkin's general approach to distributive justice. I do not challenge its fundamental precepts; instead I attempt to address problems relating to its implications and its presuppositions. In particular, I follow Dworkin in presupposing that justice requires some form of egalitarian distribution (until section VI where I question this view). I also accept that option luck-induced differences need not be equalised, while brute luck-induced ones do; and I take option luck and brute luck to be exhaustive and exclusive categories.<sup>7</sup> Finally, I accept Dworkin's use of the brute/option luck distinction to argue that distributions are just when they would have resulted from the choices people would counterfactually have made under appropriate conditions. My goal is to probe further what the appropriate conditions are, and to shed light on some problems relating to the definition of brute luck and option luck that have not received sufficient attention. Like Michael Otsuka's critique, my argument observes that Dworkin's conditions for

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

<sup>6</sup> See in particular Marc Fleurbaey, 'Equality of Resources Revisited' *Ethics* 113 (October 2002): 82-105; Michael Otsuka, 'Luck, Insurance, and Equality', *Ethics* 113 (October 2002): 40-54; Peter Vallentyne, 'Brute Luck, Option Luck and Equality of Initial Opportunities', *Ethics*, 112 (April 2003): 529-557; and Robert van der Veen, 'Equality of Talent Resources: Procedures or Outcomes?' *Ethics* 113 (October 2002): 55-81.

<sup>7</sup> In contrast, Kasper Lippert-Rasmussen, 'Egalitarianism, Option Luck, and Responsibility', *Ethics* 111 (April 2001): 548-79, does not follow Dworkin's exoneration of option luck differences, but argues 'that differential option luck is bad from the point of view of equality' (p. 549).

when insurance converts brute luck into option luck are too weak.<sup>8</sup> This is because although partial insurance may be possible, full insurance may be unavailable or unreasonable. I investigate how the definition of brute luck can be refined to tackle this problem, while remaining within the spirit of elaborating Dworkin's overall approach to questions of justice. This leads to a modified brute luck egalitarianism that remains faithful to Dworkin's commitment to ambition-sensitivity. In this my analysis differs from Otsuka's, which jumps to the conclusion that *ex post* inequalities should be eliminated in cases of less than reasonable and full insurance. Moreover, I show that Otsuka's specification of when insurance fails to convert brute luck into option luck misunderstands Dworkin's approach.

To show that the distinction between brute luck and option luck is conceptually more problematic than is often thought, the paper proceeds as follows. I show in section II that Dworkin's own definition is imprecise and invalidly generalises from the special case of full insurance. I offer two possible generalisations in section III. Neither definition, however, can do the job that Dworkin's theory needs it to perform. This is because even when full insurance is available, it may be an unreasonable option. Ultimately a workable distinction between brute and option luck can only be defined with reference to non-egalitarian principles of reasonability (section IV). This leads to two problems. One is specific to Dworkin's resource egalitarianism, as it undermines his argument that true equality is given by the equilibrium of a hypothetical insurance market (section V). The other applies to brute luck egalitarianism generally, as the claims of justice that support the distinction between brute luck and option luck threaten the appeal of equality as the prime distributive principle (section VI). Section VII concludes.

## **II. Full or partial insurance?**

Dworkin defines the distinction between option luck and brute luck as follows: 'Option luck is a matter of how deliberate and calculated gambles turn out — whether someone gains or

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<sup>8</sup> Michael Otsuka, 'Luck, Insurance, and Equality'.

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'.<sup>9</sup> I start by briefly illustrating how Dworkin proposes to use the brute luck-option luck distinction to disarm the ambition critique of egalitarianism. He does so by arguing that a plausible egalitarianism must satisfy the principle of *ambition-sensitivity*. Thus, if the background conditions are the same for everyone, then there should be no compensation for the inequality between those who have chosen safe versus risky actions: 'People should pay the price of the life they have decided to lead, measured in what others give up in order that they can do so [...] 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'.<sup>10</sup> Second, Dworkin argues that there should be no redistribution between the winner and the loser of a gamble, because this difference is caused by a risk they both chose to take upon themselves and could have declined. Thus, 'the possibility of loss was part of the life they chose... it was the fair price of the possibility of gain'.<sup>11</sup>

We can schematise Dworkin's argument by reference to the simple graphic in figure 1. In the rest of the paper, each such graph will be called a prospect, where each node before the endnodes represents a choice faced by the individual or the realisation of an uncertain event outside of the individual's control. The endnodes indicate the amount of resources<sup>12</sup> that the individual possesses in that state of affairs.

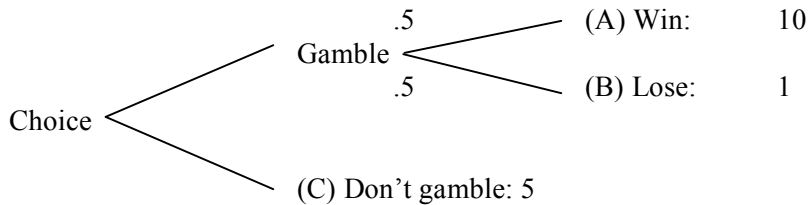
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<sup>9</sup> Dworkin, *Sovereign Virtue*, p. 73.

<sup>10</sup> *Ibid.*, p. 74.

<sup>11</sup> *Ibid.*, p. 74-5.

<sup>12</sup> Since it is in Dworkin's work and the criticism of it that the notion of brute luck has been most widely employed, the discussion refers to his analysis of resource egalitarianism. It is important to note, however, that the arguments presented here apply to all forms of brute luck egalitarianism, regardless of the specific currency or *equalisandum* they use.



(Fig. 1)

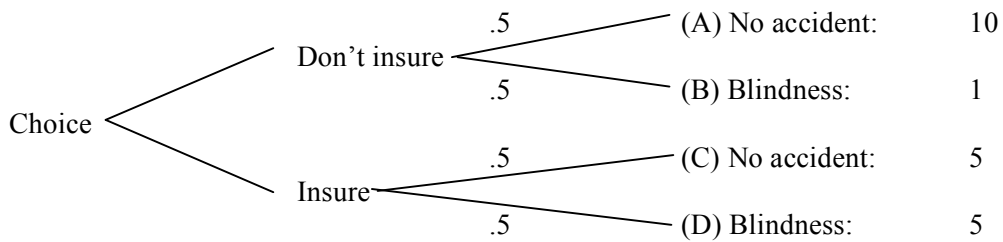
Suppose Joe and Mary both face the situation depicted in figure 1. What does egalitarianism require, according to Dworkin, if they end up at different endnodes, either because of different choices or differential luck? Ambition-sensitivity rules out redistribution either from (A) to (C) or from (C) to (B) — these outcomes are caused by different choices amongst options that were equally available to both Joe and Mary, and so any difference in resources between them is a matter of option luck. Similarly, resource egalitarianism does not require — indeed it prohibits — redistribution from (A) to (B), since that difference is due to different realisations of a freely accepted gamble that is available to both Joe and Mary, and the inequality is therefore again a matter of option luck.

It is with the advent of insurance that ambition-sensitivity takes on its full role. In Dworkin’s scheme, the availability of insurance *converts* what would otherwise be brute luck effects into option luck effects:

‘... the possibility of insurance provides, as I suggested, a link between the two kinds of luck. For suppose insurance against blindness is available, in the initial auction, at whatever level of coverage the policyholder chooses to buy. And also suppose that two sighted people have, at the time of the auction, equal chance of suffering an accident that will blind them, and know that they have. Now if one chooses to spend part of his initial resources for such insurance and the other does not, or if one buys more coverage than the other, then this difference will reflect their different opinions about the relative value of different forms or components of their prospective lives... [T]he bare idea of equality of resources, apart from any paternalistic additions, would not argue for redistribution from the person who had insured to the person who had not if, horribly, they were both blinded in the same accident. For the availability of insurance would mean that, though both had had brute bad luck, the difference between them was a matter of option luck, and the arguments we entertained against disturbing the results of option luck under conditions of equal antecedent risk hold here as well.’<sup>13</sup>

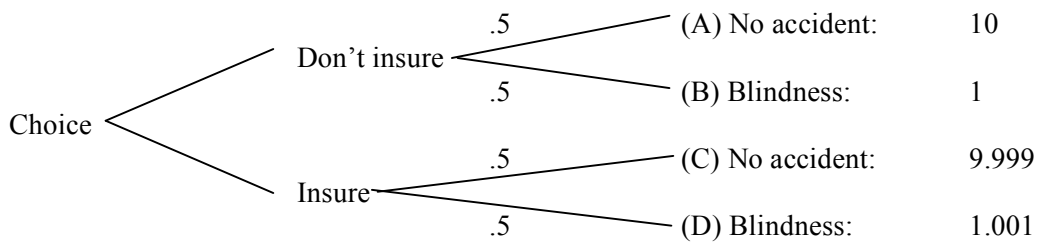
We can illustrate this situation with figure 2:

<sup>13</sup> Dworkin, *Sovereign Virtue*, p. 77.



(Fig. 2)

If there were no insurance, and only the top half of the prospect were feasible, equality would require redistribution from (A) to (B). But when the choice to insure is available, the prospect is essentially the same as that in figure 1. Like in that prospect, Dworkin argues, no redistribution is required between any of endnodes (A), (B), (C) or (D), since the risk in the top part of the prospect was freely entered into. But Dworkin's prose does not sufficiently stress that this conclusion depends not only on the availability of insurance, but on there being an opportunity to insure *fully*, that is, on there being a completely risk-free option. For surely, if only *partial* insurance is available, then it is not true that 'the availability of insurance would mean that [...] the difference between them was a matter of option luck'.<sup>14</sup> To see this, consider the following example of extremely partial insurance:



(Fig. 3)

In figure 3, only very little insurance is available, and nobody would claim that the scant insurance one can get is enough to convert all the brute luck into option luck.

Michael Otsuka makes a similar point: 'No such policy [that transforms all brute luck effects into option luck effects] would exist (1) if it were impossible fully to compensate the harm or (2) if, although it is possible fully to compensate the harm, the cost of purchasing such

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<sup>14</sup> *Ibid.*, p. 77.

insurance that compensates fully were (2a) beyond the capacity of the individual to purchase or (2b) within his or her capacity to purchase yet unreasonably expensive'.<sup>15</sup> That is, insurance could be only partial, or full insurance could be too expensive. I postpone the challenge of full but overly expensive insurance to section IV. Here I address the question of partial insurance, which resembles Otsuka's case 1. It is necessary to note, however, that Otsuka's definition of fully compensating insurance is inadequate. He says: '... "full compensation" is understood as an amount of money awarded that would make the person indifferent between (1) that amount of money plus the harm and (2) the absence of that amount plus the absence of the harm'.<sup>16</sup> But this talk of indifference has no place within the structure of Dworkin's theory. It is no requirement for resource egalitarianism that the insurance leaves the blinded policyholder equally satisfied after the accident as before it. That might be required by a theory of *welfare* egalitarianism. Dworkin, in contrast, quite explicitly does not want to equalise welfares, but resource stocks as measured by their social opportunity cost, since this better meets the requirement of ambition-sensitivity. Fully compensating insurance should therefore be defined as insurance that equalises the resource stocks of those insured persons who are and those who are not blinded. Whether they are indifferent between those two *ex post* situations is irrelevant, since in resource egalitarianism, preferences' only role is to determine the idealised competitive market valuation of the resources' social opportunity cost.<sup>17</sup> In particular, this means that Otsuka's definition of full insurance fails to understand Dworkin's approach.

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<sup>15</sup> Otsuka, 'Luck, Insurance, and Equality', p. 44.

<sup>16</sup> *Ibid.*, p. 44.

<sup>17</sup> Indeed it is unlikely that people would be indifferent between a lucky and an unlucky outcome with equalised resource stocks. Resource stocks are measured by their social opportunity costs, which depend on their marginal values in Dworkin's hypothetical auction. If two resource bundles have the same price in the hypothetical auction — which is how we can say that they are "equal" without them being physically identical — they must have the same marginal value in the hypothetical auction equilibrium. That does not mean people will be indifferent between the two situations *ex post*, for two reasons. The first reason is that utility levels could be different even if the marginal utility of a resource unit is the same in the two situations. The second reason is that people's preferences in the real world can be different from their preferences in the hypothetical auction.

It is correct, however, that resource egalitarianism as stated in *Sovereign Virtue* is unsatisfactory. The appeal of Dworkin's own conclusions hinge on a literal interpretation of the condition that insurance be available 'at *whatever* coverage the policyholder chooses'.<sup>18</sup> Unless an agent's alternatives include a completely risk-free option, we cannot conclude that the entire risk is one of option luck and therefore not a concern for egalitarian justice.<sup>19</sup> Dworkin's reasoning, then, relies on a special case. Yet in his overall argument he generalises the answers he gives for the special case. He is quite clear, for example, that the hypothetical insurance market whose contracts he wants to guide the tax regime of egalitarian governments, would not offer full insurance, yet he applies to it the insights from the full-insurance case.

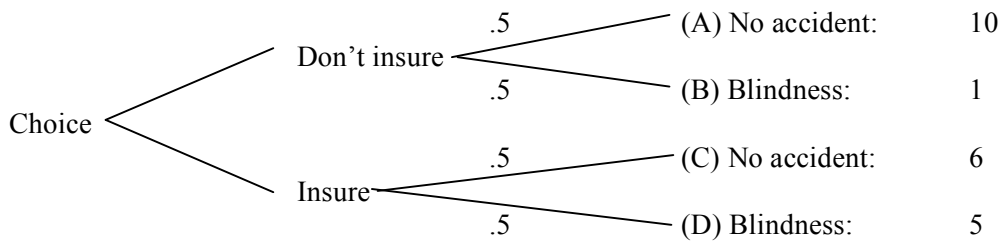
Any theory of brute luck egalitarianism, whether in Dworkin's resourcist version or based on another currency, must therefore develop a missing step in the argument if it aspires to completeness. This step is to generalise the role of insurance in converting brute to option luck to partial insurance. There is no *a priori* reason to think that this cannot be done. Until it is shown that it cannot, it is too quick to conclude that brute luck resource egalitarianism must instead equalise *ex post* resource stocks, as Otsuka claims. In order to remain faithful to the general thrust of brute luck egalitarianism, we must attempt to work out a refinement of Dworkin's definition of brute luck that can deal with partial insurance cases.

Consider a case where full insurance is *not* available, but where the partial insurance policy provides for more coverage than in figure 3:

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<sup>18</sup> Dworkin, *Sovereign Virtue*, p. 76; italics added.

<sup>19</sup> We cannot even conclude this in every case where there is a risk-free option, as I discuss below in section IV.



(Fig. 4)

In this case, it is possible to insure quite a bit, but not fully: The available policy offers coverage of 8 units of resources in the case of blindness, at a premium of 4 units.<sup>20</sup> How should we partition the differences between people who end up at different nodes into brute luck and option luck in such cases? The next section explores two possible answers.

### III. Two views of brute versus option luck

#### A. *The natural uncertainty view of brute luck*

Much of the appeal of the brute luck-option luck distinction seems to rely on the tragic nature of natural or quasi-natural<sup>21</sup> events that affect people differentially and randomly. In Cohen's view, 'a large part of the fundamental egalitarian aim is to extinguish the influence of brute luck on distribution [...] Brute luck is an enemy of just equality [whereas] genuine choice excuses otherwise unacceptable inequalities.'<sup>22</sup> This resistance to a world where individuals are victims of a blind fate's blows suggests one way of delineating the distinction between the two types of luck, which I will call *the natural uncertainty* view of brute luck. On this view, we partition the set of different risks or uncertainties that may affect a person's stock of resources into two subsets according to whether they arise from *events* outside of the person's control, or from his or her *actions*. Brute luck, in this partitioning, characterises the distributive effects of

<sup>20</sup> Alternatively stated, it pays out 4 units and waives the 4-unit premium if the policyholder goes blind.

<sup>21</sup> I mean by this events that are not strictly speaking natural disasters, but dynamics of the social system that strike individuals in a way that is perceived equally fatal and unchangeable from the point of view of the victim. An example would be sudden changes in market condition that cause unemployment, the blame for which cannot be attributed to anyone in particular. Traffic accidents that are caused not by negligent behaviour but unfortunate coincidences are another example.

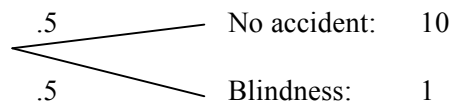
<sup>22</sup> Cohen, 'On the Currency of Egalitarian Justice', p. 931.

risks that derive from natural (or quasi-natural) events that are either unavoidable or unforeseeable. Option luck, on the other hand, is the effect on distribution of uncertain events that are both controllable and foreseeable<sup>23</sup> — either natural events that are avoidable or humanly constructed risks, such as literal gambles.

Continuing with the example from above, suppose that there is nothing<sup>24</sup> Mary and Joe can do to affect the risk of being blinded in a freak accident. On the natural uncertainty view, therefore, whether they go blind or not is a matter of brute luck. At the same time, however, they may engage in gambles and bets on any events they may desire to bet on. In particular, they may choose to bet on being blinded (that, is, they may take out insurance against blindness-inducing accidents). Such bets are clearly ‘deliberate and calculated gambles’ — they are both foreseeable and avoidable. And the correlation of the outcome of a bet (the insurance policy) with a natural event (the freak accident) does not make the bet any less optional. Taking out an insurance policy is about as deliberate and calculated gamble as there can be.

Since Joe and Mary’s final circumstances depend on a mix of brute and option luck effects, brute luck egalitarianism must disentangle them. The natural uncertainty interpretation of brute luck requires that we divide up all the sources of uncertainty into brute luck effects and option luck effects, or, we could say, into brute prospects and optional prospects:

Brute or natural uncertainty:

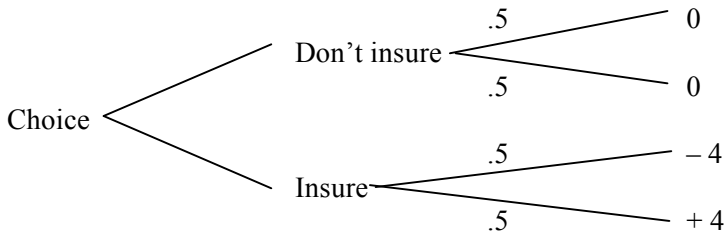


(Fig. 5a)

<sup>23</sup> Cf. Dworkin’s definition of option luck as the outcome of risks that one ‘should have anticipated and might have declined’. Dworkin, *Sovereign Virtue*, p. 73.

<sup>24</sup> Nothing, that is, given their necessarily imperfect knowledge about the consequences on accident risk of the various things they may choose to do.

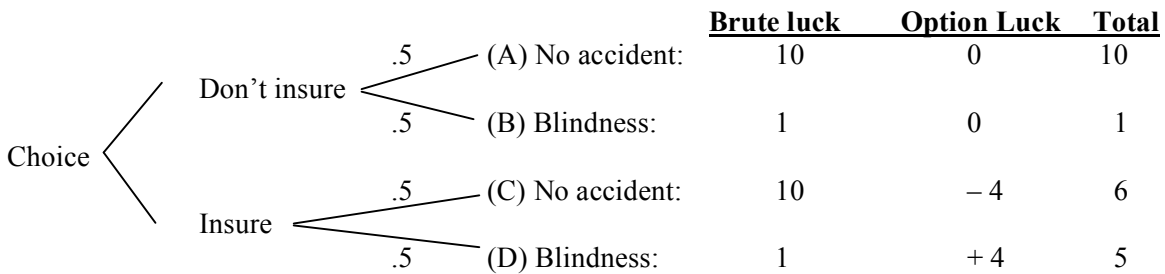
Optional gamble:



(Fig. 5b)

The *equalisandum* of brute luck egalitarianism would include the outcomes differences in figure 5a, but exclude those in figure 5b. The effects of brute luck (the differences caused by different realisations of the brute prospect) should be equalised, whereas those of option luck (the differences caused by different realisations of the optional prospect) would be left untouched.

Consider what this does to the blindness example:



(Fig. 6)

This interpretation of brute and option luck in the case of partial insurance rationalises one component of Dworkin's analysis quoted above, where the two individuals end up at (A) and (C) or at (B) and (D), respectively. In the case where neither Mary nor Joe is blinded, the brute luck effect on their resource stocks is identical, but Joe (who did insure) has bad option luck, which reduces his resource stock by 4 units. If they are both blinded, again the difference is due to option luck, but this time the option luck of Joe, who insured, is better than that of Mary, who did not. As Dworkin argues, the difference between Mary's and Joe's resource stocks should not be a concern for egalitarians.

But if the natural uncertainty view is the correct interpretation of brute luck, we must reject brute luck egalitarianism, for it will lead to perverse conclusions when one person has bad brute luck and the other does not. Consider the case where Joe and Mary have both insured, but he is blinded and she escapes the accident. Brute luck resource egalitarianism, on this view, would require a transfer of 4.5 resource units from Mary to Joe to equalise the effects of brute luck. This leaves Mary with 1.5 units and Joe with 9.5 units — a large inequality in Joe's favour. This view, in other words, gives Joe a right to be compensated for his bad brute luck, while keeping his gains from his good option luck, even though the function of the option luck in this example is precisely to provide such compensation.

Not only does the natural uncertainty view of brute luck require counterintuitively large transfers. It also implies that the presence of insurance does nothing to convert brute luck into option luck, as the accounting above shows. Even if there were full insurance, or a choice that avoided uncertainty altogether (such as that in fig. 1), brute luck egalitarianism, on this interpretation, would require a full equalisation of the effects of luck. It follows that if the brute luck-option luck distinction is to perform the task to which brute luck egalitarians need to put it, we must define it in such a way as to avoid counting the resource effects of insurance as option luck.

*B. The least risky prospect view of brute luck*

What lent *prima facie* appeal to the natural uncertainty view was the fact that Mary and Joe had no means of influencing the natural uncertainty they were facing (the probabilities of an accident). They could, however, influence the probability of their resources being *exposed* to that uncertainty. When people have this opportunity, the principle of ambition-sensitivity suggests that they are responsible for deciding whether to avail themselves of the precautionary strategy. If, as Dworkin argues, what makes the distinction between the two types of luck appealing is that people should pay the price of the choices they make, and in particular of exposing their stock of

resources (or other *equalisanda*) to the vagaries of uncertainty, then it does not make sense to partition the effect on distribution by whether the uncertain *event* is chosen or not. Rather, the ethically relevant feature of uncertainty is simply the degree to which someone's resource stock is unavoidably exposed to it. We therefore disregard *events*, and characterise uncertainties only in terms of the range of possible final *outcomes* and the probability of each outcome (where the relevant description of the outcome is given by the magnitude of the resource stock). This reasoning will give insurance the conversion function that Dworkin wants it to have.

On this view, we do not need to consider the *labels* on the different branches to partition the outcomes into brute and option luck, only the probabilities of the branches and the numbers at the endnodes. These show that it is impossible in figure 4 to avoid risk altogether — thus there is clearly an element of brute luck in this situation. It is, however, possible to choose more or less risky sub-prospects. In particular, it is possible to choose the *least risky prospect*, which we define as the prospect with the smallest spread between the outcomes. According to the *least risky prospect view*, the difference between the outcomes in the least risky prospect is a matter of brute luck — it is impossible, through one's choices, to reduce the spread further. On the other hand, it is possible to choose a larger spread, that is, to select a riskier prospect than that of minimum risk. The 'don't insure' choice in figure 4 should therefore be seen as a choice of *additional riskiness*. If Mary declines to take out insurance and is blinded in the accident, out of her total resource loss of 9 units only one unit is due to her being blinded, whereas the other 8 units are due to her 'gamble' not to insure.

A schematic representation of the least risky prospect view is given in the following figure:

		Minimum achievable risk/			
		Brute luck	Option Luck	Total	
Choice	Don't insure	.5 (A) No accident:	6	+ 4	10
		.5 (B) Blindness:	5	- 4	1
	Insure	.5 (C) No accident:	6	0	6
		.5 (D) Blindness:	5	0	5

(Fig. 7)

The least risky prospect view captures the spirit of Dworkin's theory: The choice to lead a risky lifestyle is one that should be open to people, but at their own responsibility. This interpretation of the brute luck-option luck distinction reproduces his conclusions that brute luck egalitarianism 'would not argue for redistribution from the person who had insured to the person who had not if, horribly, they were both blinded in the same accident.'<sup>25</sup> That is, there should be no redistribution between endnodes (B) and (D) in figure 7, nor between endnodes (A) and (C), since the difference is only due to option luck.

At the same time, this refinement of the definition of brute and option luck reveals how precariously other parts of Dworkin's analysis depend on the assumption of *full* insurance, as I argued above. Immediately after the passage just quoted, Dworkin adds: 'But then the situation cannot be different if the person who decided not to insure is the only one to be blinded. For once again the difference is a difference in option luck against a background of equal opportunity to insure or not.'<sup>26</sup> On the present interpretation of brute and option luck, that is a *non sequitur* except in the special case of full insurance. Brute luck egalitarianism must require equalisation between (C) and (D). But since the difference between (C) and (D) is the brute luck effect on resources of being blinded *regardless* of whether the person has her resource stock additionally affected by good or bad option luck, it follows that equality of resources must *always* require a redistribution from the healthy to the blinded, and always in the same amount, namely that

<sup>25</sup> Dworkin, *Sovereign Virtue*, p. 77.

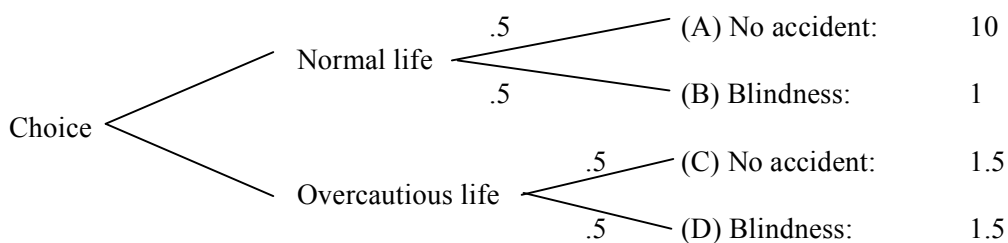
<sup>26</sup> *Ibid.*, p. 77.

amount which would equalise (C) and (D). In this example, we should redistribute  $\frac{1}{2}$  unit of resources from (C) to (D), but also from (A) to (B), from (C) to (B) or from (A) to (D). Only the *remaining* differences (but all of those differences) would be due to option luck.

This analysis is appealing in that it rationalises the intuition that egalitarianism requires the fortunate to help the less fortunate — when their misfortune is no fault of their own — while staying clear of the counter-intuitively large transfers required by the natural uncertainty view. Like the natural uncertainty view, however, it does require transfers from a (brute luck-)lucky but poor person to a (brute luck-)unlucky but rich person (assuming that the difference in wealth has not itself arisen in ways ruled out by brute luck egalitarianism), although the required transfers are smaller. This seems acceptable. A system where the state pays moderate compensation to victims of accidents regardless of their previous wealth, financing the compensation out of general taxation, does not seem unpalatable from the point of view of equality. It was the magnitude of the transfers required by the natural uncertainty view that was counterintuitive.

#### **IV. Expensive insurance and reasonable responsibility**

We showed in the previous section that we run into absurd conclusions if we let the labels in the decision trees matter — that is, if the apportionment of uncertainties to brute and option luck depends on whether the *event* that produced the uncertainty was avoidable. It must, we said, be possible to determine which differences are due to brute luck simply by looking at the resource stock outcomes in the least risky prospect. But the notion of a least risky prospect, defined simply in terms of the spread in between the possible resulting resource stocks, is problematic. This is because it is always possible to eliminate risk *altogether* by simply reducing one's resource stock in all states of the world to the level it would have in the worst realisation of the uncertainty. Thus Mary could avoid risk altogether by leading such an overcautious and crippled life that an accident would not cause her much loss. This possibility can be illustrated by the following prospect:



(Fig. 8)

The general point is that full insurance is always available. One can always eliminate risk completely by taking out the perverse insurance policy that pays nothing in the bad state and that requires a premium in the good state equal or almost equal to the total worst-scenario loss. Without further refinements, the least risky prospect view would imply that *all* uncertain effects on outcomes are option luck effects, because it is always possible to opt for a completely safe (but very bad) outcome. Call this ‘the cynical conclusion’. Clearly the cynical conclusion is not satisfactory, and therefore something is wrong with the least risky prospect view as stated.

This argument resembles Otsuka’s case 2. Recall that he says insurance cannot convert brute luck into option luck if fully compensating insurance is unaffordable or unreasonably inexpensive. Again, his intuitions are warranted, but his definitions are inadequate. I argued above that what matters in resource egalitarianism is not that insurance is ‘fully compensating’ in a preference sense. The relevant question is whether it equalises resource stocks between the good state (where resources are reduced by the insurance premium) and the bad state (where the policy pays out). This is of course always possible, *in extremis* by adopting the perverse insurance ‘policy’ of reducing the resource stock in the good state to the level it would be at in the bad state. Otsuka’s objection, therefore, must reduce to his case 2b, which is that full insurance may be *unreasonable*. Otsuka immediately jumps to arguing for *ex post* equalisation in such cases, and only cursorily discusses what the requirements of reasonability may be (and he fails to note that it must be unreasonably expensive in terms of *resources*). He thereby neglects the most natural way a resource egalitarian could respond to his worry, which is to refine the notion of brute luck to

account for reasonability requirements.<sup>27</sup> This, in turn, requires an exploration of what kind of reasonability notion is needed to qualify the insurance argument. I pursue this idea in what follows.

Let us return to the motivation for the least risky prospect view, which was that we wanted to hold people responsible for choosing risky lifestyles. We want to say to the gambler: ‘Look, you complain that losing at the casino has left you with fewer resources, but you could perfectly well have refrained from gambling. When you chose to gamble, you decided that the prospect of a large gain was worth the risk losing your stake; now take the consequences of your choice.’ But it is utterly unconvincing to say to Mary who has just been blinded in the accident: ‘Look, you complain that you lost your sight in the accident, but you could perfectly well have refrained from a lifestyle in which vision is so important, in which case the accident would not have caused you any harm. When you chose not to blind yourself, you decided that the prospect of keeping your sight was worth the risk of losing it in an accident; now take the consequences of your choice.’ The latter argument is cynical and unreasonable, and we should not accept it. We do, however, need to justify why we need not accept it. The justification is this: When a person makes a choice and the only alternatives are unreasonable ones, the consequences of her choice cannot be said to be due to her ambitions, and so ambition-sensitivity does not justify the resulting inequality. Justice does not require us to hold people responsible for the risks they can only avoid by choosing unreasonable alternatives. But it does require us to hold people responsible for the risks they can avoid by choosing reasonable alternatives. Thus the least risky prospect view must be modified to a *least risky reasonable prospect view* of brute luck, hereafter ‘LRRP’. The corollary of this definition of brute luck is that brute luck egalitarianism needs an

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<sup>27</sup> See also Dworkin’s refutation of Van der Veen’s and Otsuka’s claims that resources have to be equalised *ex post*; Dworkin, ‘*Sovereign Virtue Revisited*’, p. 120-5. The *ex ante* view of equality is essential to Dworkin’s theory and cannot be rejected without jettisoning Dworkin’s approach altogether. The present essay, while attempting to remain faithful to the Dworkinian structure, analyses the requirements that a plausible *ex ante* view of equality has to meet in the special cases I consider.

auxiliary theory of when prospects are reasonable. Without such a theory, brute luck egalitarianism remains indeterminate.

I cannot here propose a full-fledged theory of the reasonability of prospects. Instead, I will mention two plausible candidates for principles that with some refinement could provide criteria for judging when it is reasonable to hold individuals responsible for the consequences when they do not choose a certain least risky prospect.<sup>28</sup> To do so, I start with a puzzle. Consider Oscar, who has to choose between two actions. The first action is ‘risky’ — it exposes him to an uncertain event which, if it goes well, leaves him with a large stock of resources, but if it goes badly, leaves him with a much lower stock of resources. For purposes of illustration, suppose that the difference in resources between the two outcomes is 9 units. The second action is ‘safe’ — if he chooses it instead of ‘risky,’ there is no uncertainty and he knows exactly what his resource stock will be. However, that certain resource stock will only be marginally higher, say  $\frac{1}{2}$  resource unit, than what he would get if he had chosen ‘risky’ and the bad outcome had materialised.

Oscar’s friend Paul faces exactly the same choice. Suppose they both choose the risky option, and Oscar is lucky while Paul is unlucky. Does brute luck egalitarianism require redistribution from Oscar to Paul? That depends on whether the difference can be said to be due to option luck or brute luck. But here our intuitions are likely to depend on a fuller description of the actions. On the one hand, this could be a situation like figure 8, where the ‘safe’ choice is a life in which vision is not necessary. Since the safe choice is almost as bad as the bad outcome (being blinded in an accident), it seems wrong to think that the availability of it makes the effects of the risky choice a matter of option luck. In other words, we would consider at least some of the difference between seeing Oscar and blinded Paul an effect of brute luck, and would require redistribution. On the other hand, the same schema could represent the following situation: Oscar and Paul both bought lottery tickets worth  $\frac{1}{2}$  units of resources. Oscar had his lucky day and won

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<sup>28</sup> In the following discussion I talk about the risk-free option; the same arguments apply even if the least risky prospect is not an entirely risk-free one.

a lot of money — 9 units' worth of resources — in the draw. Paul, on the other hand, won nothing and was left  $\frac{1}{2}$  units of resources poorer than if he hadn't bought the ticket. In this case, it would seem, the brute luck egalitarian intuition is that all the difference is due to option luck, and that no redistribution is required to restore equality between Oscar's and Paul's respective resource stocks.

How can this be? In these examples, the inequality in resource stocks between the three possible outcomes is exactly the same. And yet we want to say that the risk-free option in the first scenario is unreasonable in a way that the second is not. We already said that the labels on the branches should not matter; we should be able to partition brute and option luck effects by knowing the probabilities and resource stock outcomes. How can we rationalise our diverging intuitions in these examples? We can do so, I believe, by noticing that what should count as brute and option luck must depend on the resource *levels* and the *probabilities*, and not just on the differences between the various outcomes. The stories I told above do specify neither levels nor probabilities. While the labels of the actions and events should indeed not matter, they could, in these examples with incomplete information, generate different expectations about what the levels and probabilities are, which in turn can trigger different intuitions about what should be Oscar's and Paul's responsibilities. I will now discuss how the two examples can be rationalised in terms of different expectations about levels and probabilities, respectively, and how those rationalisations lead to two possible criteria for the reasonability of a prospect.

One reason for our differing intuitions could be that in the blindness scenario, we expect the resource quantities *in each outcome* to be smaller than in the lottery scenario. That is, we would expect that the blinded Paul has a much lower resource stock than the seeing Paul who just bought a losing lottery ticket; the seeing Oscar has a lower resource stock than the seeing Oscar who also won the lottery, *et cetera*. The increments due to choices and fortune are likely to relate to a much lower baseline than in the accident case than in the lottery case, and it may be our

expectation of this that drives our intuitions. If it is, then we do not consider a prospect reasonable when the risk-free option falls short of some *minimum level*.<sup>29</sup>

To take another example: Suppose that the state-of-the-art technology of motor vehicle manufacturing cannot eliminate a very low probability that vehicles spontaneously combust. Should my car or the bus I am taking be one of the very few to which this happens, the resource cost to me would be very high. I could of course eliminate this risk by choosing a lifestyle where I never use a motor vehicle. Does that make the possible loss from being a victim of such an accident a matter of option luck, one for which I ought to be held responsible and thus not compensated? Surely we would want to answer that question in the negative. If I am a victim of such an accident, the stock of resources devoted to my life has been made smaller for no *justifiable* reason. The fact that I chose the ‘risky’ lifestyle does not justify my carrying the whole burden of my bad luck. One argument we may give to support this claim that the loss cannot reasonably be said to be my own responsibility is that given the nature of our society, having to live without ever making use of a motor vehicle would require a lifestyle incompatible with a level of social, economic and cultural inclusion to which we think every person in the society is entitled.<sup>30</sup> Such entitlement concerns, if we accept them, give us reasons to put a lower bound on what prospects it is reasonable to demand that people turn down only at their own risk. Some situations are just so bad that people are entitled to superior conditions.<sup>31</sup>

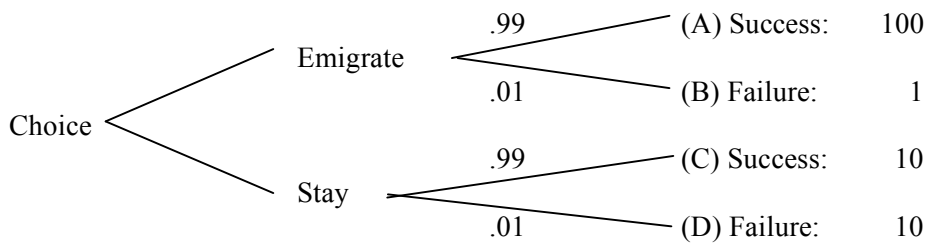
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<sup>29</sup> This seems to be Otsuka’s view of reasonability. He says that ‘[i]f the cost of such [a fully compensating] insurance premium entails the impoverishment or indentured servitude of the individual, then such insurance would be unreasonably expensive’. Otsuka, ‘Luck, Insurance, and Equality’, p. 44, fn. 18. Strictly speaking, his condition is not a property of the *price* of insurance, since the same policy would not be ‘unreasonably expensive’ for someone who was left with a satisfactory stock of resources. What is unreasonable is the *prospect* whose only risk-free option is below some minimum entitlement (the entire *set* of available options).

<sup>30</sup> A similar concern could motivate the intuition that even when people have chosen very risky lives, we would not let them bear the full consequences when those are extremely bad. We would not, for example, leave the daredevil mountaineer to perish in the case of an accident in the mountains.

<sup>31</sup> Such entitlements to minimum levels need not take the form of claims in the same ‘currency’ as the egalitarian theory they complement. In this example, we consider people entitled to certain kinds of life. We may also think that there are certain specific goods people are entitled to a minimum amount of (such as nutrition, housing or education), without thinking that they are entitled to the resource- (or welfare-, or some other currency-) equivalent of those goods.

There could be another factor behind our differing intuitions in the two scenarios. It might be that we expect the odds against winning the lottery to be much higher than the risk of being blinded in an accident. The expected value of a lottery ticket is less than its price. Yet the expected value (in resource terms) of choosing a lifestyle of which vision is a fundamental part, even taking into account the risk of a catastrophic accident, is much higher than the resource value of a lifestyle in which the ability to see things is not employed. So another reason why the perverse insurance policy could be seen as unreasonable is that its expected (and certain) resource value is so much lower than the expected resource value of not holding insurance. This line of reasoning suggests an efficiency concern as a criterion for the reasonability of prospects. When the odds are very good, we may think differently even about calculated and deliberate gambles than we do when the odds are bad as we typically expect them to be. To test this intuition, consider the following prospect:



(Fig. 9)

Suppose that in figure 9, a resource stock of 100 is great prosperity, a resource stock of 10 is adequate to stay out of misery, whereas a resource stock of 1 means living at the verge of death. The people facing this decision tree are considering whether to remain at home where they are not rich but can provide for themselves, or to emigrate to an unsettled frontier country, where with a very high likelihood they will attain great wealth. But one out of every one hundred emigrants is unlucky and ends up in misery, through no fault of his own (except the choice of emigrating) — he may just end up with a terrible plot of land, say. Here there is no argument that the safe option is below a minimum entitlement; those who stay have an adequate standard of

living. The risk involved in emigrating is a calculated and deliberate gamble. Yet do we really think that egalitarianism has no concern for the one unlucky emigrant who is starving to death although he made the same choice as those that were lucky? Do we really want, that is, to apportion the entire difference between the 99 farmers at (A) and the one at (B) to option luck?

Instead we may want to say that the opportunity cost (in resources) of ‘insuring’ against the risk involved in emigration is so high (89 expected resource units) that it would be unreasonable to require those who do not insure (who do not stay in the home country) to face the full consequences.<sup>32</sup> Put differently, the expected value of the riskless choice is so much lower (10 versus 99 in this example) that the insurance or no-gambling option is not reasonable. If we care about how many resources individuals have, we should be averse to the wastage of society’s potential resource stock that the high opportunity cost of safety here entails. If we allowed for redistribution between (A) and (B) in figure 9, everyone would be faced with a choice between 99 for sure or 10 for sure, which would encourage actions that increase society’s total resource stock and would enable everyone to improve their situation from the ‘Stay’ option.

Thus our differing intuitions about brute versus option luck in the blindness scenario and the lottery scenario could be due to one of two claims. The first is that deliberate and calculated gambles do not give rise (only) to option luck when the safe option is sufficiently bad — that is, when risks can only be avoided by going below a minimally entitled level of resources. This claim would differentiate accidents and lotteries because the former typically entail lower resource stocks than the latter. The second is that deliberate and calculated gambles do not give rise (only) to option luck when the safe option is sufficiently *worse* (in expected resource value) than the risky choice — that is, when risks can be avoided only by incurring a high expected opportunity cost of safety. This claim would differentiate accidents and lotteries because the

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<sup>32</sup> The thought that efficiency concerns can provide a basis for reasonability criteria is similar to a suggestion made by Vallentyne, who also discusses what can count as ‘reasonable avoidability’. Vallentyne asks: ‘But what makes a choice reasonable? One view is that it is in the agent’s *best* interest. Another view is that it is *adequately* (either in absolute terms, or relative to the best choice) in the agent’s interests.’ Vallentyne, ‘Brute Luck, Option Luck and Equality of Initial Opportunities’, p. 6, original italics.

expected value of risking an accident is much higher than the complete elimination of the risk, while buying a lottery ticket typically involves an expected resource loss. Put differently, the entitlement view of reasonability is concerned with minimum threshold levels, while the efficiency view of reasonability is concerned with gains and losses.

## V. Tax as insurance

Dworkin's claim is that when a person's situation is affected by risk that could have been avoided, that avoidability (opportunity to insure) turns what would otherwise have been brute luck into option luck. What I have argued so far is (1) that if there is only *partial* insurance, brute luck is only partially converted into option luck, and (2) that if the riskless prospect is unreasonable, then brute luck is only converted into option luck insofar as the least risky *reasonable* prospect provides insurance. This refinement of the brute luck-option luck distinction allows more nuance than Otsuka's claim that if there is only partial or unreasonable opportunity to insure, *all* the luck is brute luck. The least risky reasonable prospect view rescues the appeal of the brute luck-option luck distinction, but requires a similar refinement of the way Dworkin uses of hypothetical insurance market equilibria to specify just allocations of resources. Does my modification of Dworkin's argument support the same hypothetical insurance market as a good model of what egalitarian distributive justice requires? In what follows, I assume that we have a criterion for reasonability and investigate the implications of the least risky reasonable prospect view for the hypothetical insurance argument. This could be one of the two views sketched in the previous section, or a different view.

According to Dworkin, equality of resources is satisfied and no redistribution is required if prospects are identical and there is equal (and 'ample') opportunity to insure, since then all departures from equality are due to option luck. Note that Dworkin's requirement is stronger than simple equality of opportunity (in the sense of identical prospects), since he imposes the substantive condition that those opportunities must include equal availability of insurance. But

without specifying what kind of insurance must be available to people, Dworkin cannot rule out very unsatisfactory or minimal insurance schemes (such as the one shown in figure 3, or a nearly complete levelling down of the good outcomes, as shown in figure 8) as insufficient. Thus it is not clear how far his additional requirement on the content of the opportunity set can take us from mere equality of initial prospects.

This is where the least risky reasonable prospect view of brute luck differs from Dworkin's theory. The arguments about partial insurance in section III and about reasonable insurance in section IV mean that LRRP imposes *three* conditions for resource inequalities to be attributable to option luck:

- (1) the initial prospects must be equal;
- (2) there must be an opportunity to insure *fully* (that is, to fully eliminate risks), and
- (3) the full-insurance choice must be a 'reasonable' option.

Note that Dworkin only requires the first two of these conditions to hold, and that he may demand something weaker than (2).

If (2) doesn't hold, then the minimum-spread option (the least risky prospect) does not fully equalise resource stocks across different realisations of the uncertainty. If the minimum-spread choice is a reasonable option, then equality requires redistribution in the amount necessary to equalise the effect of uncertainty in the least risky prospect, but no more. If the minimum-spread choice is not reasonable, brute luck egalitarianism requires further redistribution in the amount necessary to equalise the effect of uncertainty in the least risky of the reasonable set of prospects. A special instance of the latter case is when (2) holds but (3) does not, for example in the perverse cases we discussed above where a way of fully 'insuring' was to level the good outcomes all the way down to the worst-scenario outcome.

We can now discuss the natural lottery. One important feature of the world we live in is the unequal distribution of innate handicaps and talents. These differences mean that initial prospects are not identical (where we can think of 'initial' as meaning at birth or at conception).

None of the three above conditions hold. But we can think of individuals being randomly allocated to their circumstances at birth — that there is an equal chance that each individual will be born as any specific individual. The probability distribution of being born with certain handicaps or talents is then just the actual distribution of those handicaps and talents within one’s cohort. If we extend the prospects of individuals to include the random allocation of specific congenital advantages or disadvantages, then those extended prospects are identical across people, and we can apply the above analysis to guide our specification of egalitarianism.<sup>33</sup>

Even though people do not actually have the opportunity to insure against being born with too little talent, Dworkin’s approach is to give people what they would get from the choices ‘properly attributed to them’<sup>34</sup>. The question, then, becomes which counterfactual choices are ‘properly attributed’ to people; that is, from which counterfactual choice *sets* do people’s hypothetical choices have normative implications. Dworkin’s discussion of the hypothetical insurance market shows that he sees the relevant choice set as the menu of insurance policies that would be provided in a competitive equilibrium, given that people know their preferences (including preferences over risk) and the distribution of handicaps and talents in society, but not their own place in that distribution. Attributing to people the choices they would have made in that situation is how ambition-sensitivity can be respected in a world where people are born different. (This is the principle that is missed by those of Dworkin’s critics who demand *ex post* equalisation of resource differences due to differential endowments of talents and handicaps.)

As we noted above, Dworkin’s argument that resource equality requires such redistribution as is necessary to replicate the policies adopted in a hypothetical insurance market

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<sup>33</sup> Susan Hurley provides an incisive discussion of the problems with such an approach; see Hurley, ‘Luck, Responsibility, and the “Natural Lottery”’, *The Journal of Political Philosophy* 10:1 (2002) 79-94. Important though they are, these problems are outside the scope of this essay. As I stated in the introduction, my criticisms are internal to Dworkin’s general approach of applying the hypothetical insurance device to the question of what justice requires with respect to the unequal distribution of talents and handicaps. For the purposes of my internal criticisms, I therefore ignore Hurley’s otherwise highly legitimate concerns.

<sup>34</sup> Dworkin, ‘*Sovereign Virtue Revisited*’, p. 111.

relies on his characterisation of brute luck, which we showed to be problematic. What LRRP adds to Dworkin's reasoning is a constraint on what *kind* of insurance must be available to people in the relevant counterfactual choice set, for those hypothetical choices to be 'properly attributable to them.' So while Dworkin discusses what an allocation generated by a hypothetical insurance market would look like, and identifies the answer as what equality of resources requires, an LRRP-brute luck egalitarian needs to ask two additional questions about the insurance market itself before concluding that equality of resources does in fact hold in the ensuing allocation. The first question is whether the hypothetical market would make *full* insurance available. If not, then the second question is what the least risky reasonable prospect is among the options offered by that market. Brute luck egalitarianism requires redistribution in the amount necessary to equalise that spread<sup>35</sup> in addition to replicating any insurance contracts people may have entered. If full insurance is available, on the other hand, then the second question is whether that option is a reasonable one. If it is not, then additional redistribution must again take place in the amount necessary to equalise the outcomes in the safest of the reasonable prospects, in addition to any amount necessary to replicate the contracts that would be established.

Thus Dworkin's own solution satisfies brute luck egalitarianism, appropriately refined by the LRRP view of brute luck, only in the very special case that the hypothetical insurance contract includes a full insurance contract *and* where this full insurance option is a *reasonable* one. In the general case, providing people with the transfer schemes that they would have chosen in the hypothetical insurance market does not *per se* restore equality. Dworkin himself advances arguments to the effects that the hypothetical insurance market would *not* offer a full-insurance option. He thinks people are insufficiently risk-averse for more than modest coverage levels to be supplied; or if there were to be offered policies with a high coverage level, they would be very expensive. Dworkin's own speculations, therefore, suggest that the hypothetical insurance market

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<sup>35</sup> Cf. figure 7.

would not present people with reasonable risk-free options. If this is the case, brute luck egalitarianism on the LRRP view requires more redistribution than Dworkin's solution.

We have to consider two counterarguments to this claim. The first regards our conjectures about the empirical workings of the hypothetical insurance markets. Several writers have pointed out that insurance policies are isomorphic with tax régimes.<sup>36</sup> These insights tempt one to conclude that if the hypothetical insurance market only offers limited insurance policies, that means only the equivalent tax régimes could be implemented. Even if 'unreasonable,' they are the best we can do in terms of justice, and so the issue of whether justice requires more *ex post* redistribution becomes moot. But this conclusion is incorrect. It is true that any tax régime can be *described* as an *ex ante* insurance policy (and any insurance policy as an *ex post* tax régime). But the set of feasible tax régimes and the set of feasible insurance market equilibria are only identical if extremely stringent invariance conditions hold on preferences across the two cases. First, equivalence presupposes that the risk-aversion governing how individuals trade off incomes across uncertain future states of the world and thus attitudes towards insurance (the von Neumann-Morgenstern utility function) exactly corresponds to the preferences that determine the marginal utility of income in a realised state of affairs and thus attitudes to taxation (the utility function measuring well-being). There is no reason to believe that this is true; attitudes to risk and the marginal benefit of an additional dollar in a known state of affairs are quite different phenomena.<sup>37</sup> Second, it requires that the disincentive effects of paying taxes and paying insurance premia are the same. In fact there are many reasons why they may not be; for instance, people may feel differently (and in a just society, hopefully better) about paying taxes than about paying insurance premia, and they may be less willing to accept welfare payments than to collect

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<sup>36</sup> Fleurbaey, 'Equality of Resources Revisited'; van der Veen, 'Equality of Talent Resources'.

<sup>37</sup> Suppose everyone is risk-neutral; that is, they are unwilling to take actuarially unfair gambles. Given the transaction costs of insurance, this means no policies would be offered. The lack of a hypothetical insurance market, however, does not imply that it would be impossible for a government to tax the rich and redistribute to the poor; that is, to implement an insurance policy that could not exist in an insurance market in competitive equilibrium.

on their insurance. Finally, it requires that the enforcement capacities of a tax-collecting government and those of an insurance company are the same, even though the latter are quite likely to be higher than the former. All this means that the government has many redistributive schemes available to it that could not be offered by insurance agents in a competitive market.

The second, more challenging counterargument is directly normative.<sup>38</sup> Suppose we accept that in the hypothetical insurance market, reasonable policies that could be enforced by a tax system *ex post* would indeed not be offered, since nobody would purchase them. I have argued that this means brute luck differences remain even if we redistribute according to people's hypothetical choices. But we could imagine a *regulated* hypothetical insurance market which was forced to offer a more redistributive policy than Dworkin's competitive insurance market equilibrium. In particular, we could imagine a regulated hypothetical insurance market which was forced to offer the insurance scheme implied by LRRP, in addition to the Dworkinian solution. If Dworkin's conjectures about people's risk preferences are correct, then people would not choose the higher coverage policies even in such a regulated insurance market — because the premium would be higher than anyone would like to pay (that is why those policies are *a fortiori* unsustainable in the competitive market). If we believe that to be true, how could we be justified in forcing people to pay the higher premia (taxes) *ex post*?

There are two answers to this charge. The first is that on Dworkin's own theory, the choices that are 'properly attributable to' people are the choices they make in the *particular* counterfactual situation of the competitive insurance market, not just *any* counterfactual situation. So what people would do in an alternative, more generous insurance market is irrelevant, as Dworkin explains in his response to recent critics.<sup>39</sup> But we may of course disagree with this part of Dworkin's theory, and think that choices in other counterfactual situations also matter. But which other counterfactual situations? A theory would be needed to specify what these situations

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<sup>38</sup> I owe this argument to an associate editor of this journal.

<sup>39</sup> Ronald Dworkin, 'Sovereign Virtue Revisited', pp. 108-11.

could be and rule out extravagant possibilities (like the insurance policy that offers the best case scenario outcome in all states of the world and charges a zero premium). The most relevant counterfactual situation that would both be feasible and give people a wider range of options would be letting people counterfactually choose tax régimes directly, rather than insurance policies. Suppose therefore, to push the counterargument as far as it will go, that if people were given a choice of all feasible tax schedules (under the same informational constraints as Dworkin's counterfactual), they would in fact not choose the least risky reasonable option, but opt for Dworkin's insurance policies. How could we then justify imposing a tax system that redistributed resources *ex post* in excess of the Dworkinian scheme?

The second reply is that which choices people *would* make is not the issue here. It is which choices people *could* make, or rather which ones they could not make. Reconsider figure 4, in which it is possible to insure partially against blindness (insured Joe gets 6 resource units if he doesn't have an accident, and 5 if he is unlucky and is blinded; uninsured Mary gets 10 and 1 in the respective situations). We argued that the lack of full insurance (or the lack of a *reasonable* full-insurance policy) means that the brute luck effect of being blinded is one resource unit, *no matter whether Mary and Joe actually take out insurance or not*. So even if neither Mary nor Joe insure, and Mary is blinded, then brute luck egalitarian justice still requires a transfer of  $\frac{1}{2}$  resource unit from him to her. Thus it is the *availability*, not the *actual choice*, of insurance that converts brute luck into option luck. It is the part of luck that would counterfactually not be reasonably insurable (not the part that would counterfactually not be insured against) that remains brute luck and requires redistribution. The same, of course, holds for a counterfactual choice over redistributive tax policies. We may presume that the alternative counterfactual just considered, which includes more 'insurance' options than Dworkin's counterfactual competitive insurance market, would still not include a reasonable *full* insurance option. Full insurance would be equivalent to a tax system which *completely* equalised resource stocks *ex post* across the handicapped and the healthy and across the talented and the untalented. As Dworkin points out,

this would be disastrously expensive, and would thus amount to levelling-down. But if the safe option in a prospect involves levelling down, we argued, then the full-insurance option is unreasonable, and some brute luck remains in the prospect. And that brute luck — equal to the spread between the outcomes in the least risky *reasonable* prospect — must be equalised if brute luck equality is to prevail.

Recall that this equalisation would have to come on top of whatever redistribution is necessary to replicate the choices people would make in the counterfactual situation. Note that this would be impossible if people would in fact choose the least risky reasonable prospect, since by hypothesis, it is the most redistributive of all feasible and reasonable tax policies. But it would not be impossible if people chose something less redistributive, as Dworkin assumes they would do, and as the counterargument we are addressing assumed. Suppose, as an extreme case, that people would not take out any insurance whatsoever (they are all risk-neutral). Then Dworkin would recommend a *laissez faire* tax system which would replicate their choices by having zero redistribution. On the LRRP view of brute luck egalitarianism, some redistribution would still be required in the amount given by the spread in the least risky reasonable prospect. Thus, LRRP requires redistribution over and above the Dworkinian solution. This holds even if Dworkin is right that people would choose only moderately redistributive policies under his system.

## **VI. On the consistency of brute luck egalitarianism**

In the previous sections, I took egalitarianism for granted and presented a refinement of brute luck egalitarianism. I now address the implications of the LRRP view of brute luck for egalitarianism as such. It is useful to start with Cohen's notion of a *weak equalisandum claim*, which 'says that [people] should be as equal as possible in some dimension but subject to whatever limitations need to be imposed in deference to other values: those limitations are not

specified by the claim in question'.<sup>40</sup> In his exegesis of Dworkin, and in presenting his own theory of 'equal access to advantage,' Cohen suggests that egalitarians may use the brute luck/option luck distinction to construct more convincing weak *equalisandum* claims, or WECs. The argument I have developed in this essay suggests that this strategy can only be successful if it is supplemented by a refinement along the lines I have discussed, providing auxiliary principles of reasonable insurance. This is true regardless of the exact currency of distributive justice, as long as the theory aims to filter out from it the effects of option luck.

Now any WEC is composed of two constituent claims. The first claim is about the appropriate currency of justice; it is a *weak distribuendum claim*, or WDC. A WDC specifies *which* currency should be redistributed, without specifying what pattern of redistribution is called for. The second constituent claim of a WEC is a *weak patterning claim*, or WPC. A WPC is a claim about *how* the currency should be distributed. In the case of *equalisandum* claims, of course, the patterning claim says that the just pattern of the *distribuendum* is equality, or more strongly, that a more equal distribution is always more just than a less equal one, other things being equal.

The debate about brute and option luck helps to refine WDCs by advancing more appealing claims about what it is that distributive justice should be concerned about distributing. The notion that only brute luck effects should be up for redistribution, however, does not by itself provide grounds for supporting an egalitarian WPC. As Susan Hurley has argued, the aim of neutralising the influence of brute luck on the distribution of advantages does not imply that any specific pattern of distribution, including equality, is more just than others.<sup>41</sup> Nor does it lend support to any specific distribution, including equality, as the default from which deviations have to be justified (by appeal to people's responsibility for the deviations). Saying that distributive justice does not require changing that for which people have responsibility only strengthens the

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<sup>40</sup> Cohen, 'On the Currency of Egalitarian Justice', p. 908.

<sup>41</sup> Susan Hurley, 'Luck and Equality', *Proceedings of the Aristotelian Society* Supp. Volume LXXV (2001): 51-72.

weak *distribuendum* claim that *if* anything should be equalised, one should leave untouched the effects of option luck and only equalise the effects of brute luck. But, as Hurley shows, it equally strengthens the same *distribuendum* claim when combined with other patterning claims, such as prioritarianism<sup>42</sup> or maximin, or for that matter, maximax. The general point is that a *distribuendum* or currency claim by itself has no logical implications for patterning claims. Egalitarians need to defend an egalitarian WPC on separate grounds in order to establish equality as the preferred distribution of the currency.<sup>43</sup>

Egalitarian thinkers need not resist the conclusion that currency claims by themselves have no implication for the pattern of distributive justice. They may say: ‘We agree that the idea of responsibility or the notion of treating brute luck and option luck effects differently do not tell us anything about *how* to redistribute the effects of brute luck. But we have independent reasons to be egalitarians, and given those, the brute luck refinement provides us with a better view of what exactly distributive justice should equalise.’ This reply, however, may run afoul of a logical confusion. The fact that a currency claim has no logical implications for patterning claims does not mean that the *reasons* for believing a certain currency claim may not also constitute reasons for or against specific patterning claims. So even if WDCs that incorporate a plausible brute/option luck distinction by themselves contain nothing that tells either for or against egalitarian or other WPCs, there is a possibility that the *justification* for such WDCs may not be neutral with respect to the justness of patterns, and may thus limit which WPCs one may consistently advance.

If this reasoning is correct, then egalitarians who choose to confine their currencies to brute luck-induced advantages risk rendering themselves a disservice. I want to suggest that the arguments that can sustain the distinction between brute and option luck are in fact detrimental to

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<sup>42</sup> For an elucidation of the priority view, see Derek Parfit, *Equality or Priority*, The Lindley Lecture (Kansas City: University of Kansas Department of Philosophy, 1995).

<sup>43</sup> It follows that Dworkin has not incorporated specifically within *egalitarianism* the most powerful idea of the anti-egalitarian right; rather, he has incorporated it within the general family of patterned theories of distributive justice.

egalitarianism. Why would this be? I have argued that we can only define a currency that respects the distinction between brute luck and option luck by relying on non-egalitarian arguments about reasonable responsibility. The non-egalitarian arguments invoked to restrict the currency of justice to the brute luck-determined part of people's positions cannot be ignored in the analysis of what the just pattern should be; and they may have non-egalitarian implications for how justice requires the currency to be distributed.

Recall the view that insurance cannot convert brute luck fully into option luck when the safe option fails to ensure a minimum entitlement level. Now if we believe that people are entitled to a certain minimum level and if what we can reasonably require from their risk management (that is, what counts as option luck) depends on whether they are above the threshold, then it seems inconsistent not to introduce this principle directly into our theory of the just distributive pattern. In other words, if we hold such a principle to be true when we determine the reasonability of insurance, we should also hold it to be true when we decide what pattern of the *distribuendum* is most just. For by denying that the opportunity to go below the minimal threshold makes the consequences of *not* doing so a matter of option luck — by saying, that is, that justice requires redistribution between any of the endnodes in figure 8 — we must be saying that someone's falling below the minimal threshold is *per se* a matter for distributive justice. A brute-luck theory of just distribution that incorporates this view would presumably advocate that everyone should be given their minimal entitlement (subject to feasibility and trade-offs against other imperatives).<sup>44</sup> Depending on the magnitude of the threshold, this requirement of justice might only be achievable by allowing avoidable inequalities (for incentive reasons). Even if it were possible to guarantee the minimum for everyone while equalising brute luck effects *above* the threshold, we showed in section IV that on this view all risk would be a matter of option luck as long as people could choose to ensure their minimum. The minimal entitlement view of brute

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<sup>44</sup> This could be implemented, for example, through a Universal Basic Income policy as envisaged by Philippe van Parijs, *Real Freedom for All: What (If Anything) Can Justify Capitalism?* (Oxford: Clarendon Press, 1995).

luck egalitarianism would therefore not even leave any room for ‘residual’ egalitarianism after minimal entitlements were met.

Another view of the reasonability criterion was based on an argument from efficiency. On this view, bad luck is brute if it is excessively costly to insure against it, in the sense that the expected resource value of the insured prospect is much lower than that of the uninsured prospect. But again, if the normative principle on which the brute/option luck distinction — and thus our currency of justice — is based is an aversion to excessive waste and inefficiency, then we cannot disregard that concern when we choose the distributive pattern of the *distribuendum*. For again, by denying that the opportunity to purchase risklessness at a very high opportunity cost (even when paying the cost does not lead to a resource level below any acceptable minimum) makes the consequences of not doing so a matter of option luck — by saying, that is, that justice requires redistribution between any of the endnodes in figure 9 — we must be saying that justice is not indifferent to someone’s bad luck incurred in a voluntary attempt to maximise resources. One of the reasons I gave for not treating the deliberate and calculated gamble in figure 9 as option luck was that individually risky actions with a high expected resource outcome increase the total stock of resources available for distribution in the aggregate (when risks are independent across individuals). If we allow this efficiency concern to affect the choice of *distribuendum*, then we should also consider its implications for the just pattern. Taking efficiency into account in the patterning claim would lead to at least some weight being put on maximising the aggregate resource stocks.

If I am correct, then, a workable distinction between brute and option luck must be founded on considerations that are inimical to egalitarian WPCs. In response to previous versions of this essay, critics of my argument have proposed the following counterargument. I would be right if reasonability was a *moral* criterion for what justice requires. But a more natural interpretation of reasonability is *prudence*; a reasonable choice is one which a rational and self-interested person could choose. On this view, there is no conflict between, on the one hand, the

reasonability considerations underpinning the brute luck-option luck distinction in the WDC, and on the other, the egalitarian WPC.

This counterargument fails, for two reasons. The first reason is that the kind of reasonability we need to rely on is not the reasonability of *choice*, but the reasonability of prospects, that is, of *sets of options*. What mattered for the arguments in section IV was not whether it was unreasonable to buy very expensive insurance, but that it was unreasonable to say that the *choice set* provided a range of alternatives sufficient for making unequal outcomes a matter of option luck. And the reasonability of a *choice set* is not a prudential notion, but presupposes a moral claim; a moral claim about what minimal set of alternatives an individual must be provided with *ex ante* for justice to be unconcerned with the consequences of his choices *ex post*.

The second reason is that prudence cannot account for our intuitions in the cases considered in section IV. Consider the person who has to choose in a decision tree like the one depicted in figure 8. The risky option has a very large spread, and the safe option has no risk, but is almost as bad as the bad outcome in the risky choice. I argued that the inequalities between people who end up at different realisations of the risky prospect is not a matter (only) of option luck. But that is *not* because it is imprudent to choose the safe option. That choice may in fact be very prudent, for example if it yields just above the resource stock required for survival, and the bad realisation of the risky prospect yields just below that level. It may even be prudent to sell oneself or one's children into slavery in the hope of avoiding what is in any case a miserable condition. The same applies to being risk-averse and choosing a safe prospect of low expected value instead of a risky one with high expected value. There is nothing *imprudent* in turning one's back on the possibilities of huge gain for the comfort of calm and predictability. What this shows is that the arguments for the least risky reasonable prospect view are based on moral, not prudential, intuitions about reasonability.

So if the availability of ‘insurance’ does not convert brute luck into option luck in these cases it is not because only an imprudent person would choose to insure. Rather, it is because *justice* requires that people be provided with better choice sets than these. But that, as I said, opens up the possibility that the considerations about what choice sets people should have, on which brute luck-egalitarian theories have been shown to rely, threatens what is egalitarian in those very theories.

## VII. Conclusion

My arguments can be summed up as follows: Distinguishing between brute and option luck is less straightforward than it seems from Dworkin’s definition and in the ensuing literature on brute luck egalitarianism. I presented two possible refinements of the distinction, and showed that the least risky prospect view must be chosen over the natural uncertainty view. The least risky prospect view defines brute luck as the spread between the outcomes in the least risky (minimum-spread) option available, measured in resources or some other *distribuendum*. For the distinction to be appealing as a foundation of brute luck egalitarianism, however, it must be parasitical on a notion of reasonability — it is only *reasonable* opportunities to insure that convert brute luck into option luck. This is not always apparent in the way egalitarians adopt Dworkin’s distinction into their vocabulary; indeed it seems that the cart is sometimes put before the horse. We cannot derive what people are to be held responsible for from a distinction between brute and option luck; the derivation has to go the opposite way.

I then argued that incorporating the idea of choice and responsibility into the definition of the proper currency of distributive justice has two important implications. If we take egalitarianism for granted and simply want our egalitarianism to incorporate ambition-sensitivity in a plausible manner, then we must conclude in favour of more redistribution in response to innate differences in handicaps and talents than what Dworkin advocates. This does not, however,

mean that we need to go to the extreme of complete *ex post* equalisation, as claimed by Otsuka and others.<sup>45</sup> The second implication hits at the core of egalitarianism itself. It only makes sense to treat brute and option luck inequalities differently if the distinction is defined with reference to non-egalitarian principles about reasonable sets of options. Once such non-egalitarian concerns are used to define the *currency* of justice (the *distribuendum* claim), the theory of distributive justice that incorporates the currency must also allow them to have force in determining the just *distribution* (the *patterning* claim). In a plausible version of brute luck distributive justice, therefore, equality may at best be *primus inter pares* among values, and not the ‘sovereign virtue’ that Dworkin wants it to be.

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<sup>45</sup> Otsuka, ‘Luck, Insurance, and Equality’; van der Veen, ‘Equality of Talent Resources’.