

The Slavery of the Not So Talented

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Accepted: 21 June 2010 / Published online: 30 June 2010
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Abstract The article sets forth Ronald Dworkin's efforts to avert the slavery of the talented within his theory of equality, so that they are not forced to work full-time at one type of job, but then criticises Dworkin for failing to apply similar concerns to not so talented workers. It argues that he overlooks the problem of the slavery of the not so talented that results from the tough rules he proposes for dealing with insurance payouts. Finally, it tries to show how this unfairness can be avoided with a better interpretation of the likely outcome of his hypothetical insurance experiment given a better understanding of the motivations of parties operating within that experiment.

Keywords Dworkin · Slavery of the talented · Equality · Liberty

Like other resource egalitarians, Ronald Dworkin is troubled by the problem of the slavery of the talented. This occurs when an attempt to mitigate the influence of unequal talents on the distribution of income suggests enslaving the talented so that their talents can be put to work for the not so talented. In order to avoid the slavery of the talented Dworkin argues that talents should not be included in an initial auction for worldly resources. For the same reason he thinks that hypothetical insurance premiums against lack of talent should not be based on potential earnings but fixed as an increasing proportion of actual income. However, when it comes to insurance payouts the proposal is to tie coverage to potential earnings rather than actual income. The consequence of these tough rules on payouts is that the not so talented face restricted occupational choices. I try to show how this consequence can be avoided once a more complete inventory of the possible motivations of parties to the hypothetical insurance scenario has been taken. Finally, I try to work through the implications of this argument for debates in political theory and welfare policy.

1 The Auction

One of the most discussed features of Dworkin's theory of equality is the idea that the government should try, so far as it is able, to make the distribution of income and wealth in

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society sensitive to people's choices and ambitions (including decisions about whether to work in more or less productive ways and whether or not to purchase insurance against risk) but at the same time not sensitive to people's native endowments (or talents) and uninsurable risks (such as being born with a handicap) (Dworkin 1981, p. 311; 1985, p. 207). Of course, in reality people start off with greater or lesser shares of worldly resources and in some cases are born with handicaps that they might have wished to purchase insurance against but cannot. Indeed, the rich are able to purchase insurance packages that are simply not available to the poor (1981, p. 311; 2006, p. 115). So Dworkin employs a thought experiment of people shipwrecked on a desert island (1981, p. 285). They are placed under conditions of *ex ante* equality, meaning they are given equal numbers of clamshells with which to bid for an equal share of the island's natural resources, and are given ample opportunity to purchase insurance against equal risks, including physical handicaps and lack of talent.

If one of the goals of egalitarian justice is to mitigate the influence of talent-endowment on the distribution of income after the auction, why not include people's talents or labour-power within the initial auction itself? Dworkin declines this alternative on the following grounds. Suppose Adrian and Claude possess unequal talent for production such that either Adrian is able to engage in skilful farming and Claude is not or both can engage in skilful farming but Adrian will produce far more resources than Claude with the same degree of effort. Since Adrian 'is able to produce prodigious income from farming, others would be willing to bid a large amount to have the right to his labor and the vegetables thereof, and if he outbids them, but chooses to write indifferent poetry instead of farming full-time, he will have spent a large share of his [clamshells] on a right that will bring him little benefit' (Dworkin 1981, p. 311). For Dworkin, 'This is indeed the slavery of the talented' (p. 312).

Nominally, what makes auction-slavery unjust, in Dworkin's eyes, is the fact that such results are forbidden by 'the envy test'. According to the envy test: 'No 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' (Dworkin 1981, p. 285). It is important to recognise that the envy test is not supposed to be static: if someone chooses to work hard to expand his worldly resources, the relevant question is not whether other people would envy his worldly resources but whether they would envy his worldly resources plus the talent and effort he must expend to obtain those worldly resources. Nevertheless, if Adrian is regarded as owning his own talents and whatever his labour-power enables him to produce, then Claude is likely to envy Adrian's bundle of worldly resources and talents. If, on the other hand, Adrian is put in a position of having to purchase his own talents or labour-power from the auction, then he might end up envying Claude's situation. This is because Adrian, unlike Claude, will have to spend most, if not all, of his clamshells in purchasing his own labour-power or else let other people own his labour-power and all his income (1981, p. 312).¹

Dworkin's case against the inclusion of talents in the auction must also be understood in the context of his wider reconciliation of equality and liberty. Isaiah Berlin famously argued that there are a number of fundamental political values (including equality and liberty), which can, and often do, conflict to give contrary directives in matters of political morality (Berlin 1969). This, of course, leaves the difficult task of trying to establish which values are to be promoted or sacrificed at any given time. Nevertheless, Berlin believed that it is better to be a pluralist fox than a monist hedgehog (1978, p. 22). Dworkin, by contrast,

¹ For further discussion of this point, see Miriam Cohen Christofidis (2004) pp. 33–4 and Dworkin (2004) p. 351.

rejects value pluralism arguing instead that it is possible to reconcile equality and liberty once we understand the true nature of each. He affirms that equality and liberty are not ‘flat’ concepts but ‘dynamic’ concepts (Dworkin 1987, 2001). This means that the citizens of a true political community do not have a right to every freedom or every equal distribution possible. On the contrary, citizens are only entitled to specific kinds of rights to do or not do things and specific kinds of rights to equal distribution, where specific rights must be grounded in more general principles of political morality. In order to establish specific rights to equality and liberty Dworkin maintains that we need only recognise an abstract egalitarian principle that we are all united in accepting, *vis-à-vis*, that every citizen has a right to be treated with equal concern and respect by his or her own government (1977, p. 180; 1983, pp. 24–25; 1986, pp. 296–7; 1987, pp. 7–8; 2000, p. 2). If this abstract egalitarian principle overarches more specific rights to equality and liberty, then there cannot be genuine conflict between specific rights *qua* adequate interpretations of the abstract egalitarian principle (1987, p. 9).

How does this general argument about equality and liberty apply in the case of the slavery of the talented? Anyone who accepts the abstract right to equal concern and respect accepts only as much equality and liberty as this right implies or can be plausibly interpreted as implying. According to Dworkin’s interpretation, within a true political community each citizen has a right to an equal share of resources and enough liberty as is necessary to be able to identify and realise the intrinsic value of his or her own life (Dworkin 1977, pp. 272–3; 2006, p. 10). And the basic thought is that being enslaved by an auction for one’s own talents is in direct opposition to having satisfactory liberty with which to identify and realise the intrinsic value of one’s own life. Hence, anyone who affirms a kind of specific right to equality of resources which entails the slavery of the talented must reject the abstract right to equal concern and respect, for to allow the slavery of the talented is to deny a specific right to liberty that flows from that abstract right.

Assuming this interpretation of the abstract egalitarian principle is correct it provides one line of response to those who would argue that auction-slavery is not really slavery after all. In the case of the chattel slave, he is owned lock, stock and barrel from the moment of his birth, whereas the auction-slave (so the argument goes) is merely required to make a choice between either bidding for his own talents and thereby giving up other consumption or having his talents owned by others in which case he cannot expect much leisure. If tastes about consumption, work and leisure are amenable to the agent’s own control, then what looks like the enslavement of the talented under the auction is really a kind of responsibility-attracting expensive taste (Stark 2002, pp. 46–7). However, if the above interpretation of equal concern and respect is correct, then the ability to make an occupational choice between different types of work whilst maintaining decent levels of consumption and leisure is part and parcel of having satisfactory liberty with which to identify and realise the intrinsic value of one’s own life, and is something to which individuals have a specific right.

2 The Hypothetical Insurance Scenario

Given the foregoing arguments, how does Dworkin think that can we move towards equality of resources *without* putting talents directly into the auction? He asks us to imagine that the shipwreck survivors face the same antecedent risks of lacking the talent to earn at different levels of income and are offered the possibility of purchasing talent or income-maintenance insurance. They can choose between schemes that determine the relevant insurance premiums in one of two ways: either flat rate premiums (charged at fixed

amounts depending on the chosen level of insurance coverage and payable at those amounts whatever the policyholder actually turns out to earn) or variable rate premiums (charged as an increasing percentage of the income that the policyholder actually turns out to earn). Having reflected on the level and type of insurance coverage that the islanders would choose, on average, under conditions of *ex ante* equality, Dworkin affirms that we have at our disposal an appropriate baseline for judging the justice or otherwise of social welfare provision in the real world (Dworkin 1981, pp. 290, 315; 2002, p. 107; 2006, p. 115–7).²

The spectre of talent enslavement has not entirely gone away, however. Dworkin argues that *if* the survivors opted for flat rate insurance policies, they would be unlikely to want to purchase insurance at the highest level of coverage. For suppose someone did decide to purchase insurance at the highest possible level of coverage, with the highest premiums payable, and then ends up losing the insurance bet because it just so happens that his movie star talents are highly valued on the island. He could not earn enough to pay his premiums if he opted to work as an administrator, mechanic or any number of less well-paid jobs. In fact, according to Dworkin:

Only one form of work, and full-time, will be likely to produce the income needed to pay the premium that is now his albatross. So his penalty has special welfare disadvantages not measurable in ordinary financial terms. It is these that make it appropriate to speak of enslavement. (Dworkin 1981, p. 322; cf. 2002, pp. 128–9)³

Does Dworkin's use of the phrase 'special welfare disadvantages' reveal that he is relying on some variety of welfare metric to make his case and is thereby conceding the inadequacy of the resource metric? The short answer is no. The phrase refers to the reasons or motivations that the shipwreck survivors would have not to purchase high coverage under a flat rate scheme, to wit, that doing so could enslave them. Although the purpose of the hypothetical insurance question is to realise equality of resources, this does not rule as inadmissible lines of reasoning about the motivations of insurance purchasers including the special welfare disadvantage of becoming enslaved. In other words, Dworkin might involve welfare in the story about why persons would purchase one level and type of cover rather than another but this does not mean that the account is grounded in some prior conception of equality of welfare (Dworkin 1981b, p. 335).

By using the term 'enslavement' to characterise the insurance scenario Dworkin harks back to the above-mentioned auction scenario, where slavery would ensue if labour-power were included within the initial auction of worldly resources. However, there are important dissimilarities between auction-slavery and insurance-slavery. In the event that the auction-slave does not bid or bids unsuccessfully for his talents he forfeits the ownership of his talents and must work as directed by the eventual owners. The insurance-slave is in a different situation. He must work if he is to pay his premiums, but his labour-power is not the property of someone else. He has the right not to work if he wishes; what he does not have the right to do is not pay his premiums. Putting this another way, although the insurance company is entitled to take action against someone who refuses to earn enough to

² Marc Fleurbaey objects that this method of basing actual policies on average hypothetical decisions violates the separateness of persons (Fleurbaey 2002, p. 90). For a critical discussion, see Brown (2009b) pp. 67–9.

³ Dworkin implies that under the fixed rate system enslavement will only affect those who gamble on the highest level of coverage. But Daniel Markovits has calculated that purchasing insurance coverage even at the mean level of income in the projected range will carry the risk of enslavement. See Markovits (2003) pp. 2308–9. For an interesting discussion of Markovits, see Vincent (2006).

Drawing on similar reasons Dworkin also rejects Robert van der Veen's proposal of a 100% flat rate tax (van der Veen 2002; Dworkin 2002, pp. 128–9).

pay his premiums—either to collect the premiums he owes or to recoup at least some of its losses—other things remaining equal it would not have the right to force policyholders to work. Furthermore, there is a sense in which someone who chooses to purchase high insurance coverage and loses the bet (i.e. ‘must’ work at full stretch at one type of job in order to pay off flat rate insurance premiums) is a slave to his own gamble rather than to someone else. In other words, the reason why we are willing to regard auction-slavery as a possible infringement of liberty is that the decision to place talent or labour-power in the auction is not made by the persons concerned. The insurance-slave, by contrast, is in the position of choosing whether or not to gamble on a policy that could enslave him. If he gambles and loses, then the result is bad option luck.⁴

More generally, that Dworkin introduces option luck into the picture testifies to the depth of his opposition to Nozick’s memorable argument in *Anarchy, State, and Utopia* that income taxation is on a par with forced labour (Nozick 1974, p. 169). Whereas Nozick’s argument extends to all types and levels of redistributive income taxation (as in, the taxation of earnings from labour used for the purposes of inter-personal redistribution as opposed to funding national defence, the police, and the public administration of justice), Dworkin affirms that income taxation is not unjust provided that it mimics the type and level of insurance premium that would be selected by persons placed under conditions of *ex ante* equality. Dworkin favours a proportional taxation system. Nozick, on the other hand, believes that a proportional taxation system (under which individuals still have freedom of choice over how much work they do and what type) is on a par with forced labour because it violates people’s private property rights.

At any rate, Dworkin goes on to argue that most of the island insurance companies would offer, and most of the shipwreck survivors would want to purchase, variable rate insurance policies in which premiums are charged as an increasing proportion of the income the policyholder actually turns out to earn. People would prefer a ‘bet’, in other words, under which the percentage of income they pay in premiums rises and falls with their actual income (Dworkin 1981, p. 325). In order to pay a reduced rate in insurance premiums the policyholder need only prove reduced actual earnings. ‘If we modelled our tax structure on the hypothetical insurance story,’ explains Dworkin, ‘we would insist on a fairly steep progressive tax-rate system so that those with more income would pay at a higher rate’ (2006, p. 117).

In contrast to this, Dworkin suggests that insurance payouts would be triggered only on the basis of shortfalls on the side of earning potential as opposed to deficits in actual earnings. That is to say, ‘the insurance company will pay the policyholder the difference between that coverage level and the income he does in fact have an opportunity to earn’ (Dworkin 1981, p. 317). A shortfall between a policyholder’s actual income and his or her insured income will not be enough to trigger a payout. What matters is the gap between what policyholders have the opportunity to earn or potential income and the level of insured income. In fact, Dworkin conjectures that most insurance companies would place the burden of proof on policyholders because of the administrative savings this will produce. The sort of evidence a policyholder could be required to bring to bear is evidence that he or she has tried and failed to secure a job at the agreed level of coverage or that he or she lacks the skills and talents required to earn at that level. Some insurers might even require policyholders to pursue job training as a condition of receiving any payouts. In this way policyholders must prove that their lack of employment or low pay is due to lack of talent

⁴ Faced with the problem of people whose lives would be ruined by these sorts of unwise insurance bets, Dworkin concedes that we may have ‘special reasons for forbidding certain forms of gambles’ (Dworkin 1981, p. 295).

rather than lack of effort or training. Unless the policyholder can prove otherwise, the insurer proceeds on the basis that he or she has the capacity to earn at the agreed level of coverage. If there is evidence to show lack of talent at that level, the insurer retreats to a lower percentile, and agrees to pay the difference between the two. The onus of proof then reverts back to the policyholder, to prove that he or she cannot earn at this lower level. This process continues until the policyholder is no longer willing or able to show that he or she is incapable of earning at a particular level (1981, p. 326; 2000, p. 336).

Why does Dworkin think that this type of insurance policy would be popular? The main reason appears to be that it would be cheaper than its alternatives. He thinks that by imposing strict rules on insurance payouts insurers will be able to make significant savings and pass on at least part of the savings to policyholders as inducements to purchase the relevant policies rather than more expensive alternatives. The savings come from the fact that insurance is not triggered merely if an agent earns below the insured amount, so in principle fewer payments will have to be made, and because the onus of proof is on the policyholder to provide evidence, thereby saving the insurer the administrative costs of gathering that evidence. If governments modelled social welfare provision on this part of the hypothetical insurance story, they would insist on a strict system of interviews, eligibility assessments, and work or retraining requirements such that citizens who could not prove their inability to earn at a specified income level would not receive assistance even if their actual earnings fell below that level.

3 Comparing the Rules on Insurance Premiums and Payouts

How might these different rules impact on hypothetical policyholders? Imagine that on the island variable rate insurance premiums are charged as an increasing percentage of actual earnings according to the following bands: band A at 25% of income for people in the first to the thirtieth income percentiles, band B at 50% of income for people in the thirty-first to the sixtieth income percentiles, and band C at 75% of income for people in the sixty-first to the one-hundredth income percentiles. Now suppose that two of the shipwreck survivors, Jane and John, both choose to purchase insurance coverage at the thirtieth income percentile, which they reasonably predict as being necessary for maintaining a decent standard of living (taking into account the cost of the insurance premiums). It turns out that Jane actually has the talent to earn at the eightieth income percentile, well above the insured level. Although she is unable to claim an insurance payout, she nevertheless enjoys real freedom of occupation. If she decided to earn at her maximum potential income level, she would have to pay premiums at a rate of 75% of income. But if she reduces her earnings by taking up less well-paid employment, she could pay at a reduced rate of 50% of income. She could even choose to work part-time and still earn at the thirtieth percentile paying a rate of 25% of income. The upshot is that Jane is free to accept a wide variety of different jobs and work below her maximum earning capacity whilst at the same time enjoying a decent standard of living. John, by contrast, turns out to have the talents required to earn at the covered level of income but no higher. He will pay a premium rate of 25% of income whatever he earns. Furthermore, since he is able to earn the covered amount, no insurance payout will be triggered by any reduction in his actual earnings. So if he chooses not to work at full stretch or not to employ his most valuable talents, he will earn a salary below the thirtieth income percentile. The consequence is that John is unfree to work fewer hours or accept a less well-paid job whilst maintaining a decent standard of living.

Now Dworkin suggests that 'if the imagined conditions of the hypothetical insurance device were actually met, prudent people, at least on average, would take out policies of

unemployment or low-wage insurance to guarantee a decent standard of living but would not insure to provide as much as the average pre-insurance level of income in their community' (Dworkin 2002, pp. 125–6). I believe that the problem I have identified is particularly acute at this level. For, it is at this level that earning less than the insured amount can have the most significant impact on someone's ability to make ends meet. Someone with John's talents will have limited real freedom of choice about the general character and quality of work in which he engages and almost no real choice about the mix of work and leisure that he might prefer. He lacks real choice in the specific sense that dropping below his maximum earning potential will send him below the level of a decent standard of living.⁵ This invites the criticism that Dworkin's description of the insurance scheme does not consistently cater to real freedom of occupation and thereby discriminates unfairly between the talented and the not so talented.

Let me be clear about the nature of this criticism. I have used the notions of real freedom of occupation and a decent standard of living in order to highlight the unequal predicament of not so talented workers. Consequently, some might have the suspicion that, in the end, I subscribe to an equality of welfare account or perhaps an equality of opportunity account—which are defensible, of course, but not compatible with Dworkin's account. This is not my position, however. The point is that equality of resources is defined by a decision over the purchase of income maintenance insurance under conditions of *ex ante* equality. Typically, people will consider various things in coming to such a decision, including, I propose, concerns about real freedom of occupation. Nevertheless, I do not make the further claim that the primary aim of egalitarian justice should be to equalise real freedom of occupation or access to the good life or equality of opportunity for welfare broadly construed. My aim, by contrast, is merely to reflect more deeply on what is likely to occur if persons are placed under conditions of *ex ante* equality, as defined by resource-based measures. The moral of my story is that people can have reasons not to purchase a scheme that leaves them with limited real freedom of occupation, a conclusion which is, I believe, compatible with Dworkin's general account.

How might Dworkin respond to my argument about the unforeseen consequences of his proposed rules for insurance payouts? Consider two possible replies. The first denies that tough rules dealing with insurance payouts detract from freedom of occupation properly called. On this view, John is free to earn less than his maximum potential income for the simple reason that nobody is coercing him to work at his full capacity. Nor is he forced to work at his full capacity in order to pay high fixed rate insurance premiums. Though this reply merits attention it is not decisive. What is at stake here is people's real freedom of occupation, where this means the opportunity to choose between different kinds of work and combinations of work and leisure but at the same time maintain a decent standard of living. Putting the point another way, we might say that occupational choice against a background of consumption and leisure is an intrinsic component of virtually all conceptions of the good life (see van Parijs 1995; Levine 1998). I do not claim that tough rules dealing with insurance payouts can enslave policyholders in exactly the same way that fixed rate premiums might enslave policyholders. But I do claim that it is wrong to suppose that the former is not a form of unfreedom or somehow irrelevant from the point of view of

⁵ It might be thought that even if John is stuck, so to speak, working at his maximum earning potential, he nevertheless enjoys a greater variety of types of jobs at this lower level of income than at a higher level (cf. Dworkin 1981, p. 322). But this is far from obvious. Although John may have a choice of jobs, he could still lack any real choice in the type of occupation since at this level most jobs are likely to involve the same high degree of routine, non-complex, restricted-autonomy labour.

justice. The key question is whether or not individuals have a right to real freedom of occupation. On Dworkin's view, this depends on what it means to show equal concern and respect in matters of distribution, where this interpretation depends in turn on the hypothetical insurance device. I conjecture that persons would be inclined to purchase insurance policies that furnish them with a degree of real freedom of occupation, and therefore that individuals have a right to real freedom of occupation. I should perhaps also clarify that when I talk of a lack of real freedom of occupation I do not mean *any* limitation on choice of occupation. Presumably no sensible scheme would grant people the real freedom of occupation to do jobs for which they are not competent. It would be inappropriate, for example, to regard someone as lacking liberty of occupation merely because the relevant authorities do not permit unqualified people to work as surgeons.

The second reply is that even if a person loses the insurance bet in the sense that I have just described, he is still very little worse off than if he had taken out no insurance whatsoever (cf. Dworkin 1981, pp. 322–3). Even at relatively low levels of coverage, however, it is difficult to make the case that someone is very little worse off than if he had taken out no insurance whatsoever. There is one clear sense in which he is worse off. If he had not been insured, then at least he would not now have to pay insurance premiums. If he chooses to earn below his potential, John still has to pay premiums at a rate of 25% of income, and with the tough rules dealing with insurance payouts he would receive no payouts to counterbalance the premiums. More importantly, he is worse off than if the insurance policy had been different, that is, if the policy had been based on actual earnings and paid out even if he opted to earn less than the insured amount. So why not use this as the baseline? In the absence of an answer to this question the reply lacks force.

4 Reinterpreting the Insurance Scenario

In the light of the above I propose to rethink the motivations of the shipwreck survivors. Dworkin takes it as read that most, if not all, of the agents would opt for the least expensive type of insurance policy. The assumption is that agents are motivated principally by cheaper premiums, so that every penny an individual can save on insurance premiums is a penny he can spend on something else that really matters to him. But is that true? Suppose some firms offer no-talent-test insurance whereby the policy is triggered as soon as actual earnings fall below the covered level rather than if potential income falls below. Will anyone want to buy this type of insurance? I do not deny that the answer to this question will depend on the rates of the relevant premiums, which in turn depends on projections about what people could earn, how many of them would choose to earn less than they could earn if insurance payouts were more readily obtainable, and the administrative savings that could be made if insurance firms did not have to assess evidence on earning potential. However, even assuming that no-talent-test insurance policies would be more expensive than the alternatives,⁶ there are a number of possible reasons why people might favour this type of policy.

As we have already seen, some might want the real freedom of occupation this type of insurance will provide. They will want to have an insurance policy that allows them to

⁶ I assume that if the insurance premiums associated with these policies are higher at lower levels of income, say, 30% of income for those earning in the first to the thirtieth income percentiles, then people will have to insure at a higher level of coverage in order to maintain a decent standard of living. Alternatively, insurance companies could leave band A at 25% but adjust band C to capture people earning in the fiftieth income percentile and/or introduce a new band, D, say, 90% of income for earners in the eightieth income percentile and above.

work at less than full stretch at different types of jobs, for at least part of their working life, without forfeiting a decent standard of living, and they will be willing to pay extra for it. In order to make this case we do not have to assume that they are buying insurance simply to become idlers. Some might want the real freedom to take time off work so they can pursue their religious commitments or to undertake charity work or to fulfil some other deeply held ambition. Other people might want to be able to work in less mundane jobs or jobs that afford some creativity or the chance to work with young people or in the great outdoors.

Quite apart from issues of restricted occupational choice there are other drawbacks associated with insurance schemes that tie payments to earning capacity rather than actual earnings. One problem that has emerged in the liberal egalitarian literature is that such regimes require potentially intrusive and demeaning investigations in the case of people who really do lack the requisite capacities to earn at the insured level. Jonathan Wolff dubs this the problem of ‘shameful revelation’ (Wolff 1998, pp. 113–5). Shipwreck survivors might be put off by insurance policies that, in effect, require them to reveal things about themselves that they could find shameful in order to trigger insurance payouts. They might prefer instead to have a no-talent-test policy even if they have to accept higher premiums in return. In fact, there is already a precedent for no-evidence policies within actual insurance markets. Some life insurance companies promote products especially designed to cover people above a certain age without the need for a medical. In some cases individuals are prepared to pay a premium for their privacy. This does not mean that parties will be willing to pay any amount. Rather, it suggests that an optimum balance is to be struck between the desired cost and the desired type of coverage.

That it is possible to develop a wider set of assumptions regarding the motivations of parties to Dworkin’s hypothetical insurance market is due to the fact that, unlike Rawls’ veil of ignorance, the hypothetical insurance argument is designed to allow people ‘enough self-knowledge, as individuals, to keep relatively intact their sense of their own personality, and especially their theory of what is valuable in life’ (Dworkin 1981, p. 345). The assumptions we make about the motivations of the participants, therefore, will depend on a set of premises about what people actually think is valuable in life.

If Dworkin insists on hypothetical insurance markets as the correct device for fleshing out principles of distributive justice, then any convincing arguments that can be made about what types of insurance policies would be popular among the participants must be accepted at face value. As Dworkin himself puts it,

If I am wrong in this, the hypothetical insurance argument would insist on radical redistribution and substantial wealth equality. So the scheme would offer an argument for that consequence, on that assumption. (Dworkin 1981, p. 319n.11)

Mine is not an argument for radical amounts of redistribution per se. Rather, it is that if a compelling case can be made to the effect that people would, on average, prefer an insurance policy which included a more limited use of talent-tests than Dworkin imagines, then this becomes what the doctrine of equality of resources demands.⁷

At this stage in the argument, however, it might be objected that my reinterpretation of the results of the insurance scenario cuts against Dworkin’s central norm, that we must permit the distribution of resources at any moment to be ambition-sensitive but not endowment-sensitive. Under the insurance scheme I have proposed (it might be argued)

⁷ Indeed, this is precisely the response made by Dworkin to my examples during an exchange at the University of London School of Advanced Study symposium on Dworkin’s theory of equality held at Senate House, London in March 2001.

someone with moderate talents who has not the ambition to work hard will still get the same income as someone with the same talents who chooses to earn his money by hard work. Surely this violates the goal of ambition-sensitivity.

I reject the assumption that someone who chooses to work below his or her maximum income potential is somehow not working hard. He or she could give up an income at the thirtieth percentile in order to work in an animal rescue centre but still be working tremendously hard. Be that as it may, the objection misses a more important point. The key test of egalitarian justice for Dworkin is equal concern and respect, and equality of resources is an interpretation of that abstract standard. Nevertheless, the core idea of equality of resources, according to Dworkin, is ‘that people be made equal, so far as this is possible, in their opportunity to insure or provide against bad luck before it has occurred, or, if that is not possible, that people be awarded the compensation it is likely they would have insured to have if they had had that opportunity’ (Dworkin 2003, p. 191). What follows from this opportunity is a matter of option luck. So if people would, on average, prefer a scheme that is less ambition-sensitive (in the sense suggested by the objection) than Dworkin imagines, this can still be justified within the scope of equality of resources.

5 Implications

I have argued that the assumptions we make about the motivations of people under conditions of equality can significantly alter the results of Dworkin’s thought experiment. And I have suggested that people will be motivated by what they think is valuable in life including not merely the opportunity cost of purchasing an insurance policy at a given price but also the intrinsic and instrumental value of real occupational choice, privacy and the avoidance of shameful revelation.

The foregoing arguments have important implications for social welfare policy. According to Dworkin, the hypothetical argument for insurance coverage becomes compelling ‘well above the level of income presently used to trigger payouts for unemployment or minimum wage levels in either Britain or the United States’ (Dworkin 1981, p. 321; see also 2006, p. 118). The implication of the above argument is that there is a case for not simply increasing the level at which insurance payouts are triggered in Britain and the United States but also for significantly changing the terms on which people receive unemployment and low-wage benefits. To put this into context, there has been over the past three decades an incremental move away from social security towards workfare. Successive governments in the US, Britain and various countries across Western Europe have introduced a barrage of new tests and interviews, where claimants must now prove their inability to earn more than their actual earnings as well as their willingness to actively seek employment or retraining as a condition of receiving public assistance (see Brown 2009a, pp. 84–92). My argument is that showing equal concern and respect for citizens might in fact demand that governments reverse this policy trend. That realising equality of resources may require a social security system in which people’s unemployment and low-wage benefits are based on their actual earnings rather than their earning potential or evidence thereof.

I do not ignore key justifications for workfare policies, not least those appealing to the values of fairness and reciprocity (see, for example, White 2003). However, I do wish to suggest that these are not the only values; or at the very least, that there is a way of understanding the meaning of these values that might tell against workfare. I am not the first to make such a point. A similar point is implicit in the work of writers who defend basic income schemes on grounds of real freedom for all (van Parijs 1995) or equal respect

for persons (avoiding shameful revelation) (Hinton 2001). And the point is explicitly made by Paul Bou-Habib and Serena Olsaretti, namely, 'it is plausible that people have reason to prefer not being required to accept any job that is offered to them, and that they should value freedom of occupational choice enough to be prepared to pay a higher premium for a policy that guarantees it to a greater extent than workfare policies do' (2004, p. 263). The aim of the present article has been to work through the implications of this train of thought within Dworkin's account.

Now it might be pointed out that Dworkin himself recognises the possibility of using a different tax and redistribution scheme than the one he himself thinks would follow from the hypothetical insurance device. He writes:

We might decide that a tax scheme should differ from the best approximation of that hypothetical market for other reasons. We might decide that a tax scheme so closely modelled on that market is offensive to privacy, or too expensive in administrative costs, or too inefficient in other ways. We might decide, for these or other reasons, that a scheme that tied redistribution to actual earnings rather than to ability to earn, for example, was a better second-best approximation to the ideal of mimicking the insurance market than any other scheme we could develop. (Dworkin 1981, p. 326)

Notice, however, that in this passage Dworkin describes a scheme that ties redistribution to actual earnings rather than ability to earn as a 'second-best' option. There are two problems with this. First, it ignores the fact that further reflection about the motivation of parties to the hypothetical insurance market might offer direct support for a scheme that ties redistribution to actual earnings rather than to ability to earn. If my reflections are correct, then such a scheme becomes a first-best approximation to the results of the hypothetical insurance thought experiment. Second, to say that such a scheme is a second-best option seems to concede that the demands of privacy and efficiency are in conflict with the ideal of equality such that the latter must be compromised for the former. This is surely antithetical to Dworkin's rejection of value pluralism. What Dworkin should say, and what he actually says in his later work, is that no government can claim to treat its citizens with equal concern and respect that ignores their privacy or squanders vast sums of money on expensive administration (2000, pp. 321–2; 2002, p. 126n.35; 2006, p. 110).

The above argument also has implications for civil liberties. Dworkin argues that there is no justification for limiting the rights of 'the rich' to purchase private insurance to augment their membership of compulsory social insurance schemes—private insurance that poorer people cannot afford to purchase (Dworkin 2000, p. 437). As such, he attracts criticism from those who suggest that holding onto this right frustrates his own egalitarian ambitions (Armstrong 2005). It is important to recognise, however, that Dworkin defends liberty in this case on the assumption that the government of the political community in question lives up to the standards of equal concern and respect. Private health insurance is one example but consider the case of private income-maintenance insurance. Why should a government permit rich people to purchase such insurance that is unaffordable by poorer people? One answer is that for a government to show equal concern and respect for its citizens it must acknowledge the specific right to purchase private insurance (on the assumption that this right exists). Another is that poorer people cannot reasonably object to the existence of private insurance if they themselves have access to adequate social insurance. I have argued that an adequate type of social insurance could extend even greater advantages to the not so talented than Dworkin anticipates. Where this social insurance is in place, why restrict the freedom of the more talented to purchase additional insurance? Allowing the more talented to opt out of the social insurance scheme altogether is another matter.

I have not attempted in this article to scrutinise every aspect of Dworkin's proposed reconciliation of equality and liberty. Instead I have focused on the problem of the slavery of the talent. I argued that whilst he is sensitive to the problem as it arises both in connection with the initial auction and the collection of insurance premiums from talented gamblers, he overlooks the potentially analogous lack of real freedom of occupation that can adversely impact the not so talented given the tough rules he envisages for insurance payouts. Here I found fault not with Dworkin's theoretical architecture, but with the way he interprets the likely results of his own thought experiment. It is open to debate whether there are other objections to Dworkin's reconciliation that are less easily diffused.⁸

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⁸ According to Michael Otsuka, for example, Dworkin is unable to reconcile the demands of equality and liberty in the case of inheritance and gift-giving. Dworkin cannot allow ascetics, family members or altruists to give their equal share of clamshells to others before the auction begins, since such nonmarket transfers would frustrate the goal of achieving an envy-free distribution. Yet to prevent such persons from giving their clamshells to others is to restrict liberty. See Otsuka (2002), pp. 52–3. For Dworkin's reply, see his (2002).