

Menzel's Reconciliation

1 Criticisms of Dworkin

- A. Abstractness of liberty. Dworkin relies on “treating people with equal concern” to make his basic moves. See Dworkin handout from September 24, 1.2 for an example.
- B. Questions about the relevance of hypothetical consent: both the auction and the insurance markets are hypothetical. The insurance markets also have to imagine away knowledge that real people have.
- C. Dworkin's arguments for preferring resources over welfare as the way of comparing distributions are not good ones.¹
 - 1. Adaptive preferences: cheerful handicapped person gets less than a grumpy healthy one if we're comparing their subjective welfare.²
 - 2. Should the handicapped be allowed to trade resources like health care for other things, like violins? Dworkin: no; Menzel: why not?
- D. Ambiguities in formulating insurance market: is it what “all but a small number” would insure against or the insurance coverage that “the average person” would choose? (pp. 285–7)

2 Menzel's principles

2.1 Equal opportunity for welfare

People should not be worse off (experience less welfare) than others through no fault or voluntary choice of their own. Situations where people are worse

¹ I think Menzel means endnotes 5 and 6, rather than 4 and 5.

² Menzel refers to Menzel et. al. “The role of adaptation to disability an disease in health state valuation: a preliminary normative analysis” *Social Science and Medicine* 55 (2002) 2149–58. This is on electronic reserve for our class.

off than others because of their own sufficiently blameworthy actions or choices may be tolerated, as painful or distasteful as those situations may be. (pp. 287–8)

2.2 Anti-free-riding

A person should pay for any costs she imposes on others through voluntary action that she initiates without their informed consent, and a person should be required to pay her share of a collective enterprise that produces benefits from which she cannot be excluded, unless she would actually prefer to lose all of the benefits of the enterprise rather than pay her fair share of its costs. (p. 290)

2.3 Just sharing between well and ill

The financial burdens of medical misfortunes ought to be shared equally by well and ill alike unless individuals can be reasonably expected to control those misfortunes by their own choices. (p. 296)

2.4 Personal integrity

People ought to be held to the implications of their beliefs, values, and preferences as they confront both later events and other dimensions of their current lives. (p. 299)

2.5 Presumed prior consent

A person's prior consent to welfare limiting or liberty restricting policies or actions may be presumed by others both to the extent that it is impossible, not feasible, or prohibitively costly to have solicited the person's actual consent and to the extent that others can reasonably accurately judge what the person's prior preferences would have been. (p. 300)