

traditional issues of ethical, moral, and legal theory. My overall thesis is unpopular now—the fox has ruled the roost in academic and literary philosophy for many decades, particularly in the Anglo-American tradition.² Hedgehogs seem naïve or charlatans, perhaps even dangerous. I shall try to identify the roots of that popular attitude, the assumptions that account for these suspicions. In this introductory chapter I offer a road map of the argument to come that shows what I take those roots to be.

My advance summary could start in any chapter, fanning out from there, tracing the implications of that chapter for the rest. But I think it best to start at the end of the book, with political morality and justice, so that readers particularly interested in politics will have an advance understanding of why I think that the more abstract philosophical discussions of the book are required steps to what concerns them most. I hope that starting the summary there will also encourage other readers whose greater interest lies in more mainstream issues of philosophy—meta-ethics, metaphysics, and meaning—to find practical importance in what they might believe to be abstruse philosophical issues.

Justice

Equality. No government is legitimate unless it subscribes to two reigning principles. First, it must show equal concern for the fate of every person over whom it claims dominion. Second, it must respect fully the responsibility and right of each person to decide for himself how to make something valuable of his life. These guiding principles place boundaries around acceptable theories of distributive justice—theories that stipulate the resources and opportunities a government should make available to people it governs. I put the matter that way, in terms of what governments should do, because any distribution is the consequence of official law and policy: there is no politically neutral distribution. Given any combination of personal qualities of talent, personality, and luck, what a person will have by way of resource and opportunity will depend on the laws in place where he is governed. So every distribution must be justified by showing how what government has done respects these two fundamental principles of equal concern for fate and full respect for responsibility.

A laissez-faire political economy leaves unchanged the consequences of a free market in which people buy and sell their product and labor as they wish and can. That does not show equal concern for everyone. Anyone impover-

ished through that system is entitled to ask: “There are other, more regulatory and redistributive, sets of laws that would put me in a better position. How can government claim that this system shows equal concern for me?” It is no answer that people must take responsibility for their own fate. People are not responsible for much of what determines their place in such an economy. They are not responsible for their genetic endowment and innate talent. They are not responsible for the good and bad luck they have throughout their lives. There is nothing in the second principle, about personal responsibility, that would entitle government to adopt such a posture.

Suppose government makes the extreme opposite choice, however: to make wealth equal no matter what choices people made for themselves. Every few years, as would be possible in a Monopoly game, government calls in everyone’s wealth and redistributes it in equal shares. That would fail to respect people’s responsibility to make something of their own lives, because what people chose to do—their choices about work or recreation and about saving or investment—would then have no personal consequences. People are not responsible unless they make choices with an eye to the costs to others of the choices that they make. If I spend my life at leisure, or work at a job that does not produce as much as I could of what other people need or want, then I should take responsibility for the cost this choice imposes: I should have less in consequence.

The question of distributive justice therefore calls for a solution to simultaneous equations. We must try to find a solution that respects both the reigning principles of equal concern and personal responsibility, and we must try to do this in a way that compromises neither principle but rather finds attractive conceptions of each that fully satisfy both. That is the goal of the final part of this book. Here is a fanciful illustration of a solution. Imagine an initial auction of all available resources in which everyone starts with the same number of bidding chips. The auction lasts a very long time, and will be repeated as long as anyone wishes. It must end in a situation in which nobody envies anybody else’s bundle of resources; for that reason the distribution of resources that results treats everyone with equal concern. Then imagine a further auction in which these people design and choose comprehensive insurance policies, paying the premium the market establishes for the coverage each chooses. That auction does not eliminate the consequences of good or bad luck, but it makes people responsible for their own risk management.

We can use that fanciful model to defend real-life distributive structures. We can design tax systems to model these imaginary markets: we can set tax

rates, for instance, to mimic the premiums it seems reasonable to assume people would pay in the hypothetical insurance market. The rates of tax designed in that way would be fairly steeply progressive; more so than our tax rates at present. We can design a health care system mimicking the coverage it seems reasonable to assume people would seek: this would require universal health care. But it would not justify spending, as Medicare now does, enormous sums keeping people alive in the last few months of their lives, because it would make no sense for people to give up funds useful for the rest of their lives to pay the very high premiums required by that sort of coverage.

Liberty. Justice requires a theory of liberty as well as a theory of resource equality, and we must be aware, in constructing that theory, of the danger that liberty and equality will conflict. It was Isaiah Berlin's claim that such conflict is inevitable. I argue, in Chapter 17, for a theory of liberty that eliminates that danger. I distinguish your freedom, which is simply your ability to do anything you might want to do without government constraint, from your liberty, which is that part of your freedom that government would do wrong to constrain. I do not endorse any general right to freedom. I argue, instead, for rights to liberty that rest on different bases. People have a right to ethical independence that follows from the principle of personal responsibility. They have rights, including rights to free speech, that are required by their more general right to govern themselves, which right also flows from personal responsibility. They have rights, including rights to due process of law and freedom of property, that follow from their right to equal concern.

This scheme for liberty rules out genuine conflict with the conception of equality just described because the two conceptions are thoroughly integrated: each depends on the same solution to the simultaneous equation problem. You cannot determine what liberty requires without also deciding what distribution of property and opportunity shows equal concern for all. The popular view that taxation invades liberty is false on this account provided that what government takes from you can be justified on moral grounds so that it does not take from you what you are entitled to retain. A theory of liberty is in that way embedded in a much more general political morality and draws from the other parts of that theory. The alleged conflict between liberty and equality disappears.

Democracy. But there is another supposed conflict among our political values. This is the conflict between equality and liberty, on the one hand, and

the right to participate as an equal in one's own governance, on the other. Political theorists sometimes call the latter a right to positive liberty and suppose that that right may conflict with negative liberty—the rights to freedom from government I just described—and also with the right to a just distribution of resources. The conflict is realized, on this view, when a majority votes for an unjust tax scheme or a denial of important liberties. I respond to that claim of conflict by distinguishing various conceptions of democracy. I distinguish a majoritarian or statistical conception from what I call the partnership conception. The latter holds that in a genuinely democratic community each citizen participates as an equal partner, which means more than just that he has an equal vote. It means that he has an equal voice and an equal stake in the result. On that conception, which I defend, democracy itself requires the protection of just those individual rights to justice and liberty that democracy is sometimes said to threaten.

Law. Political philosophers insist on yet another conflict among political values: the conflict between justice and law. Nothing guarantees that our laws will be just; when they are unjust, officials and citizens may be required, by the rule of law, to compromise what justice requires. In Chapter 19 I speak to that conflict: I describe a conception of law that takes it to be not a rival system of rules that might conflict with morality but as itself a branch of morality. It is necessary, to make that suggestion plausible, to emphasize what might be called procedural justice, the morality of fair governance as well as just outcome. It is also necessary to understand morality in general as having a tree structure: law is a branch of political morality, which is itself a branch of a more general personal morality, which is in turn a branch of a yet more general theory of what it is to live well.

You will by now have formed a suspicion. Poseidon had a son, Procrustes, who had a bed; he suited his guests to his bed by stretching or lopping them until they fit. You might well think me Procrustes, stretching and lopping conceptions of the great political virtues so that they neatly fit one another. I would then be achieving unity on the cheap: a meaningless victory. But I mean to submit each of the political conceptions I describe to the test of conviction. I will not rely on any assumption that a theory is sound just because it fits with other theories we also find agreeable. I hope to develop integrated conceptions that all seem right in themselves, at least after reflection. I do make an independent and very powerful claim, however. I argue throughout the book that in political morality integration is a necessary condition of

truth. We do not secure finally persuasive conceptions of our several political values unless our conceptions *do* mesh. It is the fox who wins too easily: it is his apparent victory, now widely celebrated, that is hollow.

Interpretation

The first step toward that important conclusion, about integration and truth, requires facing up to an immediate challenge. I sketched a series of claims about the true meaning of a variety of political concepts. How can I show that one conception of equality or liberty or democracy is right and rival conceptions wrong? We must pause to consider what political concepts are and how we might be said to agree or disagree about their application. If you and I mean something entirely different by "democracy," then our discussion about whether democracy requires that citizens have an equal stake is pointless: we are simply talking past one another. My claims about the best understanding of the political virtues would then count only as statements about how I propose to use certain words. I could not claim that I am right and others wrong.

We must ask: When do people share a concept so that their agreements and disagreements are genuine? We share some concepts because we agree, except in cases we all regard as borderline, about what criteria to use in identifying examples. We mainly agree about how many books there are on a table, for example, because we use the same tests in answering that question. We don't always agree because our criteria are sometimes slightly different: we might disagree because you count a large pamphlet as a book and I don't. In that special borderline case our disagreement is illusory: we don't really disagree. Justice and the other political concepts are different, however. We think that our disagreements about whether progressive taxation is just are genuine even though we disagree, in some cases very sharply, about the right criteria for deciding whether an institution is just.

We must therefore recognize that we share some of our concepts, including the political concepts, in a different way: they function for us as *interpretive* concepts. We share them because we share social practices and experiences in which these concepts figure. We take the concepts to describe values, but we disagree, sometimes to a marked degree, about what these values are and how they should be expressed. We disagree because we interpret the practices we share rather differently: we hold somewhat different theories about which

values best justify what we accept as central or paradigm features of that practice. That structure makes our conceptual disagreements about liberty, equality, and the rest genuine. It also makes them *value* disagreements rather than disagreements of fact or disagreements about dictionary or standard meanings. That means that a defense of some particular conception of a political value like equality or liberty must draw on values beyond itself: it would be flaccidly circular to appeal to liberty to defend a conception of liberty. So political concepts *must* be integrated with one another. We cannot defend a conception of any of them without showing how our conception fits with and into appealing conceptions of the others. That fact provides an important part of the case for the unity of value.

I describe interpretive concepts much more fully in Chapter 8. Chapter 7 takes up a more basic set of questions about interpretation. We interpret in many genres beyond politics: in conversation, law, poetry, religion, history, sociology, and psychodynamics. Can we provide a general theory of interpretation that holds for all these genres? We will better understand the standards that should govern our interpretation of the distinctly political concepts if we can. I describe a popular general theory of interpretation: that it always aims to retrieve the intention or other psychological state of some author or creator. That theory is apt in some circumstances in some genres and inapt in others; we need a more general theory of interpretation that explains when and why the intention-retrieval goal is plausible. I suggest a value-based general theory. Interpreters have critical responsibilities, and the best interpretation of a law or a poem or an epoch is the interpretation that best realizes those responsibilities on that occasion. The best interpretation of Yeats's poem "Sailing to Byzantium" is the interpretation that deploys or assumes the best account of the value of interpreting poetry, and reads the poem so as to show its value in that light. But because interpreters disagree about their responsibilities, because they disagree about the value of interpreting poetry, they disagree about how to read that poem or any other object of interpretation.

Truth and Value

I argue, then, that political morality depends on interpretation and that interpretation depends on value. It has become obvious by now, I suppose, that I believe that there are objective truths about value. I believe that some institutions really are unjust and some acts really are wrong no matter how many

conception of how that challenge is best met through political structures and practices. Because we aim to interpret our two principles as mutually supporting, not conflicting, we must try to develop conceptions of equality, liberty, and democracy that support one another as well.

This strategy for studying political rights is strikingly different from what is often called the historical approach. Many philosophers—Isaiah Berlin and Bernard Williams were prominent recent examples—have argued that we cannot appreciate the character or force of a political concept like liberty until we have gained a sense through history of what it meant to our political predecessors.¹⁵ In one sense the project I recommend is historical: it is right to treat liberty, equality, and democracy as interpretive concepts only if those concepts function as interpretive, and the question whether they do has a historical dimension. In that way interpretation engages history, but history does not fix interpretation.

I do not mean that a concept is interpretive only if those who use it understand that it is interpretive. As I said earlier, very few people have the concept of a concept, let alone the concept of an interpretive concept. I mean that we must be able to make best sense of the concept's use over history—best sense of the ways in which people take themselves to be agreeing and disagreeing—by supposing that it is interpretive. If the great political concepts are indeed interpretive, however, then history is no privileged guide to their best interpretation. The fact that throughout modern history many people have supposed that taxes infringe liberty or that democracy means absolute majority rule does not mean that an interpretation that denies this is false. They may have been—I think they were—mistaken. Perhaps those philosophers who believe that a study of these concepts must be densely historical have simply assumed that the concepts are criterial. If so, it is their approach, not the one I recommend, that is unhistorical.

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Equality

Philosophy and Shame

Poverty makes an odd subject for reflective philosophy; it seems fit only for outrage and struggle. In most of the rich countries the distance between the comfortable and the poor is unconscionably great; in some, including the United States, the distance increases relentlessly. In these circumstances academic political philosophy must seem artificial and self-indulgent. Theories of distributive justice almost inevitably urge radical reform in the advanced capitalist communities in which they are most avidly studied. But the practical possibility of anything like the reform they recommend is remote. Left-of-center politicians struggle, with at most moderate success, to achieve incremental gains for those at the bottom, and the best politics is politics that does not ask more than the comfortable majority is willing to give. The gap between theory and politics is particularly great and depressing in racially or ethnically diverse communities; majorities continue to be reluctant to help poor people who are markedly different from them.¹ It is nevertheless important to continue to trouble the comfortable with argument, especially when, as I believe is now the case, their selfishness impairs the legitimacy of the politics that makes them comfortable. At a minimum they must not be allowed to think that they have justification as well as selfishness on their side.

Theories of distributive justice are highly artificial in a further and different way. They rely heavily on the furniture of fantasy: fictitious ancient contracts, negotiations among amnesiacs, insurance policies that will never be written or sold. John Rawls imagines people negotiating terms of an original political constitution behind an opaque curtain that hides from each what he really is, thinks, and wants. I imagine desert-island auctions that might take months to complete. This second kind of artificiality is inevitable, however. If we are to reject politics as the final arbiter of justice, we must supply something else to define what justice requires, some other way of showing what equal concern and respect really do demand. Given our complex and deeply unfair economic structure, with its own dense history, it is difficult to do this without heroically counterfactual exercises.

It would be worse than pointless, however, for political philosophers to describe angelic societies that actual human beings could not even approach. Or to suppose that our own communities could be improved only by an actual completely fresh start: by a voluntary return to a state of nature or an isolated island with convenient veils or bidding chips at hand. A useful theory of distributive justice must show which of the minimal steps we can actually take now are steps in the right direction.² If philosophers build ivory towers, they must set some Rapunzel at the top so that we can, slowly, climb higher. The economist Amartya Sen has criticized what he calls the "transcendentalist" theories of justice offered by Rawls and others, including me, for their exclusive concern with "one-shot" achievements of perfection and their corresponding neglect of comparative judgments of actual political systems. His criticism is unfounded, but it would be damning if accurate.³

False Conceptions

Laissez-faire

Coercive government is legitimate only when it attempts to show equal concern for the fates of all those it governs and full respect for their personal responsibility for their own lives. (Edwin Baker had reservations about this claim even at that abstract level.⁴) Because we know that moral truth cannot be bare truth, we must seek an interpretation of those two demands that produces not conflict but mutual reinforcement. One interpretation of the first requirement is popular among political conservatives and would indeed

avoid conflict. This denies that the distribution of material resources is a proper function of government at all. On this view, government treats people with equal concern simply by allowing them all the freedom they need to work, buy and sell, save or spend, as they themselves can and think best. Their wealth would then be very unequal, because some people are much more talented in production and management than others, wiser in investment and more frugal in spending, and some inevitably have better luck than others. But that is not the doing of government and therefore cannot be taken to signal any lack of equal concern for those who fail, any more than the fact that most runners lose a race signals a lack of concern for the losers by the race organizers.

This popular argument is silly because it assumes that government can be neutral about the results of the economic race. In fact, everything the government of a large political community does—or does not do—affects the resources that each of its citizens has and the success he achieves. Of course, his resources and success are also a function of many other variables, including his physical and mental abilities, his past choices, his luck, the attitudes of others toward him, and his power or desire to produce what others want. We might call these his personal economic variables. But the impact of these personal variables on his actual resources and opportunities must in every case also depend on the political variables: on the laws and policies of the communities in which he lives or works.

A community's laws and policies constitute its political settlement. Tax laws are of course central to a political settlement, but every other part of the law belongs to that settlement as well: fiscal and monetary policy, labor law, environmental law and policy, urban planning, foreign policy, health care policy, transportation policy, drug and food regulation, and everything else. Changing any of these policies or laws changes the distribution of personal wealth and opportunity in the community, given the same choices, luck, capacities, and other personal variables of each person. So we cannot avoid the challenge of equal concern by arguing that the resources an individual has depend on his choices, not government's choices. They depend on both. The political settlement, which is under the community's control, fixes the opportunities and consequences of choice for each individual for each of the sets of choices about education, training, employment, investment, production, and leisure he might make, and for each of the events of good or bad luck he might encounter. It is a clumsy evasion to say that a *laissez-faire*

policy, which simply means one set of laws rather than another, is not the act of government.

The footrace analogy reveals the weakness of the claim that government can be neutral about distribution. Properly designed races are not neutral: they are rigged so that people with particular skills are more likely to win. That kind of rigging is not bias; it treats people as equals because they are assumed to share that sense of the purpose of the enterprise. But the point of living together in legitimate political communities subject to the principles of dignity is not to identify and reward any particular set of skills, qualities, or luck, so laws that will predictably have that result may well be biased.

Utility

That observation might suggest a different strategy for defending laissez-faire government, however. On this view, the point of government is to identify and reward productive skill, not as an end in itself but in order to make the community more prosperous overall. We can put that claim more formally in the vocabulary of utilitarianism: we treat each person as an equal by valuing his pleasure (or happiness or welfare or success) equally in choosing policies that will increase the aggregate of pleasure (or one of those other commodities) in the community as a whole. Utilitarianism has been and remains an influential position in political theory. But it offers an unpersuasive interpretation of equal concern. Parents would not show equal concern for all their children if they spent their entire available budget educating only those who were likely to earn heavily in the market. That would not treat the success of each child's life as equally important. Concern for a large group of persons is not the same thing as concern for its members one by one. Yes, an aggregation strategy values happiness or welfare or some other interpretation of utility, no matter in which person it resides. But that is concern for a commodity, not for a person.

Welfare

These two responses to the challenge of equal concern—that the distribution of resources is not the business of government, and that government's goal should be to maximize some aggregate good—have at least this virtue: they recommend policies that respect people's individual responsibility for their own lives. But neither offers a reasonable conception of what it is to treat

people with equal concern. Now we should notice a group of theories that fail in the opposite way. These aim to make people equal in welfare or well-being or capability according to some conception of what counts as well-being or what opportunities or capabilities are important.

They aim, for example, at making people equally happy or giving priority to the least happy, all as tested by some happiness Geiger counter. Or they aim to make people equally successful in their own lights. Or equal in their opportunities for achieving happiness or well-being.⁵ Or equal in their overall capabilities.⁶ But people disagree about what happiness is, and they value happiness differently; some are ready, even anxious, to sacrifice happiness for other goals. They also disagree in their views about what makes their lives successful: some have much more ambitious—and expensive—plans than others. So they also differ, for both these reasons, in their view about what they need by way of opportunities to be happy or what capabilities are more important than others. If a community set out to make people equal in any of these welfare commodities, then it would necessarily be imposing on everyone its collective judgment of what lives are good and how to live well. It would annihilate personal responsibility even more fundamentally in another way, moreover: it would aim to insure that people were equal in the designated welfare commodity, no matter what choices they had made or risks they had run. Personal responsibility would count for almost nothing.

We must try to avoid both these errors: we need a theory of distributive justice that satisfies both our two principles. The welfare-based theories of the last paragraph show that we can do that only if we choose, as our basic metric, not people's happiness or opportunities or capabilities for achieving happiness but some test for equality that is as shorn of assumptions about welfare or well-being as possible. We must concentrate on resources, not welfare, and we must distinguish between personal and impersonal resources. Someone's personal resources are his physical and mental capacities; his impersonal resources consist in his wealth, measured as abstractly as possible. Only impersonal resources can be measured without welfare assumptions, and only these can be distributed through economic transactions and redistributed through taxation or other government programs. We must aim, as a first approximation, to make members of our political community equal in those material resources. That goal might seem perverse, because it aims to make people equal in what they value only as a means.⁷ Reasonable people want resources not for their own sake but to make their lives better or better lived.

But that is the point. A community that respects personal ethical responsibility must concentrate on a fair distribution of means when it fixes its political settlement. It must leave the choice of ends to its citizens one by one.⁸

Equality of Resources

The Envy Test

What political settlement, seeking what distribution of resources, fits our two principles taken together? I have proposed a fantasy answer.⁹ Imagine people shipwrecked on an empty island with diverse natural resources. They are each given an equal number of clamshells as bidding tokens, and they compete in an auction for individual ownership of the island's resources. When the auction finally ends, and everyone is satisfied that he has used his clamshells most efficiently, the following "envy" test will necessarily be satisfied. No one will want to trade his bundle of resources for anyone else's bundle, because he could have had that other bundle in place of his own if he had so wanted. Because the result is an envy-free distribution in that sense, the strategy treats everyone with equal concern. Each person understands that his situation reflects that equal concern: his wealth is a function of what others want as well as what he wants. The strategy also respects the personal responsibility of each bidder for his own values. He uses his clamshells to acquire the resources that he deems best suited to the life he deems best. He is limited, in designing that life, by what he discovers are the choices of others, and therefore of what he can have available for whatever life he designs. His choices are not limited by any collective judgments about what is important in life, but only by the true opportunity costs to others of what he chooses. (I discuss the nature of true opportunity costs and their role in establishing a theory of justice, together with Samuel Freeman's comments on that role, in a note.¹⁰)

The fantasy distribution respects both our principles: it provides attractive conceptions of both equal concern and full respect. But you and I are not shipwrecked passengers on a newly discovered and abundantly stocked island. How far and in what way can we be guided by the fantasy in the very different situation of modern economies? The story has an immediate negative lesson. A command or socialist economy in which prices, wages, and production are set collectively by officials would be a very imperfect realization of our values. The decisions of a command economy are collective: they

reflect a collective decision about what ambitions, and hence which resources, are best suited to a good life. A free market is not equality's enemy, as is often supposed, but indispensable to genuine equality. An egalitarian economy is a basically capitalist economy.

That bald claim must, however, quickly be qualified in two crucial ways. First, it is essential to the justice of the island auction that the price someone pays for what he acquires reflects the true opportunity cost to others of his acquiring it, but actual markets in capitalist economies are often corrupted in ways that defeat that condition. Regulation is therefore often needed to perfect the freedom or efficiency of a market: to protect it against distortions of monopoly or externality. These distortions include (as we have recently come to learn) exaggerated risk in search of exaggerated profit when the risk falls largely on those who took no part in the decision and would have little share in any gain. Climate impact is another important example of distortion: because the market cannot easily be structured to reflect the opportunity costs of energy consumption now to future generations, extra-market regulation seems necessary. These adjustments to a free market do not contradict the spirit of this understanding of equal concern; on the contrary, they enforce that understanding by better matching people's resources to the true opportunity cost of what they do or consume.

The second qualification is very different and must occupy us at some length. The fantasy auction scheme shows equal concern, I said, because the result satisfies the envy test I described. What each islander has is fixed by his own choices, given the choices others make from an equal base. When the auction is finally over, however, and the islanders begin their economic lives, the envy test soon fails. They plant, manufacture, and consume using the resources they acquired in the auction, and they enter into transactions with one another, each trading to improve his situation. Some of the differences this activity generates reflect their choices—to consume rather than save, to rest rather than work, or to produce poetry that others do not much want rather than corn, which is popular. The envy test is still met in spite of these differences if we apply that test over time: people's resources continue to be sensitive to their choices. But other differences do corrupt the envy test. Some islanders do not have much talent to produce what the markets value, or they fall sick, or they make responsible investments that nevertheless fail. They then have fewer resources with which to build a life, not as a consequence of, but in spite of, the choices they have made. Now the envy test fails

because their resources do not depend, after all, only on their choices. The market is no longer egalitarian.

Ex Ante or Ex Post?

How should we respond? Runners in a fair race are equally placed, all at the starting line, before the race begins. They are *ex ante* equal. But they are not equally placed after the race has been run: *ex post* one has beaten the others. Which is the right temporal focus for justice? Does equal respect require trying to satisfy the envy test, so far as we can, *ex ante*, before the impact of transactions and luck? Or *ex post*, after those events have run their course? A government committed to *ex post* equality undertakes, so far as this is possible, to bring citizens who lack market skills to the same economic level as those with more skills and to restore those who have fallen ill or suffered handicaps to the position they would otherwise have occupied. A government that aims at *ex ante* equality, on the other hand, responds differently. It aims that its citizens face these contingencies in an equal position; in particular, that they have an opportunity to buy appropriate insurance against low productive talent or bad luck on equal terms.

At first blush *ex post* compensation might seem the more appropriate goal. People who are unemployed or who are badly injured or crippled and who receive only what an insurance policy might pay by way of compensation remain in a much worse position than others. Insurance payments typically do not compensate fully, and for some instances of bad luck—terrible physical disability—they fall sickeningly short of restoring people to their prior position. So long as the community can improve the situation of someone who has been a victim of bad luck, then equal concern might seem to require that it do that. In fact, however, the *ex post* approach, even so far as it is possible, is a very poor understanding of equal concern. The *ex ante* approach is better.

Investment luck, very broadly understood, is an important reason why people's income and wealth differ. You and I study financial charts with equal care and make equally intelligent though different choices. Your stocks thrive and mine wither; you are rich and I am poor and this is only because your luck has been better than mine. But if our political community undertook to erase this consequence of luck, it would undermine the responsibility each of us exercised; if it made our investment choices pointless in that way, we would cease to invest. Many of the most important decisions we make are

also investment decisions whose consequences turn on luck: any educational or training decision might be undermined by unforeseeable technological shifts that make our particular training useless, for instance. If the community aimed to insure that our fate in no way depended on how any such investment gambles fare—if it guaranteed that we are equal in wealth, whether or not our choice of career turned out to be suited to our tastes or talents or market conditions—it would end by crippling our own responsibility for our choices. So any plausible version of an *ex post* approach would have to draw a distinction between investment and other forms of luck and rule out the former as a ground for redistribution.

That distinction would be difficult to draw. But *ex post* compensation would be not a reasonable goal, even if restricted to noninvestment luck. Any community that undertook to spend all it could to improve the position of its blind or crippled members, for example, until further expenditure would not even marginally benefit them, would have nothing left to spend on anything else, and the lives of all other citizens would be miserable in consequence.¹¹ That policy would reflect no one's actual priorities, including the antecedent priorities of the victims of terrible accidents. If the choice had been up to them before they were injured, they would not have spent everything they had to buy the best possible accident insurance policy, because they would not have thought, given the odds, that it made sense to compromise their lives in every other respect to secure the most expensive possible insurance. The *ex post* compensation approach to bad luck is irrational.

It remains wrong even if we apply it to erase the consequences, not of bad luck as ordinarily understood, but only of the bad genetic luck of not having talents prized in the contemporary market. If the community restores people to a condition of equal wealth, no matter what choices they make about work and consumption, then, as I said, it destroys rather than respects this dimension of responsibility. But there is no way fully to erase the consequences of differences in talent without adopting that foolish remedy. It is impossible in principle, not simply practically impossible, to distinguish the consequences of choice and capacity across the range of economic decision, because preference and capacity interact in both directions. Our preferences both shape the talents we are disposed to develop and are shaped by the talents we believe we have. So we cannot separate choice from genetic luck in what might seem the most direct way: by making sure, *ex post*, that people's wealth reflects only the former and no tinge of the latter.

Equal concern does indeed require that a community compensate in some way for bad luck. But we need an understanding of compensation that is compatible with the right respect for individual responsibility, and we must therefore seek an *ex ante* approach. This aims, as I said, to situate people equally as they face both economic decisions and the contingencies that hedge those decisions. An economic market for investment, wage, and consumption is a crucial step toward that equality, because it allows people's decisions to carry costs or gain rewards that are measured by the impact of those decisions on other people. But we need a further step: we need to place people in the position they would have occupied if they had been, at a point before the decisions and events that shaped their lives began, equally able to protect themselves against these different dimensions of bad luck through appropriate insurance. That step unfortunately requires the kind of fantasy speculation that I referred to earlier. For of course it is impossible that people could ever be equally able to insure in any real insurance market; certainly impossible before their genetic luck begins, because before that point they do not even exist.

Hypothetical Insurance

We must return to our island. Now we notice that insurance is among the resources auctioned. Some islanders undertake to insure others, in competition with other insurers, at market clamshell rates. When the auction ends, *ex ante* equality has been preserved and future transactions maintain it. How does this expanded story help us? It teaches us the importance of the following hypothetical question. What level of insurance against low income and bad luck would people in our own actual community buy if the community's actual wealth was equally divided among them, if no information was available that would lead anyone or any insurer to judge that he was more or less at risk than others, and if everyone otherwise had state-of-the-art information about the incidence of different kinds of bad luck and the availability, cost, and value of medical or other remedies for the consequences of that bad luck?

We can sensibly speculate about answers to that question from information readily available about what kinds of insurance insurers actually do offer and people actually do buy. Of course, there must be a large range of uncertainty in any answer we give. We cannot specify any particular coverage level that we can be confident any specific number of people would buy under the fanciful

counterfactual conditions we imagine. But that need not be our aim. We can try to identify a top coverage level at which we can sensibly assume that most people in our community would have chosen to insure, given what we know about their needs and preferences, and given the premium structure that that coverage would require. We cannot answer even that question with any pretense to exactitude. But we can dismiss some answers as plainly too low. We can identify a coverage level such that it would be foolish for most people, given their preferences as we can ascertain them, not to buy coverage at that level.

We can then insist that our officials use at least that coverage level as a guide to redistributive programs of different kinds. We might aim to collect from the community, through taxes, an amount equal to the aggregate premium that would have been paid for universal coverage at that level and then distribute, to those who need it, services, goods, or funds that match what that coverage would have provided them in virtue of their bad luck. We would fund unemployment and low wage insurance, medical care insurance, and social security for people in retirement in that way. It is important to notice that by hypothesis any community can afford the programs that this insurance scheme describes: those programs would not be irrational in the way those mandated by a goal of *ex post* compensation would be. On the contrary, because the programs the scheme identifies reflect reasonable assumptions about the overall preferences of the community over risk and insurance, a government that did not provide them would fail in its economic responsibilities.

Paternalism?

Our overall ambition, remember, is to provide a scheme of distributive justice that satisfies both principles of dignity. It might now be objected that the hypothetical insurance scheme I just summarized offends the second principle because it is, in effect, mandatory. (Arthur Ripstein offers this objection and another concern.¹²) The scheme assumes that most citizens would have purchased insurance at least at the coverage levels and for the premiums it stipulates. But perhaps some would not, and taxing those citizens under the scheme (or indeed, awarding them benefits under it) is therefore, according to this objection, a paternalistic imposition of a supposedly reasonable choice upon them.

The point calls for further explanation, but the objection is not yet well framed. Paternalism means imposing a decision on someone supposedly for

his own good but contrary to his own sense of what that is. The hypothetical insurance scheme makes assumptions, on the contrary, about what citizens' preferences would have been in circumstances very different from those anyone has actually encountered. It is no more paternalistic to assume, for any individual, that he would have chosen to buy the insurance at what we judge to be a level at which most people would have insured than it would be to suppose that he would not have bought that insurance and to treat him accordingly.

So the scheme is not paternalistic. But it is probabilistic. No one can sensibly think or argue that he would not have made the decision we assume most people would have made. The counterfactuals are too deep for any such individualized judgment: the scheme's claims can only be statistical. But he can rightly say that he might not have made it. That fact presents an issue not of paternalism but of fairness. We can treat individual citizens on either of two assumptions, and it seems fair to treat them, lacking any information to the contrary, as if each would have done what we judge most would have done.

This is our justification. We aim to charge people the true opportunity costs of their choices. Though we must rely on actual markets in production and wage, we must supplement and correct those markets in a variety of ways. In particular we must try to eliminate the effects of bad luck and other misfortunes by judging what a more comprehensive and fairer market would have revealed as the opportunity costs of provision against those misfortunes. We must make probabilistic counterfactual assumptions in that exercise, to be sure. But that seems fairer than the alternatives, which are either to leave the misfortunes uncorrected or to choose some level of redistributive transfer payments through politics guided only by raw reactions of fairness that have no ground in theory and are likely to be stingy in practice. We choose the hypothetical insurance device, even though it requires rough judgments of probability, as more faithful to the overall opportunity costs conception of fairness. That is the best we can do to show equal concern and the right respect for individual responsibility. Our overall interpretive project endorses a redistributive scheme modeled on hypothetical insurance assumptions for that reason. (Amartya Sen offers a number of further objections to the hypothetical insurance scheme.¹³)

Laissez-faire Again

That completes my summary sketch of a design for a political settlement that merges equal concern by government and personal responsibility for citizens.

(I have elsewhere described in much more detail the tax structure that this exercise would generate and the social programs it would justify.¹⁴) But we must take care not to confuse our ex ante approach, which features ex ante compensation, with a different ex ante approach—misleadingly called equality of opportunity—that is popular among political conservatives. This holds that we show equal concern by letting the chips fall where they may: it allows no redistribution of market rewards and insists those who have bad luck must bear it themselves. This is just a form of the laissez-faire doctrine I mentioned at the outset of this discussion. Proponents say that laissez-faire rewards individual responsibility. But people with little market talent or bad luck can reply that it does not show equal concern, because a different economic arrangement is available that also satisfies the requirements of individual responsibility and that shows more appropriate concern for them.

Equality of resources, understood as I have described it, may reward qualities of productive intelligence, industry, dedication, shrewdness, or contribution to the wealth of others. But that is not its aim. It does not even suppose that these are virtues; it certainly does not suppose that a life earning more money is a better or more successful life. It presumes only that we treat people with equal concern when we allow each to design his own life, aware that his choices will have, among other consequences, an impact on his own wealth. However, it is crucial to this understanding that the character and degree of that impact reflect the effect his choices have on the fortunes of others: the cost to others, in lost opportunities for themselves, of the various decisions he has made.

Notes

I. Baedeker

1. Isaiah Berlin, *The Hedgehog and the Fox: An Essay on Tolstoy's View of History* (London: Weidenfeld and Nicolson, 1953), 3.
2. Much of the fox's ammunition relies on substantive moral pluralism: the thesis that sound moral principles and ideals inevitably conflict with one another. See Berlin, *The Crooked Timber of Humanity: Chapters in the History of Ideas*, ed. Henry Hardy (London: John Murray, 1991); Thomas Nagel, "The Fragmentation of Value," in *Mortal Questions* (Cambridge: Cambridge University Press, 1979).
3. See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996).
4. I first described and defended this thesis long ago. See "Objectivity and Truth: You'd Better Believe It," *Philosophy & Public Affairs* 25 (Spring 1996): 87–139. I have been lecturing about that and other issues in this book off and on since then, and am boundlessly grateful to many commentators and critics over those years.
5. See Crispin Wright, *Truth and Objectivity* (Cambridge, Mass.: Harvard University Press, 1992); and Kit Fine, "The Question of Realism," *Philosopher's Imprint* 1, no. 2 (June 2001), www.philosophersimprint.org/001001/.
6. In book 3 of his *Treatise* Hume said, "In every system of morality . . . the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when of a sudden I am surpriz'd to find, that instead of the usual copulations of propositions, *is* and *is*

14. The term “trickle down” is used mainly as a pejorative. The theory itself, often called Reaganomics, is vigorous though discredited. See “Live Free or Move,” editorial, *Wall Street Journal*, May 16, 2006.

15. Isaiah Berlin, “Two Concepts of Liberty” (1958), in *Four Essays on Liberty* (Oxford: Oxford University Press, 1969); Bernard Williams, “From Freedom to Liberty: The Construction of a Political Value,” *Philosophy & Public Affairs* 30, no. 1 (2001): 3–26.

16. Equality

1. See Eduardo Porter, “Race and the Social Contract,” *New York Times*, March 31, 2008.

2. See my *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, Mass.: Harvard University Press, 2000), chapter 3.

3. Sen says that his recent book, *The Idea of Justice* (Cambridge, Mass.: Harvard University Press, 2009), marks an important “departure” from standard theories of justice—he cites, among others, John Rawls’s and my own work—that are concerned only to describe ideally just institutions and are therefore of no use in guiding the comparative judgments we must make in the real and very imperfect world. But Rawls’s two principles of justice are tailor-made for the comparative real-world judgments Sen has in mind. There is, in fact, an astronomically extensive literature of philosophers, political scientists, economists, lawyers, and even politicians applying Rawls’s theories to actual concrete political controversies. (A sample can be harvested by typing “Rawls” and the name of any particular controversy into a Google search.) In my own case, Sen may not have taken full account of my discussion “Back to the Real World,” in chapter 3 of *Sovereign Virtue*, which describes in some detail how the abstract theory of justice I defend in that book can be used to justify comparative judgments about improvements in justice. Nor of the entire part II—half—of *Sovereign Virtue*, which is devoted, as that book’s subtitle promises, to the “practice” rather than the “theory” of equality. I discuss there, again in some detail, the application of the general theory of part I of that book to practical improvement on present policies in the fields of taxation, health care, racial justice, genetic policy, abortion, euthanasia, freedom of speech, and the regulation of elections. I have also tried to explain practical consequences of my views in general journals, particularly the *New York Review of Books*.

Sen’s own work in developmental economics has been enormously important and useful. His views on the causes of famine have been particularly influential. He has brought a wealth of Eastern, particularly Indian, history, literature, and philosophy to the attention of Western readers; his latest book is particularly rich in such information. However, *The Idea of Justice* does not support Sen’s claim of a departure in normative political philosophy: in fact he offers less help in real-world judgment

than do the theories he means to depart from. His comments on particular political issues are either uncontroversial—he condemns slavery—or noncommittal. He appeals to a variety of standards for comparative judgment of existing structures, but at far too abstract a level to be useful in comparative judgment. He endorses the spirit of Adam Smith’s “impartial observer” test, which recommends the decisions that an ideal and impartial judge would reach. But that test, unless construed in a utilitarian way, lacks bite: it does not tell us what theory a beneficent spectator would deploy to decide issues now controversial. Sen says that policy should focus (though not exclusively) on promoting equality in what he calls “capabilities” (see the discussion of “capabilities” in note 6 below). But he concedes the wide variations in people’s rankings of the importance of these capabilities and does not recommend any way of choosing among these rankings in the face of serious disagreement. He believes that free democratic discussion among ideally public-spirited citizens would be helpful to comparative judgment. He does not say how this thought is helpful in real communities that include a great many followers of, say, Sarah Palin. It is not helpful, in the world of real politics, only to call for due consideration of a large variety of factors that everyone concedes relevant without also offering some overall scheme to suggest how these different factors should be weighted in a practical decision about a controversial issue.

4. Baker’s ambitious and impressive article was completed just before his tragic death (C. Edwin Baker, “In Hedgehog Solidarity,” in *Symposium: Justice for Hedgehogs: A Conference on Ronald Dworkin’s Forthcoming Book* [special issue], *Boston University Law Review* 90, no. 2 [April 2010] [hereafter BU]: 759). He believed, contrary to my own opinion, that citizens need have no more concern for their fellow citizens when they act together in politics than they need have when they act as individuals. Politics, he thought, should be understood as a competitive activity in which each citizen works to advance his own values and goals by winning a collective political decision to create an ethical environment he approves. There are losers as well as winners in this competition. Political majorities must be tolerant of minorities: they must not coerce them to embrace the majority’s values or otherwise violate their liberty or other rights. But majorities need not otherwise refrain from using politics to shape the community to their own convictions about good lives. They need not try to be neutral out of concern for those who disagree with them.

Baker also disagreed with me, in a parallel way, about democracy. He agreed on the need for what I call, in Chapter 18, a partnership conception of that ideal. But he thought that I favor an “epistemic” interpretation of partnership in which the community’s role is limited to identifying and enforcing a correct theory of distributive and political justice, while he favored a “choice” interpretation in which majorities choose the values that define the community as a whole. “This alternative sees people in the partnership as trying to convince each other about, and as acting as a partnership to pursue, ethical ideals. It treats equality of respect, not equality of concern, as the

sovereign virtue.” He thought that conceiving of citizens as “reason-giving” partners in “communicative action” as well as in competition with one another allows us to provide a more secure basis for principles of justice than a view like mine is able to provide. He adopted Jürgen Habermas’s view that people in conversation commit themselves to certain principles, and that it is these commitments that identify justice for them.

It will be helpful in considering his views to distinguish two questions. First, do the members of a coercive political community have an obligation, when they design an economic structure, to treat the fate of each citizen as equally important? Second, are they obliged not to adopt laws that can be justified only by assuming the truth of ethical ideas controversial within the community? This chapter answers the first question: yes. Though Baker denied the need for equal concern, I am not sure he actually meant to disagree. I think he rather associated equal concern with a “yes” answer to the second question. There is nothing in his picture of a choice democracy that would suggest that a majority should not have equal concern for the fate, as distinct from the values, of all fellow citizens. Turn to the second question. Baker believed that the majority in a choice democracy should have the power to select texts for public education that reflect their values and to establish a particular religion as official. I believe he underestimated the coercive power of that kind of control. (See my *Is Democracy Possible Here? Principles for a New Political Debate* (Princeton: Princeton University Press, 2006). Baker’s version of tolerance would not in fact encourage the “reason-giving” he hoped for among citizens. On the contrary: a majority confident of its power to choose public school textbooks would have little reason to try to explain itself to those left out. For a frightening contemporary example, see Russell Shorto, “How Christian Were the Founders?” *New York Times*, February 11, 2010. The conception of liberty I describe in Chapter 17, which allows the ethical environment to be set organically, so far as possible, through individual choices one by one rather than by collective action, provides much more incentive for conversation aimed at persuasion.

5. Richard Arneson, “Equality and Equal Opportunity for Welfare,” *Philosophical Studies* 56 (1989): 77–93; and G. A. Cohen, “On the Currency of Egalitarian Justice,” *Ethics* 99 (1989): 906–44.

6. See my *Sovereign Virtue*, 301–303. In his *Inequality Reexamined* (Cambridge, Mass.: Harvard University Press, 1992), Amartya Sen describes the “capabilities” that should figure in such a calculation to include capacities to bring about “being happy, having self-respect, taking part in the life of the community, and so on.” These seem to be welfarist notions, though I offered in those pages an alternative characterization. In *The Idea of Justice* Sen adds that “happiness does not generate obligations in the way that capability must do” (271), but it is not plain whether this judgment is meant to change his earlier opinion.

7. Sen, *The Idea of Justice*, 265.

8. See “Ronald Dworkin Replies,” in Justine Burley, ed., *Dworkin and His Critics* (Malden, Mass.: Blackwell, 2004), 340ff.

9. I describe the story summarized here in much greater detail, and consider its implications for tax and other political policy, in *Sovereign Virtue*, chapter 2.

10. Freeman suggests, in the course of a very instructive essay, that an ambition to charge people the true opportunity costs of their choices in work and consumption cannot help us to fix a theory of justice in distribution because what we take true opportunity costs to be depends on which such theory we have already assumed (Samuel Freeman, “Equality of Resources, Market Luck, and the Justification of Adjusted Market Distributions,” BU: 921). If we decide that a utilitarian scheme is most fair, for instance, then we will think that the true opportunity costs of a person’s choices are those fixed by the price system that best promotes utility. If we think some other theory of justice superior, we will take true opportunity costs to be those set by prices in an economic system that enforces that other theory. So even if we assume that asking someone to pay the true opportunity costs of his choices respects his responsibility for his own life, we cannot draw any conclusion from that assumption about which theory of justice is best.

However, the conception of equality of resources described in the text uses the idea of opportunity costs at a more basic level. Any defensible interpretation of equal concern supposes that no one in a political community is initially entitled to more resource than anyone else; it asks whether any reason consistent with that assumption justifies an economic system in which some prosper more than others. Utilitarians, Rawlsians, and other theorists offer such reasons: that treating people with equal concern requires maximizing their average welfare, or protecting the situation of the worst-off group, or something of the sort. They then offer models of economic systems that these different assumptions would justify, and, as Freeman says, any such model carries with it its own distinct calculation of the true opportunity costs of one person’s choices to others’. Equality of resources, on the other hand, offers the idea of a fair distribution of opportunity costs, not as derivative from other reasons for allowing deviation from flat equality but as itself a reason for deviating and limiting the scope of such deviation. It defines true opportunity costs recursively as those measured by prices in a market in which all have equal resources and in which insurance against risks of different sorts is marketed on equal terms. The yield of that market then structures, through taxation and redistribution, future markets in which prices set true opportunity costs. So the ambition to make people responsible for their choices is at work in that conception of distributive justice right from the start.

11. See the discussion in *Sovereign Virtue*, chapters 8 and 9.

12. I recommend Ripstein’s account of my views about distributive justice. See his essay “Liberty and Equality,” in Arthur Ripstein, ed., *Ronald Dworkin* (Cambridge: Cambridge University Press, 2007), 82. He cites the mandatory character of the insurance scheme as an objection (103). He also comments that though the insurance scheme is designed to separate tastes from handicaps, it actually assumes

that distinction, because it does not suppose that people can insure against having expensive tastes. I did not intend the scheme to help make that distinction, which I assumed could be made independently through what I described as an identification test. A taste is not a handicap for an agent who does not wish not to have it. See my "Ronald Dworkin Replies," in Burley, *Dworkin and His Critics*, 347ff. See also my "Sovereign Virtue Revisited," *Ethics* 113 (October 2002): 106, 118ff. It is worth noting here, however, that the insurance scheme does operate to enforce the distinction through the phenomenon of moral hazard. Insurers will not insure against a risk whose cultivation is under the control of the insured and cannot be assumed to be undesirable to him. Nor will they insure, except at extravagant premium, against a risk when it would be expensive and particularly difficult to prove that its cultivation was not desired and not under the insured's control. This is not just a convenient side effect of the insurance scheme. It reflects the connection between that scheme and the view of judgmental responsibility defended in Chapter 10. I also recommend another thoughtful discussion of the mandatory-insurance objection in the course of a detailed and careful study of equality of resources: Alexander Brown, *Ronald Dworkin's Theory of Equality: Domestic and Global Perspectives* (Basingstoke: Palgrave Macmillan, 2009). Brown's study has the great virtue of discussing the role of that conception of equality in global justice, which, as he notices, I have so far not taken up.

13. Sen discusses the hypothetical insurance strategy at some length in *The Idea of Justice*, 264–68. I can best respond through the inelegant vehicle of a list. (1) He discusses comments I made in an earlier book about his "capability" approach. See *Sovereign Virtue*, 299–303. He denies that this approach is welfarist. I offered reasons why it could easily be so interpreted: see the discussion of "capabilities" in note 6 above. (2) He says of the alternative interpretation I offered—that the capabilities approach "is only equality of resources in a different vocabulary" (*Sovereign Virtue*, 303)—that even if that were so, the capabilities approach would be superior because it identifies what is finally important rather than focusing on resources, which, as I have conceded, are mere means. But first, though some people might deem capabilities important for their own sake (that is also true of resources: some people value them as sources of freedom even if they do not use them), others will value them only so far as they can use them to lead lives they find desirable. Like resources, most capabilities, for most people, are only instrumental. Second, as I have several times said in a variety of places, it doesn't follow from the fact that sensible people value resources as means to better lives that government should aim to make people equal not in resources but in the goodness of their lives. This chapter argues that any such program would impair personal responsibility. (3) Sen's remaining comments are specifically about the insurance strategy. He says that an insurance market cannot reflect relative disadvantage. That seems incorrect, for reasons Adam Smith made plain. In deciding how much coverage to buy against unemployment or low wage or

disability, people will naturally take into account not only their absolute need but how they would fare relative to others in different situations. (4) Sen next says that the insurance device supposes individuals acting as "atomistic operators" rather than as part of a process of "public reason." But the insurers I imagine can have the benefit of as much public and private discussion as a flourishing community will generate, as well as the benefit of a shared culture that reflects different strands of opinion. They must finally decide for themselves, but that hardly means that they must decide in an isolation chamber. (5) He declares that my focus "in common with other transcendental institutionalist approaches, is on getting to perfectly just institutions (in one step)." That is wrong; see the discussion of Sen's claim in note 3 above. (6) He says that I take for granted the "existence, uniqueness and efficiency of perfectly competitive market equilibria, which he needs for his institutional story to be entirely unproblematic" (267). He doesn't say why I need this unreal assumption, and I have denied that I do. See, e.g., *Sovereign Virtue*, 79; "Sovereign Virtue Revisited"; *Is Democracy Possible Here?* 115; as well as this and the preceding paragraphs of this text. (7) He concludes, reluctantly, that I betray "institutional fundamentalism" and "innocence" in my assumption that fixing just institutions will solve all human problems, and in my pretense, as he sees it, that the hypothetical insurance scheme has "imperial powers" (267–68). But I disavow any such assumption or pretense. The insurance scheme plays a role in the more complex integrated theory of justice described here. It does nothing "one shot." It offers advice about marginal gains in distributive justice in imperfect communities, and it takes into account the wisdom of flexible insurance policies that can be adjusted to reflect changes in circumstances and ambitions, and also the need sometimes to temper justice with compassion. See my "Sovereign Virtue Revisited."

14. *Sovereign Virtue*, part II.

17. Liberty

1. Benjamin Constant, "The Liberty of the Ancients Compared with That of the Moderns" (1819), in Biancamaria Fontana, trans., *Political Writings* (Cambridge: Cambridge University Press, 1988), 309–28; Isaiah Berlin, "Two Concepts of Liberty" (1958), reprinted in *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), 118–72.

2. Charles Fried, *Modern Liberty and the Limits of Government* (New York: W. W. Norton, 2006); Stephen Breyer, *Active Liberty: Interpreting Our Democratic Constitution* (New York: Knopf, 2005).

3. Berlin, *Four Essays on Liberty*, xlix.

4. H. L. A. Hart, "Are There Any Natural Rights?" *Philosophical Review* 64 (1955).

5. See Nicholas Clee, "And Another Thing . . . Morality in Book Publishing," *Logos* 10 (1999): 118, 119.

6. See my discussion of Edwin Baker's version of this argument in Chapter 16.