On a New Theory of Justice

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INTRODUCTION

Inscribed on Robert Aitken’s frieze above the entrance to the Supreme Court are the words, “Equal Justice Under Law.” So far, so uncontroversial. But there is room for disagreement when you get down to cases, and these four words have given rise to as much debate as anything in the history of philosophy. Rakowski’s book is a rich and ambitious attempt to grapple with specifics, to pin an exact meaning to the phrase “equal justice”; it is both a distinguished original contribution to political philosophy and a lucid introduction to the current state of the subject.

Equal Justice is divided into three parts. Part One develops and defends a highly original theory of justice, called Equality of Fortune. This theory, very roughly, holds that, as a matter of justice, the consequences of random lucky and unlucky events should be evened out: nobody should have more resources (including personal talents and abilities) than anybody else simply as a matter of pure chance. Rakowski explores the implications of this doctrine, sketching the way it can ground redistributive claims and paying special attention to such problems as the treatment of the handicapped and the transfer of vital organs.

Part Two outlines a theory of tort liability. Rakowski trenchantly (and, to my mind, persuasively) criticizes Richard Posner’s wealth-maximization theory, and argues that justice requires a theory of strict liability tempered, in certain narrowly defined situations, by a standard of negligence. He explores the consequences of his theory for intentional torts, nuisances, abnormally dangerous activities, and no-fault automobile insurance.

Part Three returns to topics in medical ethics and continues his earlier discussion of organ transplants. Rakowski considers a large number of issues in applied ethics: How should one allocate scarce medical resources? What sorts of medical insurance schemes should the society make avail-

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able? What are society’s obligations to handicapped children? Can you kill one person to save five others, and if so, under what circumstances? Should their ages, or wealth, or importance to society be taken into account? To what extent do numbers count when saving lives? Is it permissible to kill animals for human benefit? If killing animals is always wrong, should humans try to eradicate all the carnivores in nature? The discussion of these difficult issues is wonderfully clear. Rakowski writes elegantly and takes care to make his position intelligible: on stylistic grounds alone this book can be held up as a model.

It should be apparent that *Equal Justice* is an exceptionally complex work. Not only does it cover a great deal of territory; not only does it range from the very abstract to the very concrete; but it is also rich in analytic detail. It is filled with subtle, ramifying arguments; Rakowski presents them carefully and is meticulous in explaining their implications. In consequence, this is not a book that can be readily summarized, nor one whose interest can be plumbed by a single review. In what follows I shall largely confine myself to a detailed examination of the theory of Equality of Fortune. For reasons given below, this is one of the most original theories of justice to have been proposed in recent years, and it raises questions that deserve careful analysis.

I

**Rakowski’s Methodology**

I begin by considering Rakowski’s methodology. I do so because it holds the key to both the strengths and weaknesses of the book.

Rakowski, in his introductory chapter, considers several familiar ways in which principles of distributive justice may be systematically justified: social contracts, the ideal observer, reflective equilibrium, conceptual analysis, the universalizability of moral judgments, linguistic analysis, and so on (pp. 6-12). He finds all of these systems wanting, for essentially two reasons. First, they oversimplify the complexities of moral reasoning and try to squeeze morality into the narrow confines of some cherished Master Principle. Second, such systems are otiose. For the justification of such a theory of distributive justice is as much open to ethical debate as are the theory’s substantive moral implications; the theory confers no greater certainty upon those implications, and indeed until we have examined them in concrete cases, we are in no position to pass judgment on the abstract system. Worse, if we take the theory for granted before we have examined its implications, we risk cutting off debate prematurely. For all these reasons, Rakowski concludes that no other methodology is possible than to give all arguments their due, from whatever quarter they come.
There is simply no commonly accepted benchmark for assessing the force of normative assertions or criticism, nor is one likely to be found or invented. At any rate, these convictions account for the form this book has taken. The arguments must speak for themselves (pp. 9-11).

Rakowski thus addresses himself directly to the substantive moral issues, and he brushes aside questions of metaethics as “irrelevant,” “of no practical import,” and “utterly pointless” (pp. 11-12).

I said that Rakowski’s methodology has both strengths and weaknesses. Let us begin with the strengths. His arguments show a deep sense of the complexity of the issues. He tackles each problem as it comes, and this gives his work great stability. You cannot refute his views by refuting some one central assumption. The individual arguments stand on their own feet; in particular the arguments in Parts Two and Three turn out—fortunately—to be largely independent of the abstract theory developed in Part One.

Indeed, the virtues of Rakowski’s approach are most evident in Part Three, where he addresses a host of specific problems in applied ethics. He deploys a dazzling array of arguments against philosophers like Elizabeth Anscombe, Judith Thomson, and Peter Singer. His reasoning is both flexible and subtle, and he shows himself fully worthy of appearing in such distinguished company.

An example—the celebrated “trolley problem”—illustrates this point. Consider the following two cases. In the first, a runaway trolley is hurtling down some railroad tracks. You are standing at a switch. If you do not intervene, the trolley will continue its course and will kill five workers on Track A. But if you switch the trolley to Track B it will kill only one (different) worker.

In the second case you are a surgeon. You have five patients, each of whom will soon die without an organ transplant. You also have a perfectly healthy patient who, if killed, could supply the five needed organs. In each case it seems that one innocent life will be sacrificed to save five others. Should you make the sacrifice in both cases? If not, what is the relevant difference between them?

Rakowski considers an answer proposed by the philosopher Judith Jarvis Thomson (pp. 344-47). On her theory, it is permissible to switch the trolley but not to kill the patient. This is because by killing the patient one has impermissibly changed the nature of the threat. That is, if the nature of the threat is the same for both populations (death by trolley) then it is permissible to deflect it from the larger population to the smaller. But one is not allowed to create a new threat (death by the surgeon’s knife) in order to rescue the larger population from a different kind of fate (death by organ failure).
Rakowski is thoroughly in his element in evaluating this argument, and his discussion shows his methodology at its best. He begins by objecting that Thomson does not explain why the nature of the threat should be morally relevant: it seems to be an *ad hoc* solution to the dilemma. He then considers two reasons why Thomson’s solution nevertheless possesses some intuitive appeal: first, people would find it in their antecedent self-interest to permit the *deflection* of a threat in an emergency; second, in the nonemergency surgery case the patients could have voluntarily organized themselves into a risk pool, so that a tampering with the nature of the risk would be a tampering with risks the patients chose to bear.

Rakowski’s arguments come from every direction. He fires off an entire quiver of objections and analogies, invoking the “choice-of-evils” defense in the common law, the theory of insurance schemes, the power of the police to endanger innocent life when capturing dangerous criminals. He then turns to some compelling counterexamples. Suppose, he says, that in the trolley case your hand is not on a switch but on a detonator, so that the innocent worker will be killed, not by the trolley, but by the blast that destroys it. “Thomson’s approach . . . would preclude use of the detonator while permitting use of the switch, because exploding the trolley would alter the means of death while diverting it onto another track would not. Her distinction has no basis in reason or intuition” (p. 346).

Rakowski’s next paragraphs show his methodology actively at work—his determination to reach moral judgment only after considering arguments from all quarters. He considers a situation imagined by Thomson in which “five immobile convalescents will be crushed by a ceiling about to give way, unless someone turns on some motor-powered support to keep the ceiling from collapsing. If someone turns on the machine, however, it will emit toxic fumes that will surely kill a sixth convalescent in the adjacent room” (p. 346). Rakowski says that

\[\text{whether someone may switch on the machine seems to me to depend on his professional role and relationship to the convalescents, on how the situation came about, on what the patients’ expectations were on entering their rooms and on entering the hospital, and on what his fellow citizens have expressly or tacitly authorized him to do in such an emergency. What the moral permissibility of turning on the machine does not depend on, however, is whether it would alter the cause of death. Suppose the ceiling were about to fall because there was a heavy weight atop it, that one could not remove the weight, but that one could shift it to a spot above the sixth person’s room, so that he would die instead. Thomson would apparently allow one to shift the weight, but not turn on the machine (pp. 346-47).}\]

Rakowski’s methodology serves him brilliantly in these passages. His counterexamples strike me as conclusive and are all the more impressive for
their blunt simplicity. Parts Two and Three of *Equal Justice* are filled with such deft and persuasive arguments and make Rakowski’s work one of the half-dozen or so most penetrating and informative modern books on taking and saving life; any student of applied ethics will have to grapple with his multifaceted contributions to the subject.¹

Part One, however, is a different sort of enterprise altogether. Rakowski embarks on a project that has beguiled philosophers at least since the days of Plato: the construction of a theory of justice. Historically the rate of success for such theories has not been high, and Rakowski’s methodology is not a promising foundation for a comprehensive and abstract theory. Such a theory demands systematic construction, the selection of a few basic principles, and their application to the fullest range of cases. But a task of this sort is not best pursued by adopting whatever arguments come most readily to hand, and I shall argue that Rakowski’s methodology leads him into difficulties that could have been avoided had he taken a more architectonic approach. Here, it seems to me, his work does not possess the systematic rigor, the comprehensiveness, or the tightness of construction that one finds in the writings of, say, a Bentham or a Rawls.

II

Equality of Fortune

It will be best to begin by describing the theory. Equality of Fortune consists of two principal elements. The first is a description of a hypothetical initial social world; the second, a principle of transformation that bridges the gap between that initial world and our own.

Rakowski begins by imagining a group of castaways shipwrecked on a deserted island and asks how they should divide the resources of the island among themselves. To answer this question, Rakowski first makes a number of simplifying assumptions. He takes the castaways to be equally healthy, equally well endowed with organs and natural abilities, equally industrious, and equal in desert. In other words, he starts with a snapshot of a static world and abstracts away from the distributional problems posed by illness, handicaps, laziness, risk-taking, investment, production, procreation, and the like. In such a world, he argues, everybody should receive an *equally valuable* share of the island’s resources (p. 65).

He observes that he must now answer two difficult questions: What is a resource? And how are resources to be valued? Rakowski’s provisional answer to the first question is that resources are non-human objects that will be owned privately (p. 67). He does not here or elsewhere attempt a theory of collective goods (like roads or the quality of the atmosphere); and since by hypothesis the castaways are equally healthy and equally able, for the

¹ Rakowski’s ideas on these subjects have been updated and expanded in his article *Taking and Saving Lives*, 93 *COLUM. L. REV.* 1063 (1993).
time being there is no need to consider whether one’s kidneys or intelligence should be deemed resources for redistribution.

As for the second question, he argues for a market solution: give everybody an exactly identical bundle of resources and allow them to trade freely among themselves. This process will yield a just initial distribution of resources among the castaways. For “[b]undles of resources are equally valuable if each of their owners would not prefer to own someone else’s bundle” (p. 69). Such a market process yields a distribution that is in this sense equal. (I note in passing that, as a technical matter, this important conclusion does not follow, even in the simplest two-person case; in general, the welfare economic foundations of Equality of Fortune are shaky, and need considerable patching if the theory is to work.)

Having specified a just initial distribution of resources for the castaways in their static world, Rakowski next turns to the second principal task of Equality of Fortune. He is gradually going to relax the special assumptions he has made about the castaways; he will consider how the patterns of distribution will shift over time, and how the existence of accidents, illness, handicaps, hard work, unequal talents, bequests, and the like should be incorporated within his scheme of justice.

Rakowski’s central analytical device for this task is the distinction, borrowed from Ronald Dworkin, between two kinds of luck: brute luck and option luck. Option luck is the outcome of a conscious and voluntary gamble: you choose to take a risk, and you gain or lose as a result. Brute luck is not the result of such a voluntary choice—being struck by lightning, say, or finding a pearl in your oyster soup.

2. If the island resources cannot be apportioned into strictly identical bundles, Rakowski would use the device of an auction or of an economic market (p. 70); but nothing in my remarks hinges on these refinements.

3. Suppose you and I are the only two castaways and that our resources are four socks—two white, two navy. You prefer a navy pair to a mixed pair to a white pair; I prefer a navy pair to a white pair to a mixed pair. We are given identical baskets at the outset; that is, one white sock, one navy. I will improve my position by trading my navy sock for your white one, but at the end of the day I will still prefer your bundle to my own. Rakowski’s conclusion is thus false: all we are entitled to conclude is that nobody will prefer his own initial bundle to his own final bundle. But this does not establish that the distribution is “equally valuable.”

A further complexity should be observed. Rakowski allows his castaways to rank only their privately held bundles of goods. They are not, it seems, allowed to rank the desirability of the overall distribution. This limitation needs argument, for it excludes certain other rankings that might be thought relevant to the question of equal justice.

For instance, I might reason as follows: “I value, not only socks, but also close personal friendships. But a close friendship is possible only among persons of roughly equal means. If either of us owns all the navy socks, then close friendship will be impossible; for this reason, I prefer the distribution in which each of us has a mixed pair, even though, if I am restricted to choosing among bundles, I would prefer to own the bundle in which I hold a matched pair.” I can see no simple and overwhelming moral argument for declaring such reasoning illegitimate; on the other hand, if the parties are allowed to rank overall distributions, and if the parties are more than two, then Arrow cycles of the well-known sort can arise.

I propose no solution to these difficult problems, but merely note that they must be addressed and solved if the theory is to succeed.
Rakowski makes the important claim that “a single principle specifies the proper response to almost all potential sources of inequality” (p. 74). Let us call this principle the Principle of Luck. It has two parts. Let us call the first the Principle of Option Luck. This principle says that differences in holdings arising from variations in option luck are unobjectionable, so long as everybody has a chance to make the gamble in question: those who win are entitled to keep their winnings; those who lose have no right to complain of their losses and may not look to society for compensation. The second part is the Principle of Brute Luck. It says that consequences of brute, unmerited, unchosen windfalls should be evened out. The lucky must share; the unlucky are entitled to compensation. These two principles are related in a natural manner:

For the essence of the theory of Equality of Fortune is the imperative that people’s shares be kept equal, insofar as that is humanly possible and not excessively costly, except to the extent that their voluntary actions give rise to inequalities; only by eliminating unsolicited good and bad fortune from the forces shaping people’s holdings can true equality of station be attained, and the distribution of resources be made acceptable to a community of persons who regard one another as moral equals (p. 75).

Rakowski now uses this bold and powerful Principle of Luck to develop his theory of justice. The strategy is as follows. Starting with the equal distribution of resources on the island, he abandons, step-by-step, the unrealistic assumptions about the castaways. At each stage he asks, “What would be a just distribution in the resulting world?” And he derives the answer from the Principle of Luck. At the end of the process all the assumptions have been dropped, and we find ourselves with a theory of justice for our own world.

Rakowski’s discussion takes over one hundred and twenty pages and defies easy summary; along the way he analyzes such rival theories as Nozick’s anti-redistributive libertarianism and Dworkin’s theory of Equality of Resources—an enterprise which involves intricate and illumi-
nating theoretical discussions. But the outlines of his theory are admirably
clear.

The cases he discusses can be grouped into two broad categories. The
first group of cases is concerned with the activities of a population of
healthy, nonhandicapped adults. Rakowski considers inequalities that will
arise from such activities as lotteries, dangerous sports, the taking of busi-
ness risks, profitable inventions, and differential preferences for leisure,
gifts, and bequests. In each case he applies the Principle of Luck and asks
whether the outcome is the result of brute or of option luck. If pure option
luck, there is no right to redistribution; if pure brute luck, there is. Thus, the
winner of a national lottery and the victim of a sky-diving accident must
live with the consequences of their freely chosen gambles: society may not
expropriate their winnings, nor need it compensate them for their injuries.
But the farmer whose crop is destroyed by an unforeseeable drought, and
the beachcomber who accidentally stumbles upon Bluebeard's Treasure,
must share their brute luck with the rest of society: the farmer is entitled to
assistance, and the beachcomber is obligated to share the unearned gold.

Difficult cases arise when brute luck and option luck are intertwined.
In such cases, Rakowski recommends—without providing precise instruc-
tions—that one try to disentangle the two as best one can. For example, a
profitable discovery might be the result of years of patient searching—or it
might be the result of a serendipitous accident:

Brute luck may thus play a prominent, middling, or minor role in a
fortunate discovery.

The import of its presence is plain. How much the unexpect-
edly wealthy must share with the rest evidently depends upon the
extent to which what they discovered or the way in which the value
of their property changed was a foreseeable result and motivating
factor in the type of activity in which they were engaged when they
discovered or purchased it. People might disagree, of course, over
how that extent should be measured and hence over the way in
which the percentages should be split between brute and option luck
in a particular case (p. 85).

For example, gifts from parents are more likely to be the product of good
brute luck than gifts from friends:

Children do not choose their parents. . . . [T]hey were through no
merit of their own better placed to win their parents' affection than
were other people. They also do so because parents often become
attached to their progeny through the activities of procreation and
child-rearing, for which attachment children are in no way responsi-
ble . . . (p. 159).

But gifts from friends are more likely to be the product of option luck, for
friendships have to be consciously chosen and cultivated: "One can, after
all, discover the identities of the rich and open-handed, and make whatever
overtures one thinks appropriate” (p. 160). It follows that gifts and bequests from parents should be taxed more heavily than gifts between friends, even though Rakowski concedes that it would be “practically impossible” to sort out the contributions of brute and option luck in every individual case (p. 161).

So much for the application of the Principle of Luck to healthy adults. The second broad category of cases involves handicaps, illness, unequal endowments, the just distribution of vital organs, and the treatment of children. Rakowski views natural abilities (p. 138) and bodily organs (p. 169) as resources; here, too, the Principle of Luck furnishes the key to a just distribution. Consider first adult illness: healthy, normal adults know that they may fall ill or need an organ transplant, and they can enter into voluntary insurance schemes to guard against such eventualities. They are thus able, as it were, to convert brute luck into option luck. So, for adults, Rakowski favors a competitive market in health insurance and a voluntary organ transfer scheme (p. 182).

But what if you cannot buy health insurance because you were born with a predisposition to heart disease? Or what if you were born without a full set of natural mental and physical abilities? Or what if you fall ill as a child, before you have a chance to buy insurance? In these cases, Rakowski blames brute bad luck and says that justice requires the transfer of resources from the more fortunate to the less. In essence, society must insure you against misfortunes that are not your fault:

Because natural endowments are nontransferable resources, and because their presence or absence is a matter of brute luck, unequal abilities should apparently be dealt with in the same way as congenital disabilities and accidental childhood injuries. Resources should be taken from those whose complement of powers is above average and given to those whose abilities fall short (p. 138).

This theory accords with and justifies many of our intuitions about health care, but it also has some startling implications. It implies, for instance, that a child who needs a kidney may have a right to a compulsory transplant from an adult with two kidneys. Rakowski recognizes that this conclusion

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6. Hence, justice would be equally well served by allowing a competitive insurance market to flourish, as was true of other types of bad brute luck discussed above. So long as people had an equal opportunity and the rational capacity to devote some portion of their personal holdings to measures designed to allay possible misfortunes, they could not later complain, if they neglected to look ahead, that they were treated unjustly if equality were not restored once the lightning had struck (p. 89).

7. Or again:

[The starting-point in the case of adults and minors is the same—complete elimination of the effects of bad brute luck, with the qualifications mentioned—and the divergent treatment of adults and minors in the end stems from the fact that adults may responsibly waive the protection to which they are entitled whereas minors lack that capacity for autonomous decision (p. 103).]
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is counterintuitive, and Part One ends with a long, eloquent defense of his conclusion (pp. 183-95).

I wish now to make two important points about Equality of Fortune. I assume Rakowski intends it to be a comprehensive theory of distributive justice—that is, a theory that covers the traditional range of problems encompassed by that term—and not just a grab-bag theory for health care, business ventures, lightning bolts, and Monte Carlo. For he describes Equality of Fortune on the first page as a “theory of justice”; he sets it up as a competitor to both utilitarianism and Rawlsianism (p. 19); he states the Principle of Luck without any indication that its scope is to be restricted. There is no sign that he intends Equality of Fortune to be merely a part of some other theory of distributive justice. I make this assumption explicit at the outset, for I shall be arguing that Equality of Fortune cannot succeed as a comprehensive theory. In contrast to utilitarianism and contractarianism, it is only plausible if understood as a fragment of a theory of justice; it does not and cannot stand on its own.

Second, the extreme ingenuity—even brilliance—of Rakowski’s theory should not be overlooked. Although the central distinction between brute and option luck is borrowed from Dworkin, Rakowski puts it to an entirely original use, and Equality of Fortune can be viewed as an attempt to address one of the central problems in recent political theory. Rawls’ Theory of Justice rested on two fundamental principles of justice: one having to do with liberty; the other, with equality. The relationship between them is, as many commentators have remarked, somewhat strained and obscure, and later writers have, as it were, tried to make do with either the one or the other: Nozick, for example, grounding his theory in liberty, and Dworkin in equality. Rakowski’s theory takes a novel approach. It is grounded in the single Principle of Luck. But this principle has two aspects: one libertarian and the other egalitarian. The Principle of Brute Luck is strongly communitarian. It says that the healthy and talented have egalitarian obligations towards the less fortunate—towards the handicapped, towards children, towards those who cannot fend for themselves—and that these obligations may have to be satisfied even at the cost of a kidney or a cornea. On the other hand, the Principle of Option Luck is strongly libertarian: if you take a risk, you are free to keep the profits. Rakowski explicitly says that this principle governs the world of business, and that “most financial and commercial success . . . ought to be ascribed predominantly to option luck rather than to brute luck” (p. 83).

Rakowski’s theory, if successful, would thus provide a new starting point for political philosophy. Rather than resting on liberty or equality or a mixture of the two, his theory would rest on a single, new, intuitively plau-

sible principle that underlies both liberty and equality and explains their attractiveness.

III

EQUALITY OF FORTUNE AS A MORAL THEORY

I shall turn to a detailed analysis of Equality of Fortune shortly; for now, a simple example will illustrate my general line of criticism. After presenting his general argument for Equality of Fortune, Rakowski observes that, in some cases, equality can only be achieved by harming the better-off. For no matter how much money we lavish on an athlete who has lost his legs, he will still be less fortunate than his fully ambulatory sister; so equality in this case can only be attained by doing her an injury. Rakowski rejects this implication of his theory. He declares that it would “obviously” be wrong to pursue equality in this manner and announces that “[m]orality does not require those who are more fortunate... to accept great privations for the sake of people who are less lucky if the unlucky would benefit only slightly at the margin”... (p. 100).

No doubt; but one would like to hear an argument. After all, this is a philosophical text, and important conclusions about political equality should not simply be deemed “obvious.” Obvious to whom? Not to Mao and Pol Pot and the Red Guards; but even if we leave radical egalitarians out of consideration, Rakowski’s theory, for internal reasons, needs further elaboration. He has argued for a principle of equality. Because this principle points in unwelcome directions, he hastily invokes a second principle to limit the pursuit of the first. If this second principle is not to be an ad hoc device for preserving the believability of his theory, he needs to embed both principles in a deeper theory—one that will explain their proper spheres, why they are compatible, and how they are related to one another. I do not question that such a theory is possible or that Rakowski is capable ofsupplying it. My point is that it is needed, and that in his rush to consider the substantive issues he has neglected the claims of systematic theory-building.

A. The Castaways’ Island

I now turn to the details of Equality of Fortune itself. Recall that this theory has two parts: a theory of the just distribution of resources among island castaways, and the Principle of Luck.

9. The prima facie implication of Rakowski’s theory is in fact stronger than this: if equality is the goal, then sacrifices should be imposed on the lucky even if the unlucky would benefit not at all.
1. Just Distribution

Let us start with castaways. If Rakowski's theory is to succeed, he must establish that the initial distribution on the island be equal. I quote his argument in full:

It therefore seems sensible to ask how the world should be carved up among people who are equally able but equally undeserving, before considering what difference it makes if one relaxes the assumptions of equal intelligence, talents, and health, and if one abandons a static world for one in which procreation, risk-taking, and production occur.

As these hypothetical cases frame the initial distributive question, it all but answers itself. Once welfare-based theories have been excluded from consideration, and once one acknowledges that nobody possesses any congenital or acquired advantage that would translate into superior bargaining power if such advantages were permitted by a theory of justice grounded in impartiality to influence the distribution of resources, the natural answer is that everyone should receive an equally valuable share. Nobody would settle for less, because nobody else would have a right to demand more. The presumption must therefore be that people are entitled to equally valuable shares, unless some difference between them justifies a departure from equality (p. 65) (emphases added).

I find the reasoning in this cardinal passage confusing on several levels. Consider first the references to bargaining power and to a theory of justice grounded in impartiality. How many theories of justice are at play here? What is the relationship between them? It sounds as though Equality of Fortune rests upon a bargaining theory of justice (the theory that the outcomes of bargains struck under such circumstances will be just), and that the bargaining theory in turn rests on yet a deeper “theory of justice grounded in impartiality.”

Now, if this is so—that is, if Equality of Fortune is not Rakowski's ultimate theory of justice—then we should be told much more about the theory of impartiality: for that theory is doing all the work, and a mere passing reference to it is not enough. If, on the other hand, Equality of Fortune is supposed to provide the deepest theory of distributive justice (as the rest of the book seems to imply), then these references to other theories of justice are an unnecessary shuffle, and Rakowski should be able to reach his conclusion directly. In other words, if he is to avoid the charge of a major theoretical lacuna, he must indeed show that his question “all but answers itself.” Let us see if he can do so.

At this point we run into a second layer of difficulty. Sometimes Rakowski presents his claim as a claim about how the island resources should be distributed; other times as a claim about how they would be distributed. (In the above passage, he uses each word twice.) How are these
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claims related? Rakowski says “nobody would settle for less, because nobody would have a right to demand more” (p. 65) (emphasis added). So perhaps the argument is this:

(1) The castaways should agree to an equal division, therefore they would.

But this cannot be the argument. Not only does it depend upon an overly optimistic assumption about human nature, but it also assumes precisely what is to be established—namely, that the resources should be distributed equally. I conclude that Rakowski’s reference to “a right” was a slip of the pen.

A more plausible interpretation of the argument might look like this:

(2) The castaways would agree to an equal division, therefore that is how the resources should be divided.

But this interpretation encounters difficulties as well. To explain them, it is important to distinguish two possible reasons why the castaways might agree to an equal division. First, they might agree because they think such a division is just. Second, they might agree because an equal division is the best deal they can obtain under the circumstances. For example, if the castaways are a Believer and an Infidel, each might think that the other is morally entitled to nothing; but faute de mieux they might agree to an equal division, finding that solution preferable to war. Their bargain will then be a mere pragmatic standoff; and a pragmatic standoff cannot tell us what should happen. So if the argument in (2) is to work, the castaways’ agreement must reflect their sense of justice.

But this conclusion is open to an obvious objection. For even if we require the castaways to agree that the division they make is just, this does not guarantee that the division will be equal—even if we require the agreement to be unanimous. (Consider islanders from a caste society where the low-caste and high-caste islanders agree as a matter of justice that the low-caste islanders should receive only the resources their masters choose to give them.) Plainly, the only way we can be assured that the islanders would agree that justice demands an equal distribution is if we require them to hold an egalitarian theory of justice. But then the question “What would they agree to?” becomes a pointless detour; certainly it does not lend any support to the conclusion, required by (2), that they should agree to an equal distribution. (After all, the fact that egalitarians would agree to an egalitarian solution is not the strongest argument for egalitarianism.)

But there is yet a third layer of problems in these paragraphs: a confusion between our point of view, and that of the islanders. To explain the importance of this mixing of viewpoints it will be helpful to compare Rawls’ theory of justice. He, too, tries to extract principles of justice from considerations about the agreements that would be reached by the parties in “original position.” But his procedure is much more precise than Rakowski’s. His aim is to reach reflective equilibrium—a coherent and
systematic statement of our considered moral judgments. The original position is a tool for achieving that end. We agree that, if the parties behind the veil of ignorance are deprived of certain designated information (e.g., their age, race, sex, class—even their conception of the good life) then the principles they would agree upon will be, by our lights, just. Rakowski, in contrast, does not deprive the castaways of any information, and so he cannot guarantee that they will reach any agreement (let alone one that is egalitarian). Worse, he blurs Rawls' clear distinction between our point of view and that of the castaways; this makes his entire argument logically suspect.

Consider, for example, his requirement that the castaways be “equally undeserving.” (Rakowski is of course using “undeserving” here in its morally neutral sense, and not as a term of condemnation.) Is this evaluation to be made from our point of view, or from theirs? Of course, if we and they both agree that they are equally undeserving, then they will agree that an equal distribution is just, and, by our lights, this is the distribution they should agree to. But suppose we think they are equally undeserving, while they think the high-caste islanders should have all the resources. What follows? Not (I presume) that the inegalitarian distribution is thereby made just. In other words—and in contrast to Rawls’ original position—the analytic device of asking what the castaways would agree to is idle: our opinion is the only one that counts.

How did Rakowski go so far astray? I think his methodology is to blame. The argument he appears to want to make is this (I use as far as possible his own words):

(3) Consider a group of castaways. If they are equally undeserving, and if no difference between them justifies a departure from equality, then they are entitled to equally valuable shares.

This proposition is indeed obvious. Rakowski did not bother to state it carefully, I suspect, just for that reason: he let intuition be his guide, and the problems slipped in unnoticed. But although principle (3) is obvious, once we state it clearly we can see that (in contrast again to Rawls) it is also empty, and is incapable of grounding a theory of justice. For it does not tell us precisely what differences “justify a departure from equality.” Being handicapped? Having red hair? Believing in God? Being a Utility Monster? These are of course precisely the hard questions, and until they are answered principle (3) tells us nothing. Equality of Fortune at this point is only plausible, only tenable, if we presuppose an underlying theory of justice—a theory that (like Kantianism or utilitarianism or Rawlsianism) will tell us exactly which features of persons are relevant, and why. In other words, Rakowski’s question does “all but answer itself,” but in a manner that leaves him lumbered with a major theoretical lacuna.
2. The Principle of Luck

I turn now to the second chief element of Equality of Fortune. Rakowski nowhere provides a rigorous statement of the Principle of Luck. The closest he comes is this:

The general implications of the theory of equality of fortune should be sketched in advance, however, because a single principle specifies the proper response to almost all potential sources of inequality.

Abstract for now from differences in people's intelligence and reasoning ability. My principal claim is that all inequalities in holdings arising from variations in people's option luck are morally unobjectionable, provided that no one who wanted to run the risks associated with such luck lacked an opportunity to do so. But all inequalities resulting from variable brute luck ought to be eliminated . . . (p. 74).¹⁰

But this claim, as stated, is plainly untenable. Suppose I plant a bomb on your plane. If my option luck is good, you will vanish in mid-ocean, and I shall inherit your fortune; if it is bad, I shall be caught and go to prison. Obviously I have no moral claim to the rewards of such a gamble. If the Principle of Option Luck is to be rescued, it must be reformulated somewhat as follows:

(4) Inequalities arising from morally legitimate gambles are morally unobjectionable.

This is a large and unwelcome modification. For it makes plain that the Principle of Luck is not an independent moral principle: as with the earlier claim about equal distribution, it depends for its plausibility on a deeper, unacknowledged theory of legitimate behavior towards other persons. Once again, Equality of Fortune does not so much provide a theory of justice as presuppose one.

This objection is, I believe, fatal if Equality of Fortune is supposed to provide a comprehensive theory of justice. But even if it is supposed to provide only a partial theory, the Principle of Luck is vulnerable to other objections. Consider first the problem of multiple causation. Most real-life lucky events are not the product of a single cause, but of a chain of causes, some of which reflect brute luck, and some option luck. (I assume here that the distinction between brute and option luck can be clearly made.) For

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¹⁰ The quotation continues: except to the extent that a victim of bad brute luck waived or waives his right to compensation, or someone who enjoyed good brute luck is or was allowed to retain the benefits he received by those who have or would have had a claim to some part of them; and provided, further, that those who suffered bad brute luck would profit significantly at the margin from transfers designed to restore equality by comparison with the marginal cost to those providing compensation, and that any compensation paid is not excessively burdensome.

The basic rationale for adopting this principle is simple. People come into the world equally undeserving. Because no one has a greater claim to the earth or what lies on or beneath it than anyone else, all are entitled to equal shares (p. 74).
example, I make a conscious decision to purchase a certain stock. I do so
because I heard a chance remark on the subway. I understood the remark
only because I had chosen years earlier to attend business school. I was
able to make this choice only because I had the brute luck to be born in a
country with a modern educational system, and to parents who could afford
to pay my tuition. Clearly this chain of causes could be extended almost \textit{ad
infinitum}. If the Principle of Luck is to provide any useful guidance, we
must be given a method for distinguishing the causes that matter from the
ones that do not.

One possible way to do this is temporally. It is tempting to invoke
notions of proximate causation, to treat long-past causes as having been
dissipated with the passage of time, and to make the most recent cause the
determining one. Such a temporal test accords with basic intuitions. It
would distinguish my good \textit{option} luck at the gambling tables (where I have
a one-in-fifty chance of winning) from my bad \textit{brute} luck in the failure of
my crops—even though, when I decided to become a farmer, the chances of
a major crop failure during my lifetime were also one-in-fifty. In both
cases, I have made a choice; but in one case the choice is the proximate
cause of the outcome, and in the other the intervening years have converted
the disaster into a piece of brute luck.

But this purely temporal test does not seem to get at the heart of the
matter. Consider the following two cases: in the first, I buy a national
lottery ticket for a dollar; my chances of winning are one-in-fifty-million.
In the second, I buy for a dollar an admissions ticket that allows me to walk
in the park for an hour; my chances of being struck by lightning are also
one-in-fifty-million. \textit{Temporally} there is nothing to distinguish the two
cases; but we want to say that the lottery winnings are option luck, while
the lightning bolt is brute luck.

The crucial difference between these two cases seems to be this: when
I bought the lottery ticket I \textit{intended} to gamble; but when I bought the
admissions ticket, all I had in view was a walk in the park. This observation
seems to offer the most plausible way of addressing the problem of
multiple causation: the morally relevant cause is to be specified by refer-
tence to my \textit{psychological states}—specifically, to my conscious choices and
intentions. (Rakowski once seems to apply such a test, asking whether an
outcome was “a foreseeable result and motivating factor” for a particular
activity (p. 85).)

If we adopt this suggestion, then the revised Principle of Option Luck
will look something like this:

\begin{enumerate}
\item If I choose to make a voluntary and morally legitimate gamble
with the intent of obtaining a particular reward, and if my choice is
the principal cause of my obtaining the reward, then I have no obli-
gation to share my winnings; if, on the other hand, I suffer a loss, I
have no claim to compensation from other members of society.
\end{enumerate}
But even this revised formulation is open to weighty objections. First, it still does not solve the problem of multiple causation. Consider the example I started with. Which is the principal cause of my profit on the stock market? My choice to go to business school? My choice to buy the stock? The chance remark on the subway? Formulation (5) does not answer the question, even in principle.

Second, this formulation of the Principle of Option Luck is not plausible as a moral ideal. Consider a young scientist who chooses to study molecular biology. She is driven solely by passionate intellectual curiosity and has no thought of financial reward. A few years later, in the course of her researches, she discovers a cure for cancer. Principle (5) implies that she is entitled to the profits of her discovery if she was driven by love of money, but not if she was driven by love of science: surely a morally eccentric conclusion.

What has gone wrong? Once again, I suspect that some unacknowledged presuppositions are lurking in the background. Rakowski seems to have in mind cases where we do indeed want to encourage (or allow) risk-taking—either for social ends (as when entrepreneurs are encouraged to develop new products), or because certain moderately risky activities (like mountain climbing) are intrinsically valuable parts of the lives of those who engage in them. In such cases a principle like (5) is eminently plausible. But in these cases risk-taking is not itself intrinsically valuable: it is only instrumentally valuable as a means to a further end (an improved toothpaste, or an enhanced sense of the beauty and dangerousness of the natural world). However, when risk-taking is pursued merely for its own sake—by a frivolous gambling playboy, or in a game of Russian Roulette—principle (5) runs contrary to intuition, for which reason many states prohibit or regulate gambling.

Morally speaking, not all option gambles were created equal, nor should they be treated the same way by society. Some are to be honored and subsidized even if they fail; some to be encouraged and rewarded if they succeed; some to be tolerated and taxed; some to be frowned upon and regulated; and some to be prohibited altogether. Once this fact has been grasped, we can see that principle (5) is too crude to capture the full range of necessary moral distinctions, and consequently too crude to serve as a plausible or attractive moral ideal.

IV

EQUALITY OF FORTUNE AS A POLITICAL THEORY

To this point I have been considering Equality of Fortune primarily as a moral theory: that is, as a theory about the obligations individuals owe to other individuals, regardless of the existence of the state. I have done so because at the start of the book Rakowski stresses that the principles of justice he develops “are binding even in the absence of states” and that the
problem of political obligation falls outside the scope of his inquiry (p. 14). (He has good reasons for saying so, as we shall see shortly.)

But it is not clear that this is a tenable position. For his theory is meant to apply, not just to individuals taken two-by-two, but across an entire society: the redistributions it commands have to be calculated globally. I have a duty to compensate you for a business reversal, a duty to compensate her for a congenital handicap, a duty to compensate him for his broken leg; I also have duties to each child who needs a kidney transplant. Plainly I cannot satisfy all these duties; and plainly I cannot be allowed to pick and choose, to compensate my relatively prosperous friends while ignoring the much worse sufferings of strangers. There is a large problem of collective action here, and in order to determine the proper redistribution of resources I need at least two pieces of information: (i) a ranking of the most unfortunate members of society; and (ii) information about the steps other persons have taken to help them. This means that in any society of more than a few dozen members there will have to be a bureaucratic apparatus for assembling information, evaluating claims, and administering compensation—to say nothing of adjudicating disputes, deterring free-riders, and punishing abusers of the system.

In short, Equality of Fortune, if it is not to collapse into triviality, demands to be administered by a state. Rakowski implicitly acknowledges this fact and, despite his early disclaimers, constantly speaks as though his principles of justice will be administered through the taxation powers of governmental officials. So let us now consider Equality of Fortune from the point of view of politics—as a set of principles to guide the redistributive policies of a modern state.11 Such a theory must satisfy two requirements: it must be practical to administer, and it must be just.

11. I note in passing one difficult problem. Rakowski never abandons the assumption that Equality of Fortune applies to an island society, entirely cut off from all other societies. But his arguments about redistributive justice do not rest on this assumption, and it is hard to see why his theory does not specify my duties to all of humanity. Indeed, towards the end of the book he argues that "the right of innocent persons not to suffer serious injury or death is independent of their membership in a given community" (p. 356), and he points out that this conclusion also has implications for the treatment of animals.

Now, if this conclusion is supposed to hold generally—if Equality of Fortune stipulates my duties to all of humanity—then we encounter some hard problems. For instance, if my community chooses to squander its natural resources and to reproduce wildly while your community chooses to make sacrifices for the sake of population control and the environment, then your grandchildren will have to compensate my grandchildren for the bad brute luck of having been born into my community—a conclusion that would encourage present-day squandering. Here an intuitively plausible principle of option luck for communities stands in tension with the principle of brute luck for individuals.

Perhaps it is possible to circumvent this problem and to expand Equality of Fortune into a comprehensive theory of justice for a plurality of communities. Such a theory would have to address questions of immigration, duties to foreigners and to future generations, and the creation of rights and obligations by positive law. This is a tall order, and well beyond the scope of Rakowski's book; so I merely mention the difficulty, and, like him, assume that Equality of Fortune is meant to apply within an entirely isolated society, even though the difficulty I articulate presents a morally relevant difference between the castaways' island and the real world.
I have already touched on the problem of practicality. The Principle of Option Luck, recall, in its most plausible formulation, says:

(5) If I choose to make a voluntary and morally legitimate gamble with the intent of obtaining a particular reward, and if my choice is the principal cause of my obtaining the reward, then I have no obligation to share my winnings; on the other hand, if I suffer a loss, I have no claim to compensation from other members of society.

As we have seen, if the Department of Luck were to try to apply this principle case-by-case to roulette winnings, motorcycle accidents, commercially valuable real-estate purchases, and the like, it would need to possess a theory of morally legitimate gambles and a solution to the problem of multiple causation. Worse yet, it would also need to be able to answer intimate questions about my psychological motivation: to determine, for instance, whether I chose years ago to study molecular biology for the love of scientific research, or for the love of money.

The possibilities of deception and self-deception here are so great that it is not clear that these questions have an answer, even in principle; certainly in practice the pursuit of a principle like (5) would require massive bureaucracy, intrusive monitoring of the population, and endless bickering. Such an enforcement scheme could only be justified if (5) were an overwhelmingly plausible moral ideal in its own right—which I have argued it is not.

But suppose we do not apply (5) to all conceivable cases of option luck. Suppose we limit it to a few central cases of the sort Rakowski considers: handicaps, serious physical injuries, perhaps even differential preferences for leisure. In the first two cases, he would allow a private-sector solution: let a competitive market in health insurance flourish for adults and then use the market rates to calculate, at least roughly, the compensation due to injured children. This is a plausible and a practicable public policy (though not unique to Equality of Fortune). On the other hand, when he considers redistributions based on differential preferences for leisure or on unequal natural endowments, difficulties sprout. The best plan he can devise is open to all the above objections: it would require massive amounts of information and would be hugely vulnerable to cheating. Rakowski is scrupulously honest about this point and admits that it is a "frustrating conclusion":

The major shortcoming of this plan, of course, is that it would probably be impossible to implement. And even if it were feasible, the cost of realizing it, counting both administrative expenses and inefficiencies in assignment and distribution, would likely be staggering. Neither veracity nor compliance would be easy to obtain . . . . The temptation for talented individuals to manipulate their responses to their personal advantage might often prove irresistible. And it seems quite likely . . . that many employers and exceptionally
able workers would attempt to circumvent [the theory] through black market transactions or under-the-table payments.

Nor do these difficulties seem eliminable (pp. 146-47).

I suspect that the realization of these facts caused Rakowski to declare in his introductory remarks that his theory is independent of the existence of any state.

But a deeper theoretical problem about justice hovers behind these practical considerations. We have seen that the state is incapable, even in principle, of satisfying the requirements of Equality of Fortune. But Equality of Fortune is supposed to be a theory of justice. It seems to follow that any state will inevitably be profoundly unjust—that what states can be expected to deliver is not so much equal justice as rough justice.

If this criticism is to be evaded, it is necessary to draw an important distinction. Let us divide principles of justice into two distinct but overlapping classes. Pre-institutional principles are principles that hold even in the absence of any state: for example, the duty not to steal, or the duty to aid others in distress. Post-institutional principles, in contrast, apply to citizens and institutions after a state has been established. The duty to pay taxes, or the duty of the government to protect the civil rights of minorities, may serve as an example.

Plainly these two sorts of principle can overlap, but it is important to observe that they can also diverge. If the evidence against a rapist is inconclusive; if fair procedures were not followed; if the jury is not persuaded beyond a reasonable doubt; then the just state will acquit. And if, after the statute of limitations has expired, he should boast about his crime, then in the post-institutional sense it would still be an injustice to punish him, even though in the pre-institutional sense the result is a miscarriage of justice.

Clearly all actual states will sometimes commit pre-institutional injustices, for human institutions are fallible, and no government can right every wrong. The most one can require of a just state is that it come as close as can reasonably be expected to the ideal of pre-institutional justice. But if a state violates the principles of post-institutional justice it should either be reformed or abolished—for then it violates the very principles that are supposed to govern the behavior of states.

Now consider the above objection to Equality of Fortune. We can put the point more clearly using this new terminology. If Equality of Fortune is a post-institutional theory of justice—that is, a theory which actual states are supposed to follow—then it is open to two decisive criticisms: (1) it is impossible to implement; and (2) it therefore makes all states necessarily unjust in the strong post-institutional sense. This is an untenable conclusion; and Rakowski therefore had good reason to declare that his theory is independent of the existence of states—that is, is a pre-institutional theory.

But if Equality of Fortune is a pre-institutional theory it runs into two further obstacles. First (as we have already seen), the Principle of Luck is:
(i) an unattractive moral ideal; and (ii) one that is impossible to use, even in principle, unless we are given a solution to the problems of multiple causation, psychological motivation, and morally legitimate gambles. The second obstacle is more subtle. It is that, in a certain sense, Equality of Fortune is not a stable pre-institutional theory—it demands for its completion a post-institutional theory of legitimate state action that it cannot supply.

An example will show that not all pre-institutional theories of justice are unstable in this way. Simple act utilitarianism can be defended as a pre-institutional moral theory without any reference to the state; indeed, classical utilitarianism as presented by Sidgwick is explicitly developed solely as a moral theory. But whereas utilitarianism can be taken as a theory about how individuals should act, Equality of Fortune is a theory of the redistributions that should take place across society: it involves an essential reference to the political community. As we have seen, if the society contains more than a few dozen members, then there will have to be a bureaucratic apparatus to organize and administer the redistributions commanded by the theory.

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And since Equality of Fortune is supposed to be a theory of just redistribution it will have to say exactly how a state is to conduct its business justly. What weight, for instance, should be given to values such as privacy, administrative due process, and freedom of speech, and what are the limits of state action? What should the just state do if any of these values interferes with the pursuit of redistributinal equality? Such an objection plainly cannot be answered without an inquiry into the reasons for privacy rights, freedom of speech, and the rest—and this inquiry will inevitably lead to the full range of philosophical questions about the foundations of politics.

This objection would not be fatal if Equality of Fortune were able to furnish the underpinnings of a post-institutional theory of political justice. Once again, utilitarianism furnishes a helpful contrast. Although Sidgwick need not have a theory of politics, the Principle of Utility is nevertheless broad enough to serve as the foundation for a post-institutional theory of justice. The construction of a utilitarian political theory proceeds in the familiar way: if one wishes to establish the justice of, say, democratic government or freedom of the press, one must argue that such institutions, over the long haul, will conduce to the greatest happiness. One knows, in short, what sort of an argument is required. But Equality of Fortune offers no such clear guidance. It does not even point us in a general direction. Trying to extract a theory of the state from the Principle of Luck is like trying to extract sunbeams from cucumbers: one does not quite know how to begin.

We can now see why there exists so much wavering in Rakowski’s account—why he oscillates between Equality of Fortune as a moral ideal
and Equality of Fortune as a theory to be administered by the state. As a pre-institutional moral theory it presupposes a theory of legitimate wagers; it fails to capture the full range of ordinary moral intuitions about gambling and is therefore implausible as a moral ideal; it requires such intricate psychological and causal information that the ideal is probably unattainable even in principle; and, in any sufficiently large society, it demands to be administered by a state. On the other hand, as a post-institutional theory of justice it rests on uncertain moral foundations; it is incapable of grounding a theory of the state; and it offers a standard of justice that is in practice so radically unattainable that it demands to be construed as a purely pre-institutional moral ideal. The theory is thus intrinsically unstable and incomplete; it must chase its own tail, perpetually travelling between two interpretations, and settling on neither.

CONCLUSION

I said earlier that I believe the difficulties in Rakowski’s theory are ascribable to his methodology. I conjecture that they arose in the following way. He began by considering an important class of questions about the just distribution of medical resources—questions about organ transplants, handicaps, injuries, differential talents, and the like. Much of what he wished to say could be justified in terms of a general Principle of Brute Luck—the principle, in effect, that those who are unfortunate through no fault of their own are entitled to social assistance.

This principle immediately raised questions about smokers, injured mountain-climbers, and other voluntary risk-takers; and he was thereby led to the Principle of Option Luck, which states that those who voluntarily take risks should be allowed to reap what they have sown. He then noticed that these two principles could be used to explain our intuitions about an extensive class of nonmedical issues: inheritance taxes, entrepreneurial business profits, inventions, discoveries, gambles, and other sources of inequality.

So far, the methodology is impeccable; it is only at the final stage that Rakowski begins to go astray. He now tries to turn his observations into a comprehensive political theory of distributive justice—one in which “a single principle specifies the proper response to almost all potential sources of inequality” (p. 74). He introduces the analytical device of the castaways’ island and produces his abstract arguments for the Principle of Luck. But this part of his theory is, I have argued, carelessly developed. He fails to search for counterexamples; he treats important conclusions as intuitively obvious; he is insufficiently precise in formulating the Principle of Luck; he does not adequately explore the need for state enforcement. In short, for reasons that are essentially methodological, he places too much reliance on his intuitions, and not enough on the rigorous exposition of a systematic theory.
I do not deny that Equality of Fortune has many attractive aspects, but it is important to see why they are attractive. The Principle of Luck rests on deeper principles and is parasitic upon more general presuppositions—presuppositions about personal autonomy, about the importance of allowing persons to form their own conceptions of the good, about the social utility of entrepreneurship, about the moral duty of altruism, and so on. And these presuppositions in turn have their grounding in deeper and more familiar conceptions of justice (utilitarian, contractarian, or whatever). Rakowski, I think, regarded these presuppositions as so intuitively obvious that they hardly needed stating; but once we bring them to light we can see that his unstated assumptions are in fact carrying all the baggage. The Principle of Luck is not itself a tenable moral ideal, and what plausibility it possesses is derived from other sources.

Indeed, this conclusion should not be surprising. If one wants to develop principles of just distribution for an entire society, one must—like Bentham or Kant or Rawls—treat a much broader range of questions in political philosophy. It is necessary to make explicit one’s assumptions about moral personality, human dignity, and the good life; to relate these ideas to the principles of right; and to develop from them a theory of the just society and the just state—a theory that will treat such topics as the limits of state action, the obligations of community, free speech, personal autonomy, and the basic individual rights. In the end, the Principle of Luck is simply too weak a reed to support the entire edifice of distributive justice.

The problem, in short, is that Equality of Fortune attempts too much: it takes principles that are plausible when applied to an important but narrow range of problems, and tries to expand them into a theory of justice tout court. If the foregoing analysis is correct, then Rakowski’s arguments are best reconstrued as arguments for a partial theory of justice—one that needs to be embedded within a more general theory.

What would such a general theory look like? In view of the strongly deontological character of the Principle of Luck, Rakowski’s theory is probably incompatible with any form of utilitarianism (or, more generally, of consequentialism). But it seems to fit naturally with social-contract theory. Indeed, Rakowski’s entire battery of arguments about health care, unequal endowments, handicaps, transplants, and injuries is couched in terms of hypothetical insurance schemes that persons in a situation of equality would agree to if ignorant of their futures. Here there is at least a suggestive parallel to the idea of the original position; and Rakowski’s lengthy analysis in Part One can be read as an effort to explore, in great detail, the implications of a contract-based theory of justice for a wide range of issues broadly classifiable as health-related.

Of course, even on this reading, much work remains. It will be necessary to specify more exactly the precise range of issues in question, to explain how they fit into the more general theory, to tighten the economic
arguments, to decide on the scope of the Principle of Luck, and to explore its implications for moral responsibility. But many of the central arguments and analyses will escape the process largely unscathed, and for this reason they retain their interest and importance despite the shortcomings of Equality of Fortune.

Rakowski’s book, then, does not provide a successful new theory of distributive justice—which is hardly a surprise, considering how rarely the feat has been performed in the twenty-five centuries since the Greeks began to speculate about “equal justice under law.” What the book does provide is a rich array of arguments and insights; a deepening of our understanding of the ethics of health care; perceptive analyses of tort law, insurance schemes, and the rights of animals; and one of the finest discussions in recent years of saving and taking life—all presented in philosophical prose that is a model of clarity and precision. It is quite an accomplishment for a first book: this elegantly argued work is a genuine step forward for political theory, and should be closely studied by anybody with an interest in the problems of applied ethics.