Compulsory Insurance without Paternalism

PAUL BOU-HABIB
University of Essex

This article examines how a just society must address the needs of its imprudent members. I defend compulsory insurance as an answer to this question. It has been assumed that compulsory insurance can only be justified on paternalistic grounds. I argue that this assumption is incorrect, and defend non-paternalistic compulsory insurance (NPCI). To display the merits of NPCI, I identify a trilemma that arises for views about how to address the needs of the imprudent, including libertarian and so-called 'luck-egalitarian' views. I then suggest that NPCI enables us to escape the trilemma.

I. INTRODUCTION

How must a just society address the needs of its imprudent members? My aim in this article is to defend compulsory insurance as an answer to this question. I argue that the state may compel imprudent people in advance to insure against their own risky behaviour, so that others can avoid having to bear the costs of rescuing them in the event of an accident. Compulsory insurance has been proposed before as a just way of addressing the needs of the imprudent, but it has not been given the full statement and defence it deserves. In particular, it has been assumed that compulsory insurance can only be justified on paternalistic grounds. I argue that this assumption is incorrect, and that compulsory insurance can be justified on non-paternalistic grounds.[1]

To display the merits of non-paternalistic compulsory insurance (henceforth, NPCI), I shall first show how alternative views about how to address the needs of the imprudent all run into a 'trilemma', which I shall call the 'imprudence trilemma'.[2] Alternative views to compulsory

[1] Compulsory insurance is defended by among others: F. A. Hayek, *The Constitution of Liberty* (London, 1990), p. 286; Milton Friedman, *Capitalism and Freedom* (Chicago, 1962), p. 188; and Elizabeth Anderson, 'What is the Point of Equality?', *Ethics* 109 (1999), p. 330. Anderson is the only one of these writers who explicitly defends compulsory insurance on non-paternalistic grounds. Eric Rakowski notes that compulsory insurance is a possible way of addressing the needs of the imprudent, but assumes that only paternalism can justify it, in *Equal Justice* (Oxford, 1991), p. 76 n. 4. Ronald Dworkin has recently attempted, unsuccessfully, as I argue below, to justify compulsory insurance on non-paternalistic grounds. See his restatement and defence of his theory of equality in '*Sovereign Virtue* Revisited', *Ethics* 112 (2002), p. 114.

[2] I am grateful to Andrew Williams for introducing this trilemma to me. For his discussion of the trilemma see Andrew Williams, 'Liberty, Equality, and Property', *The Oxford Handbook of Political Philosophy*, ed. J. Dryzek, B. Honig and A. Phillips (Oxford, 2006).

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insurance, I show, are unable to meet simultaneously the following three widely endorsed desiderata: freedom from exploitation, a guaranteed minimum for all, and non-paternalism. Having illustrated how these alternative views run into the imprudence trilemma, I then show that NPCI is able to meet all three desiderata: it guarantees a minimum for all people, both prudent and imprudent alike, it exploits no one, and treats no one paternalistically.

The success of the argument for NPCI would prove most significant for theories of distributive justice that maintain that distributions of resources, or welfare, or some other advantage, ought to be sensitive to choices for which people can legitimately be held responsible.[3] Proponents of such responsibility-sensitive theories – and I count myself among them – are potentially committed to the awkward conclusion that people may, as a matter of justice, be left to die or suffer grievously as a result of their imprudent choices.[4] NPCI provides us with an attractive way to avoid this implication – attractive, because, unlike other attempts to avoid this awkward implication, it is able to meet all three of the above-mentioned desiderata.

The article proceeds as follows. In section II, I explain in more detail the trilemma we face when responding to the needs of the imprudent. In section III, I show how NPCI can escape the trilemma. In sections IV and V, I consider an objection to NPCI and offer an answer to it.

Before I begin, I should emphasize that in what follows I shall suspend consideration of whether or not compulsory insurance is practicable, and concentrate on whether it would be justified in principle as a response to the imprudence of others.

II. THE IMPRUDENCE TRILEMMA

Let me begin by sharpening the focus of the question before us, namely, that of how a just society must address the needs of the imprudent. As I shall understand it, for conduct to count as 'imprudent' it is necessary and sufficient that it either is, or is likely to be, detrimental to its author's interests. Let me emphasize two features of this definition. First of all, conduct is imprudent not only in so far as it causes an (insufficiently compensated for) actual bad for its author, but in so far as it causes an (insufficiently compensated for) probability of an actual

[3] For classic accounts of responsibility-sensitive distributive justice, see Richard Arneson, 'Equality and Equality of Opportunity for Welfare', *Philosophical Studies* 56 (1989); G. A. Cohen, 'On the Currency of Egalitarian Justice', *Ethics* 99 (1989); Rakowski, *Equal Justice*; and Ronald Dworkin, *Sovereign Virtue* (Cambridge, MA, 2000).

[4] This is one of Anderson's central objections against the strand of responsibility-sensitive theories she calls 'luck-egalitarianism'. See Anderson, 'What's the Point of Equality?'.

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bad for its author. It is imprudent, for example, to surrender a large sum of money for a dirty old sweater; but it is also imprudent to gamble high sums of money in the casino or to smoke cigarettes. Because the money staked in the casino buys too low a probability of winning more, and because the probability of acquiring lung-cancer is not, arguably, worth the good of pleasurable smoking, these two forms of conduct are likely to be detrimental to one's interests.[5] Second, although it is necessary that a person's conduct is intentional in order for it to count as imprudent, it is not necessary that her conduct is aimed at her own well-being. On this definition, then, it is imprudent, for example, for a parent intentionally to sacrifice her own interests for the sake of her child.[6]

It will be helpful to use some technical terms to mark various distinctions that will be relevant in what follows.[7] Following many others, I shall call intentional conduct that aims to acquire an actual good, or suffer an actual bad, a 'choice', and I shall call intentional conduct that aims to acquire a probability of acquiring a good (e.g. gambling), or that puts at stake the probability of acquiring a bad (e.g. smoking), an exercise of 'option luck'. It is important to keep in mind that a person must be acting intentionally in order for his conduct to qualify either as a choice or as an exercise of option luck. Cases in which a person non-intentionally receives goods or bads, I shall call cases of 'brute luck'. The difference between option luck and brute luck, then, is that the former is luck to which a person intentionally exposes herself, while the latter is luck that a person could not foresee or avoid.

To illustrate, if Fred is unaware of the fact that a meteor is about to crash into the road on which he is driving his motorbike, then his choice to drive his motorbike on that road has exposed him to a certain risk, that is, a certain probability of harm. However, because he could not foresee (and hence choose whether or not to avoid) that risk, his impending piece of bad luck will be bad brute luck. Consider, by contrast, the case of Helmut, another motorcyclist, to whom you offer a helmet just before he speeds off on a motorbike. Suppose Helmut rebuffs this thoughtful gesture: 'I'm not wearing that', he snarls, 'I ride for the wind in my hair!' Assuming that Helmut knows the risks, Helmut's

[5] These last two examples should not be taken to suggest that all gambles are imprudent, however. Some gambles can be prudent, namely those in which the stakes are sufficiently low relative to the prospects of gain.

[6] This second feature of the definition thus highlights that a judgement to the effect that someone behaves imprudently does not amount to a judgement about the overall merits of a person's behaviour. In particular, to say that someone behaves imprudently is not necessarily pejorative.

[7] The following distinctions were first developed by Ronald Dworkin. See Dworkin, *Sovereign Virtue*, p. 73.

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choice is a deliberate gamble of sorts – he gambles his helmetless head for the thrill of the wind.[8] His gamble may pay off: he may arrive safely at his destination with pleasantly ruffled hair. In that case, Helmut would have good option luck. Alternatively, his option luck may be bad: he could end up on the side of the road with severe head injuries.

In asking how a just society must address the needs of imprudent people, then, I am asking for an account of how such a society addresses needs that arise both because of imprudent choices – in which people aim to acquire an actual good or suffer a bad – as well as how a just society must address needs that arise because of bad option luck, such as, for example, the medical needs that would arise for Helmut were he to crash while motoring without a helmet. I am not concerned here with how a just society must address needs that arise because of bad brute luck, that is, the needs that people have due to factors beyond their control.

Let me now briefly evaluate three replies to this question, which, at least at first sight, seem to exhaust the range of possible replies. The first view we should consider is the forced redistribution view, which holds that there is an enforceable duty (a duty of justice) to transfer resources to people in order to redress their vulnerable predicament regardless of how those people got themselves into their vulnerable predicament. Two points must be clarified about this view.

First, to hold that there is an enforceable (or non-enforceable) duty to transfer resources is to hold that the performance of this duty may (or may not) legitimately be coerced through legal means, such as, for example, the state's use of penal sanctions, fines, and so on. Enforceable duties can also be labelled 'duties of justice'. It is important to note that not all duties are duties of justice. For example, there is, arguably, a duty to stay faithful to one's partner, yet many would insist that this is a non-enforceable duty. They would reject the view that the state either should or may coerce people into honouring this duty by, for instance, threatening to punish infidelity with a jail sentence. So, the forced redistribution view holds both that there is a duty to redress other people's vulnerable predicament regardless of how they got themselves into that predicament and that the performance of this duty may be coerced through legal means.

The second point of clarification concerns the extent to which the forced redistribution view enforces the redress of an imprudent person's vulnerable predicament. Here, several answers are available, ranging from the less demanding extent of redress that is necessary in order for recipients to stay above some guaranteed minimum, to the more

[8] My example of Helmut is adapted from Marc Fleurbaey's article, 'Equal Opportunity or Equal Social Outcome?', *Economics and Philosophy* 11 (1995).

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demanding extent of redress necessary for ensuring that recipients re-attain equality with other members of society. Different versions of the forced redistribution view will adopt different answers to this extent-of-redress question, depending on their view of the pattern of distribution across persons that justice requires (for example, a pattern of equality, or of highest minimum level). Since my critical remarks about the forced redistribution view will apply to all of these versions, we need not examine which one of them is the most plausible.

The strong point in favour of the forced redistribution view is that it resonates with the intuition that it should not be permissible, as a matter of justice, to leave people to die or suffer grievously just because this predicament is the result of their own choices. That is, even in these cases, it seems that justice, and not merely charity (which is a non-enforceable duty of aid), requires that something be done to help the imprudent, at least up to a certain point. However, the forced redistribution view is flawed in one serious respect. Forced redistribution would fail to respect freedom from exploitation. By 'exploitation' here, I mean 'being unfairly taken advantage of'.[9] Forced redistribution exploits (unfairly takes advantage of) the prudent, because it imposes on them the costs of other people's avoidable imprudent conduct. Consider the case of Helmut. The forced redistribution view would allow Helmut deliberately to live life in the fast lane, knowing full well that prudent members of society will be forced to share the costs of his risky lifestyle. It would thus allow Helmut to take unfair advantage of others. This exploitation problem exists for all versions of the forced redistribution view, from the less to the more demanding: all versions justify exploiting the prudent to varying degrees.

Let us next consider the laissez-faire view, which gives an altogether different answer to the question of what we should do to address the needs of the imprudent. The laissez-faire view holds that there is no enforceable duty to share the costs of other people's bad option luck. Notice that in defining the laissez-faire view in this negative manner, that is, by its denial of the claim that there is an enforceable duty to share the costs of bad option luck, I leave it open whether or not proponents of laissez-faire hold that there is a non-enforceable duty to share those costs, or a duty of charity. Some proponents of laissez-faire believe this, others may not, but, whether or not they do, it is sufficient for all of them to qualify as proponents of laissez-faire that they deny

[9] Here I follow Cohen, 'On the Currency of Egalitarian Justice', p. 908. I shall adopt this very general definition of exploitation in what follows. For a discussion of more specific definitions of exploitation, see Philippe Van Parijs, *Real Freedom for All* (Oxford, 1995), ch. 5.

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that there is an enforceable duty to share the costs of bad option luck, or, as we might also say, they do not believe this is a duty of justice. In other words, whether or not defenders of the laissez-faire view hold that there is a duty of charity to help share the costs of others' bad option luck, they all agree that there is no duty of justice to share those costs.

The laissez-faire view is endorsed by both libertarian and some luck egalitarian accounts of distributive justice, though for different reasons. Libertarians argue for this view on the grounds that individuals have stringent and extensive negative rights. In particular, libertarians endorse full rights in oneself and in one's justly acquired external resources.[10] As Robert Nozick writes, 'the central core of the notion of a property right in X is the right to determine what shall be done with X'.[11] So, for example, if I have a full property right in my arm, and thus the right to determine what shall be done with my arm, no one may force me to use it to lift Helmut from the side of the road. Likewise, if I have a full property right in my car, no one may force me to drive Helmut to hospital. Maybe I have a moral duty to do these things – maybe I am obliged to help Helmut as matter of charity – but libertarians insist that I may not justifiably be compelled to do this.

The laissez-faire view is also held by some luck egalitarians, although they do not typically defend it on the basis of full and extensive rights of ownership. Luck egalitarians believe that the distribution of resources should be 'responsibility-sensitive' and 'brute-luck-insensitive'.[12] The responsibility-sensitive requirement is grounded in the principle that every person has a right to be free from exploitation. That is, the luck egalitarian reason for why we must hold people responsible for the choices they make is that to fail to do so, and instead to require other people to share the costs of those choices, is to exploit, or unfairly take advantage of, those other people. The luck egalitarian brute-luck-insensitive requirement is grounded in the principle that no person should suffer inequality due to bad brute luck. Together, these two requirements generate the conclusion that enforced transfers of resources are just only in order to correct for inequalities due to bad

[10] It should be noted that libertarians regard these full rights only as pre-contractual full rights, and allow that one can contract (enforceable) duties to rescue. But note also that this does not undermine my attribution of the laissez-faire view to libertarians, since libertarians believe that individuals may not be compelled to contract duties to rescue. Libertarians are thus indeed committed to the laissez-faire view of rescue duties, namely, as duties that are ultimately non-enforceable. I thank Hillel Steiner for bringing this point to my attention.

[11] Robert Nozick, *Anarchy, State and Utopia* (New York, 1974), p. 171.

[12] For some classic luck-egalitarian accounts of distributive justice, see Arneson, 'Equality and Equality of Opportunity for Welfare', and Cohen, 'On the Currency of Egalitarian Justice'.

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brute luck – such as the inequality suffered by Fred. Enforced transfers that correct for inequalities due to bad option luck, on the other hand – such as, for example, an enforced transfer to aid Helmut – would be unjust, as enforced transfers of this sort infringe other people's freedom from exploitation, allowing imprudent gamblers to take advantage of the more prudent members of society.

To make vivid the luck egalitarian point of view, consider the following case. Imagine that you remind Helmut before he speeds off on his motorbike that he has no money, and that his hospital treatment may be expensive. (I am assuming there is no public provision of healthcare. The reason I assume this is that the issue of whether there should be such provision is precisely what is in question here.) Suppose Helmut flicks his hair: 'That's really no problem,' he says, 'I'm sure you'll pay for my hospital treatment, right?' If you're a conscientious person, you probably will, but wouldn't Helmut be exploiting you? Helmut gets to live life in the fast lane, knowing that you, in the slow lane, will be there to pick up the pieces. So if you have a right not to be exploited, then it seems that you cannot have an enforceable duty to pay for Helmut's hospital treatment, and neither can anyone else.

What should we make of the laissez-faire view? A point in its favour is that it ensures that no person is exploited: no person is unfairly taken advantage of by laissez-faire because this view does not force people to transfer some of their resources to others. Under the laissez-faire view, people will only have to transfer resources to others if they themselves choose to do so. While this is indeed a defensible aspect of the laissez-faire view, it seems overshadowed by a point that counts against it. The laissez-faire view commits us to the callous conclusion that it is permissible, as a matter of justice, to let people die or suffer grievously if this is the result of their own risky behaviour. Peter Jones puts the problem well:

> Can we really contemplate with equanimity a world in which some live in grinding poverty, are starving to death, are racked with disease and suffering terrible pain, while others, who could relieve those conditions at little cost to themselves, can nevertheless ignore those miseries without compunction simply because they are the outcomes of the sufferers' own actions?[13]

Most of us, I take it, could not live comfortably in such a laissez-faire world. Assuming, then, that we want our principles of distributive justice to resonate with fundamental intuitions about justice, we should examine alternatives to the laissez-faire view.

[13] Peter Jones, 'Toleration, Harm and Moral Effect', *Aspects of Toleration: Philosophical Studies*, ed. J. Horton and S. Mendus (London, 1985), p. 154. Elizabeth Anderson raises the same objection against luck-egalitarianism in 'What is the Point of Equality?', p. 296.

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Let us finally, then, consider a third view about how to distribute the costs of bad option luck. This is the compulsory insurance view: we may force potentially imprudent people to take out insurance against their risky behaviour, so that they will be covered for any assistance they may need in the event of an emergency. It is important to note that the kind of compulsory insurance that is necessary for adequately addressing the needs of the imprudent is not insurance that covers whatever negative impact their conduct may have only on other people's interests, such as, for example, the insurance against third-party risks that motorists are compelled to purchase. Rather, the kind of compulsory insurance that is necessary for adequately addressing the needs of the imprudent is insurance that covers whatever negative impact their conduct may have also on their own interests.

Compulsory insurance has been suggested both by libertarians, such as F. A. Hayek, and by luck egalitarians, such as Eric Rakowski and Ronald Dworkin.[14] That it has been suggested from both of these viewpoints is not surprising. As we have seen, in rejecting enforceable duties of assistance to the imprudent, libertarians and luck egalitarians may seem to be committed to a harsh society in which some imprudent people are permissibly left to die or suffer grievously. It is no wonder, then, that proponents of both views have suggested compulsory insurance as a way of avoiding this implication.

Compulsory insurance has obvious advantages over the laissez-faire and forced redistribution views: it would ensure that every person lives above a guaranteed minimum, namely, the minimum that persons are forced to insure for themselves. Furthermore, in extracting the funds to pay for that minimum from the imprudent persons themselves, compulsory insurance ensures that no one else is exploited in paying the costs of bad option luck. However, it has been suggested that compulsory insurance faces a problem of its own, namely, that it is paternalistic.[15] To see the plausibility of this charge, consider again the case of Helmut. Suppose Helmut catches wind of the fact that we intend to compel him to insure against his helmetless motoring, and suppose he confronts us with the following objection: 'You have no right to do this: what I do with my money is up to me, and I prefer to risk being left on the side of the road if something happened to me than having to pay for insurance now. Insurance is for wimps.' Who are we to suppress his bravado? He may be messing up his life, but, at the end

[14] For references see n. 1.

[15] Rakowski notes the possibly paternalistic basis for compulsory insurance, but does not discuss the matter further. He writes: 'There may be sound paternalistic reasons for not allowing people to dispense with health and accident insurance altogether. This book does not, however, explore the limits of paternalistic intervention' (*Equal Justice*, p. 76 n. 4).

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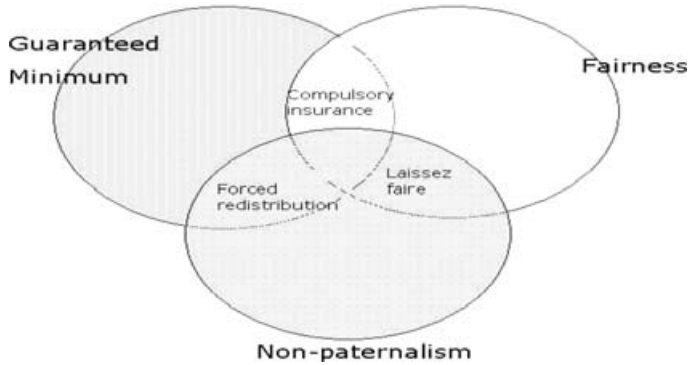


Figure 1. The imprudence trilemma.

of the day, it is his life, not ours. Compelling him to insure would seem paternalistically to override his judgement about what he wants to do with his life.

In the rest of this article, I want to examine whether compulsory insurance is indeed necessarily paternalistic in this way. Before I do so, it is helpful to take stock of the discussion so far. We have considered three main views of the just way to address the needs of the imprudent. What has emerged is that each view is able to meet some combination of two out of three widely endorsed desiderata, but only at the cost of being unable to meet the third. The laissez-faire view ensures freedom from exploitation and is non-paternalistic, but it is unable guarantee a minimum for all. The forced redistribution view guarantees a minimum for all and is non-paternalistic, but it is unable to secure freedom from exploitation. Finally, the compulsory insurance view guarantees a minimum for all and freedom from exploitation, but it seems unable to respect the value of non-paternalism. We seem, then, to face a trilemma when distributing the costs of option luck (see figure 1).

What we need is a view that falls within the overlapping area between the three circles and thus escapes the imprudence trilemma.

III. NON-PATERNALISTIC COMPULSORY INSURANCE (NPCI)

In this section I suggest a way in which we can escape the trilemma, by arguing that there is a non-paternalistic argument for requiring compulsory insurance. In a nutshell, the argument is that we may compel others to insure themselves, not for their sake, but for our own sake. If the argument succeeds, then we can avoid the trilemma. Compulsory insurance would ensure a guaranteed minimum for all, exploit no one, and respect non-paternalism.

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To motivate my argument, let me go back to Helmut and suggest a rather bizarre twist to his story. Suppose Helmut is your friend. Knowing that you will be there to pick up the costs, Helmut always carries a card naming you at the end of the following sentence, 'in the event of an emergency all bills will be paid for by— . . . '. You know that Helmut has this card, and so, every time he speeds off on his motorbike, you sit waiting by the telephone, a nervous wreck. The burden of being a good friend to Helmut is not just that you have to pay a lot of money for his various injuries: the stress is exhausting as well. Sometimes you tell yourself, 'I could just stop being friends with Helmut'. But then you know what will happen. The next time the hospital calls and you refuse to pay, Helmut will die, and you will have to live with that.

This is a bizarre story, but it serves to illustrate, rather vividly, a non-paternalistic reason for forcing Helmut to insure against his future injuries. You – and the rest of us who are in a position to be exploited by the Helmuts of this world – may force Helmut to insure for our own sake. We may force him to insure in order to prevent him from imposing on us the costs of performing our duty to him in the future. We must be careful not to confuse this kind of insurance with the insurance against third-party risks with which we are generally familiar. Insurance against third-party risk ensures that funds will be available to cover whatever negative impact Helmut's motoring may have only on other people's interests, that is, on other people's interests defined independently of any interests of Helmut's. This standard third-party risk insurance, however, is not the kind of compulsory insurance that will help us reach our goal of adequately addressing the needs of the imprudent themselves. The kind of insurance we need, and which I am now trying to justify on non-paternalistic grounds, is compulsory insurance that will also cover whatever negative impact Helmut's imprudent conduct may have on his own interests. The non-paternalistic argument for compelling this kind of insurance is that it ensures that funds will be available to cover the negative impact Helmut's motoring may have indirectly on other people's interests, via the costly aid that they will be under a moral duty to give him in the event of an accident.

It may be objected that if we are so concerned about Helmut's interests, then, rather than our forcing Helmut to pay for the insurance that would cover the costs of whatever aid he may need in an emergency, we ought to pay for that insurance ourselves. 'If you are so worried about me,' Helmut might say, 'why don't you pay for the insurance!'[16]

[16] I would like to thank an anonymous referee for suggesting this objection to me.

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This objection may initially seem powerful, but in fact it fails, because it trades on an equivocation – contained in Helmut's phrase 'if you are so worried about me'. The equivocation is between thinking that our reason for giving emergency aid to Helmut is a mere desire, on our part, that he be aided, and thinking that our reason is that aiding him is our moral duty. How we resolve that equivocation will determine whether the responsibility to pay the costs of Helmut's insurance should rest with him or with us. If our reason to give aid to Helmut were only a desire to do so on our part, then the responsibility to pay for his insurance should rest squarely with us, and the objection thus succeeds. For, after all, if what is being insured for is merely that a desire on our part will be satisfied, namely, that Helmut is aided in an emergency, then it is only fair that we, rather than Helmut, should pay the cost of that insurance. However, it is not correct that our reason for giving aid to Helmut is only (if at all) that this would satisfy a desire on our part; we would give aid also (or only) because doing so is our moral duty. But in that case Helmut's deliberate imprudence will compel us, on pain of moral dereliction, to aid him, and the responsibility to pay for the costs of that aid should rest with him. When we compel Helmut to insure, then, we are not compelling him to set money aside only so that a mere desire on our part can be satisfied, but so that he can fully compensate us for costs that his deliberate imprudence will compel us to bear.

It may be helpful to unfold this non-paternalistic argument for compulsory insurance more carefully. The argument makes the following two assumptions:

1 *The moral duty to aid in an emergency*: If A is in an emergency, B has a moral duty to aid A (assuming that B does not face prohibitively high costs in doing so).
2 *The moral right to defend oneself from exploitation*: B has a moral right to prevent A from imposing avoidable costs on B.

Let us consider these two assumptions more closely.

First, note that the first assumption refers only to a moral duty, and not to an enforceable moral duty. By 'enforceable duty', as I stated earlier, I refer to a duty the performance (or non-performance) of which is encouraged (or discouraged) by legal means, which could include penal sanctions or legally sanctioned incentives. Whether there ought to be an enforceable duty to aid people in an emergency is a question that has attracted much controversy. It is an advantage of the non-paternalistic argument for compulsory insurance I am sketching here that it is compatible with either answer to that question. Whether or not the duty to aid people in an emergency is enforceable, my argument for NPCI goes through. If the duty in question is enforceable, then those

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who have this duty may arguably have an even stronger reason to find effective means of protecting themselves from having to bear excessive costs. But my argument has force even if the duty in question is not enforceable.

Second, note also that the first assumption states that B's duty is conditional on B not facing prohibitively high costs in aiding A. The assumption that one has a duty of aid regardless of the costs is thus no part of the argument for NPCI. Such an assumption would be controversial. One may have a duty to save a drowning child if the cost of doing so is only that one gets one's clothes wet, but that one has such a duty when the cost is to face serious risk of being killed is at least questionable. People may disagree about when exactly the costs of aiding someone are 'prohibitively high', and a fully worked out account of NPCI presupposes an answer to this difficult question. My aim now is only to offer a justification of NPCI and to sketch a general framework for specifying the NPCI proposal further. So I shall simply assume, as seems reasonable, that there is some point at which the costs of aid are so high that there is no duty of aid.

Turning to the second main assumption of the argument for NPCI, the key point to notice here is that it specifies that the costs we may prevent others from imposing on us are costs that are 'avoidable'. The assumption distinguishes, in other words, between costs people can and cannot avoid imposing on us. For example, if an unpredictable rainstorm leaves a remote household in need of emergency rescue, the cost of this rescue is one that household could not avoid 'imposing' on the rest of us. It would then be a mistake to conclude, in such a case, that we would be exploited (that is, unfairly taken advantage of) in having to share the costs of rescuing the remote household. By contrast, the cost of rescuing a maverick adventurer attempting to cross the Atlantic in a bathtub is a cost he could have avoided imposing on the rest of us. So to defend ourselves from exploitation, we would be entitled to prevent him from imposing this cost on us. Once again, a fully worked out account of NPCI would need to formulate some criterion for determining when costs are properly deemed to be 'avoidable'. (In fact, this is a problem for all theories of distributive justice that aim to hold individuals responsible for their option luck.) I do not offer such a criterion here, my aim being merely to justify a framework for NPCI. The assumption I make here, then, is that we, as duty-holders, may prevent avoidable, but not non-avoidable, costs from being imposed on us.

With these two assumptions in place, the non-paternalistic argument for compulsory insurance proceeds as follows. Since B will have a duty of aid to A if A is in an emergency situation, and since the cost of discharging this duty is avoidable, given that it is the result of A's

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deliberate risky behaviour, it follows that:

> *General conclusion*: B may prevent A from imposing on B the cost of having to discharge a duty to aid A that is the result of A's deliberate risky behaviour.

I refer to this as a 'general conclusion' because it does not specify the particular way in which we may prevent people from imposing on us the costs of their risky behaviour. There may be various ways in which we may do this. The argument I am currently sketching aims to justify one particular way of preventing people from imposing certain costs on us, namely, that of compelling people to insure against their risky behaviour in advance. To complete the sketch of the argument, then, it is necessary to show why, of the alternative methods available, compulsory insurance is the best way of preventing people from imposing on us the costs of their risky behaviour.

To see why this is the case, let us briefly note two alternative methods to that of compulsory insurance of preventing people from imposing on us the costs of their risky behaviour. A first alternative would be outright prohibition. That is, we could prevent people from imposing on us the costs of their risky behaviour simply by prohibiting them from engaging in the risky behaviour. This would ensure that the rest of us would face no costs at all in having to discharge future duties of aid to people who create avoidable costs, as the occasions on which such duties would have to be discharged are now eliminated. This first alternative is less attractive than compulsory insurance because it is more restrictive of other people's liberty than is compulsory insurance, and, in so far as the concern underlying our search for a non-paternalistic proposal is that of respecting people's liberty, this concern seems to justify favouring a proposal which imposes the least restriction on that liberty.

A second alternative to compulsory insurance would be to compel people to pay for the costs of their risky behaviour as the need occurs. That is, rather than compelling people to insure beforehand, we could decide to charge them after the fact, that is, once the duties of aid to them have been discharged. This policy, it might be said, is preferable to the compulsory insurance proposal precisely in virtue of the concern with minimizing restrictions of liberty I have just cited. This is both because it does not force people to pay insurance regardless of whether or not they become claimants of aid, and because it does not force them to pay at a particular time. While these considerations have some force, the problem with this second alternative is that it does not fully guarantee freedom from exploitation. For it is possible that the persons who are rescued are unable to pay for the costs of their rescue after the fact, thus leaving the rescuers to have to bear some or all of the avoidable costs. In sum, then, the general conclusion sketched earlier,

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together with a balance of considerations about the value of our liberty to engage in risky behaviour and of a guarantee that we not be exploited by other people's risky behaviour, entails the following conclusion:

> *Specific conclusion*: B may compel A to insure in order to prevent A from imposing on B the cost of having to discharge a duty to aid A that is the result of A's deliberate risky behaviour.

IV. THE PATERNALISM OBJECTION TO NPCI

Having sketched a non-paternalistic argument for compulsory insurance, I now present an objection to the argument. The objection was first formulated by Jones during his discussion of a related, but slightly different topic from the one I am exploring here. What follows, then, is an adaptation of his objection that is suitable for our purposes.[17] The objection maintains that, appearances notwithstanding, NPCI presupposes an element of paternalism after all, and thus fails to fulfil its initial promise.

The objection can be stated in two steps. The first step is to point out that, for NPCI to be successful, it must make an additional assumption to the assumptions, stated in the previous section, namely, (1) the moral duty to aid in an emergency and (2) the moral right to defend oneself from exploitation. The additional assumption can be stated as follows:

> 3. *The moral right to receive aid in an emergency is non-waivable*: A may not waive his moral right to receive aid from B.

The reason why the non-paternalistic argument for compulsory insurance must also make this third assumption is as follows. If A were permitted to waive his moral right to receive aid from B, then A could ensure that there will be no moral duty of aid in the future for B to discharge towards A. In other words, for the first assumption of NPCI to be secure, that is, for there to be a moral duty to aid in an emergency that justifies NPCI, this third assumption must be introduced: the moral right to receive aid is non-waivable. For consider: if A were in fact able to waive his moral right to receive aid in an emergency, and if A were in fact to do this, then B would not have a moral duty to aid A, in which case B would not be able to compel A to insure on the non-paternalistic ground that doing this is necessary to defend himself from exploitation. So, in order to maintain that there is a

[17] Jones raises the objection during his examination of the outright prohibition of risky actions that threaten to generate duties for others, whereas I am discussing the justification of compelling people to insure against such risky actions. Despite this difference between our concerns, I am greatly indebted to Jones's discussion. See his article, 'Toleration, Harm and Moral Effect'.

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non-paternalistic ground for compulsory insurance, it is necessary that we additionally assume that A cannot waive his moral right to receive aid in an emergency.

Having noted the need for this third assumption, the objection then proceeds with the following second step. The only possible reason that justifies this third assumption is a paternalistic reason. That is, the only possible reason why A may not waive his moral right to receive aid in the future is that his doing so would go against his best interests, and that A may not do what goes against his best interests, or at least his core best interests, such as survival, basic health, and so on. Since this paternalistic reason is the only reason that justifies the third assumption behind NPCI, the objection concludes that NPCI necessarily presupposes, *via* that third assumption, an element of paternalism after all, and thus fails to be non-paternalistic 'all the way down'.

Let me illustrate the force of this objection with the following story. While walking along the ridge of the Grand Canyon, you come across a stranger who is about to launch himself on a near-suicidal gliding mission across the canyon. You are naturally curious about this, and ask him whether he is aware of the risks. He thanks you for your concern, and tells you that he is indeed aware of the risks. But this puzzles you: is he feeling suicidal? Apparently not: he tells you that he simply enjoys the thrill of high-risk adventures. Suppose you now tell him that he ought to insure against this risky adventure, since you would otherwise have to pay for the costs of rescuing him in case he should crash. After reflecting on this for a moment, a wry smile appears on his face: 'It's OK. I hereby waive my moral right to be rescued. So don't worry, there's no duty on you to rescue me, and I don't need to pay insurance to cover the costs of your potentially having to do so.' Now, if you were still to deny that he may waive his moral right to be rescued, it seems that the only reason you could appeal to in doing so is that he may not, at least in an extreme case like this one, act in ways that go against his own best interests, and that to waive his right to be rescued in this case would be to do just that. But then what began as an ostensibly non-paternalistic justification on your part for compelling this stranger to insure has ended up as a justification that presupposes an element of paternalism after all.

It is noteworthy that in a recent attempt to justify compulsory insurance as a way of addressing the needs of the imprudent, Ronald Dworkin fails to address this paternalism objection. He writes:

> Mandatory minimum insurance would be justified for at least two reasons . . . The first appeals to the principle of correction . . .: when someone fails to buy any personal accident insurance, and is therefore unable to afford medical care when needed, costs are born by the rest of the community, including employers

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and dependents, that are not internal to his decision. Equality of resources needs a principle of correction for such externalities, and that principle would license mandatory insurance. The second is openly paternalistic: a decent society strives to protect people against major mistakes they are very likely to regret.[18]

In labelling the second of his two reasons 'openly paternalistic', Dworkin implies that his first reason, which appeals to what he calls the 'principle of correction', is not paternalistic. However, in light of the objection I have raised in this section, it is not clear that Dworkin can sustain this claim. He says that we may compel imprudent people to insure so as to correct for costs that would otherwise be borne by the rest of the community when the imprudent need, but are unable to afford, medical care. However, as we have seen, this conclusion can only go through if Dworkin makes the third assumption I distinguished above, namely, that the imprudent person may not waive his moral right to receive medical care in advance, which assumption would seem to presuppose the paternalistic claim that people may not waive moral rights because doing so goes against their interests. In light of this objection, Dworkin may not be entitled to characterize his first reason for compulsory insurance as non-paternalistic.

So, unless some answer can be given to the paternalism objection I have raised in this section, it seems that Dworkin's theory of equality of resources, and responsibility-sensitive theories of distributive justice more generally, can only avoid being unforgiving at the cost of being paternalistic.

V. NPCI DEFENDED

In this section I will show that there is an answer to the paternalism objection against NPCI; I will show that NPCI is indeed non-paternalistic all the way down. The defence I shall put forward relies on the controversial claim that we have a moral duty to preserve certain intrinsic values, and, in particular, the value of autonomy.

Recall that the paternalism objection holds that in order that there be a moral duty to give aid, it is necessary that the moral right to receive aid is non-waivable, and second, that the only reason why the moral right to receive aid is non-waivable is a paternalistic reason (namely, that non-waivability is necessary for the agent's well-being). So, in order to defend NPCI from the paternalism objection, we need to respond to either one of these two steps. I shall sketch the form of a response to each step before filling in the details later.

One might attack the first step of the objection by holding that the moral duty to give aid does not in fact presuppose that the moral right

[18] Dworkin, '*Sovereign Virtue* Revisited', p. 114.

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to receive aid is non-waivable. This is because our moral duties may be grounded in reasons that are distinct from, and additional to, the moral rights with which those duties correlate. So, even if there were a prudential interest grounding a person's moral right to be aided, and, *via* that right, a moral duty on others to give aid to that person, it is possible that there would also be some other independent, non-rights-based ground for that moral duty to give aid. Our moral duties may rest, in other words, on dual foundations. For example, I may have a moral duty to care for your grandmother because (a) I promised you I would care for her, and (b) she has a moral right to be cared for. By the same reasoning, our moral duty to give aid to an imprudent person may be grounded in a reason that is distinct from, and additional to, the imprudent person's moral right to receive aid. If indeed there is such a non-rights-based reason for our moral duty to give aid, then, contrary to what the first step of the paternalism objection maintains, the moral duty to give aid need not presuppose that the moral right to receive aid is non-waivable. Even if the moral right to receive aid were waived, the moral duty to give aid would still rest on that distinct non-rights-based foundation.

Moreover, even if we accepted the first step of the paternalism objection, there would still be an additional answer to the objection available to us. For even if we conceded that a moral duty to give aid does presuppose that the moral right to receive aid is non-waivable, we might then still challenge the second step of the paternalism objection, which, recall, maintains that the only reason for the non-waivability of the right to receive aid is the paternalistic reason that one may not act against one's best interests. We could argue that there exists a non-paternalistic reason why persons may not waive their moral right to receive aid. If indeed such a non-paternalistic reason exists, then, even if the first step of the paternalism objection is valid, NPCI would still be non-paternalistic all the way down.

In sum, then, a successful defence of NPCI against the paternalism objection would require either (a) a non-rights-based reason for our moral duty to give aid, or (b) a non-paternalistic reason for why persons may not waive their right to receive aid. Let me now complete the defence of NPCI by suggesting that the duty to preserve the intrinsic value of autonomy can be invoked whether we want to press either (a) or (b).[19]

Something has intrinsic value if it is non-instrumentally valuable, if it is valuable for its own sake. Examples of things that are thought to

[19] I note that an alternative candidate for (a) is the duty of beneficence, by which is meant a duty to maximize well-being or minimize suffering. Considerations of space prohibit me from examining this alternative fully here.

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possess intrinsic value include parts of the natural world, such as, for example, trees, and works of art. That these things have intrinsic value is reflected in the common belief that their destruction is a matter of independent regret – a matter of regret that is independent of whatever additional regret may stem from the negative effect their destruction may have on other goods. Many people believe, in other words, that there is reason to preserve works of art, or parts of the natural world just for their own sakes. Furthermore, many people believe this reason is of the order of a moral duty, that is, it is a binding normative requirement.

In my view, we have a duty to preserve autonomy as something of intrinsic value. By 'autonomy' I refer to the ability and success of giving shape to one's life. For an agent to be autonomous, so understood, it is necessary that the agent has: (a) appropriate mental abilities, which include minimum rationality, i.e. the ability to comprehend the means required to realize goals, the faculties necessary to plan actions, and so on, (b) an adequate range of opportunities for action, and (c) freedom from subjection to another's will. In my view, we have a duty to preserve all three of these conditions. Autonomy is non-instrumentally valuable; it is valuable independently of its effects on other goods, including its effects on the well-being of the persons whose autonomy it is. The loss of autonomy is a source of regret independently of whatever negative effects it has on other goods, including the well-being of the persons whose autonomy it is.[20]

Can autonomy be shown to have intrinsic value? There is a familiar problem with seeking to justify the intrinsic value of something. It may seem that the only way one can show that something is valuable is by pointing to the fact that that something brings about certain goods. If this is the case, then it is logically impossible to show that something is intrinsically valuable. It is not true, however, that one is left simply to assert autonomy's intrinsic value: one may be able to present considerations that elicit the intuition of autonomy's intrinsic value, and to the extent that intuitions are the final touchstone for our ethical judgements, presenting such considerations may then be sufficient justification. Let me then present the following consideration in defence of autonomy's intrinsic value. Consider the familiar case of a competent adult who wishes to sell himself into slavery. This person would violate one of the above conditions for his autonomy, namely, condition (c). Now, to be sure, we might well conclude that this person is acting irrationally (let us assume that becoming a slave would make his life worse). But should we not also conclude that in

[20] In defining autonomy in this way, I follow Joseph Raz's discussion in *The Morality of Freedom* (Oxford, 1986), ch. 14.

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surrendering his autonomy this person is doing something wrong? He is letting something valuable go to waste, something which he, as well everyone else, ought to treat with respect. Assume that his becoming a slave would have no negative effect on other persons: even so, would he not still deserve condemnation for wasting his autonomy? Such a reaction implies that autonomy is intrinsically valuable and that we have a duty to preserve it.[21] The same reasoning would apply, I submit, in cases where a person would destroy conditions (a) and (b) for his autonomy: cases in which he ruins his own mental capacities, or in which he severely restricts his own opportunities for action. These also appear to be cases of immoral, and not just irrational, conduct, and thus also illustrate autonomy's intrinsic value.

Needless to say, much more could be said by way of elucidating and defending the duty to preserve the intrinsic value of autonomy.[22] But let me now show how, if true, the claim that we have such a duty would serve to complete the defence of NPCI against the paternalism objection. That defence of NPCI, as we saw, requires either (a) a non-rights-based reason for our moral duty to give aid, or (b) a non-paternalistic reason why persons may not waive their right to receive aid. In my view, the duty to preserve autonomy can serve to provide either reason. First, it can serve as a non-rights-based reason for our moral duty to aid an imprudent person. If there is a duty to preserve the intrinsic value of autonomy, then, even if an imprudent person were to waive his moral right to receive aid, we would still have a moral duty to give him aid in the event of an accident, at least in so far as such aid is necessary to preserve his autonomy. Thus, even if an imprudent person chooses to waive his moral right to receive aid, we would still be entitled to compel him to insure in order to defend ourselves from being exploited in having to pay the costs of discharging our non-rights-based moral duty to preserve his autonomy. Contrary to what the paternalism objection maintains, the moral duty to aid the imprudent would not presuppose that the moral right to receive aid is non-waivable.

Second, the duty to preserve the intrinsic value of autonomy can serve as a non-paternalistic reason for why the imprudent person may not waive his right to receive aid. If there is a duty to preserve the intrinsic value of autonomy, then the imprudent person may not waive his moral right to receive aid because his doing so would contravene his duty

[21] Note, however, that in holding that autonomy has intrinsic value, one does not commit oneself to the conclusion that it is valuable regardless of how it is used. Intrinsic value is not the same as unconditional value. For a further discussion of this distinction, see Ian Carter, *A Measure of Freedom* (Oxford, 1999), ch. 2.

[22] For a more detailed defence of autonomy's intrinsic value see Thomas Hurka, 'Why Value Autonomy?', *Social Theory and Practice* 13 (1987).

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to preserve his own autonomy. Our denying him the power to waive his moral right to receive aid therefore need not be paternalistically grounded in a concern for his well-being. Thus, even if the first step of the paternalism objection succeeds – even if the moral duty to aid the imprudent does presuppose a non-waivable moral right to receive aid – the second step fails: it is not the case that the only reason for that non-waivability is a paternalistic reason. The duty to preserve the intrinsic value of autonomy is an additional reason for non-waivability. I conclude that the paternalism objection fails: NPCI can be 'non-paternalistic' all the way down.

VI. CONCLUSION

Let me close by answering some remaining objections that may be raised against my defence of NPCI. First of all, it is important not to confuse the version of NPCI I have just defended with a version of it that is slightly different, and which I am not propounding. There is a distinction between compelling people to insure because, as I argue, this is necessary to avoid the costs of discharging one's own duty to preserve their autonomy, and doing so because, alternatively, this is necessary to enforce their duty to preserve their autonomy. To see the distinction, consider again the risk-taker in our Grand Canyon story. We might think ourselves entitled to force him to insure against his risky gliding-mission simply because we have a right to enforce his duty to preserve his autonomy, and not because we wish to cover whatever costs might attend our having to rescue him ourselves. But this would be to assume, controversially, that we have a right to enforce other people's duties to preserve their own autonomy. This non-paternalistic justification of compulsory insurance is thus different from, and should not be confused with, the one I have put forward. As I said earlier, it is desirable to provide a view of what we should do for the imprudent that does not start with the assumption that they, or we, have enforceable duties.

Second, a doubt needs to be allayed as to whether it really would be an improvement in the argument for compulsory insurance for it to assume, as I am proposing, that there is a moral duty to preserve autonomy, rather than for it to assume, alternatively, that others cannot waive their moral right to be rescued for paternalistic reasons. After all, whether compulsory insurance is justified on the non-paternalistic grounds I offer, or on paternalistic grounds, would seem to be a matter of indifference from the perspective of the person being compelled to insure: on either justification, his judgement about which uninsured risks to take will still be overridden. In fact, it makes an important difference whether we override someone's judgement on the grounds

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that we have a moral duty to preserve his autonomy, on the one hand, or whether we do so on paternalistic grounds, on the other. Apart from limiting another person's liberty, there is an additional offensiveness inherent in acting paternalistically towards a person that would be absent if we were to compel that person to insure on non-paternalistic grounds. When we act paternalistically towards someone we imply that he is inferior to us by virtue of his lesser capacity to look after himself. But this is not what we imply when we instead insist that he cannot waive our moral duty to preserve his autonomy. For in the latter case, we are not implying anything about this person's lesser capacities to care for himself. Our implication, rather, is that there exists a moral duty whose nature is such that neither he, nor we ourselves, have the power to disregard it, and there is no suggestion in this of his inferiority to us.

Finally, it is worth reiterating that the success of the non-paternalistic case for compulsory insurance that I have presented here depends on its being true that we have a moral duty to preserve autonomy. This is a claim that I have not sought fully to defend in this article. My own inclination is to accept this claim, and thus also to endorse NPCI as an effective way to escape the imprudence trilemma. A conclusive case for NPCI would have to invoke a more detailed defence of the existence of intrinsic values, including the value of autonomy, and of our moral duty to preserve such values.[23]

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