

FAIRNESS, COSTS, AND PROCREATIVE JUSTICE

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IT IS A FAMILIAR AND INTUITIVE view across a wide range of different positions in moral and political thought that it can be right to hold persons responsible for the foreseeable consequences of their choices. What, more precisely, this general thought entails varies considerably depending on the broader normative perspective of which it is a part. A commitment to holding persons responsible has in recent years come to find a central expression in certain popular liberal egalitarian views. The views in question maintain that the value of equality is quite consistent with, indeed may perhaps require, holding persons responsible for the consequences of their choices in the form of liabilities or claims that in turn result in inequalities between persons. Otherwise unfair inequality is thereby rendered fair or just in virtue of a sensitivity to responsibility.

Despite the influence and profile of this responsibility-sensitive egalitarian approach, I contend that the basis for the commitment to responsibility at its heart remains imprecisely understood. More specifically, there is a failure to distinguish between two distinct grounds for holding persons responsible for the consequences of their choices. On the one hand, there is a *fairness*-type basis for responsibility—that an agent's being better or worse off than others in virtue of their own choice renders that inequality just.¹ On the other hand, there is an importantly distinct *cost-internalization*-type basis for responsibility—that agents ought to bear the consequences of their choices because others have claims against certain costs being imposed upon them.

These respectively different bases for the commitment to responsibility in responsibility-sensitive egalitarian views are importantly related to one another, as I will go on to explain. However, they are also crucially distinct and, as I will show, failing to distinguish between them embodies the danger that we erroneously suppose that egalitarian fairness itself demands a more extensive commitment to responsibility than it necessarily does. I uncover the distinctness of the respective fairness and cost-internalization bases for responsibility

1 Or, similarly, that the choice deprives an agent or others of grounds for complaint with respect to that inequality; see Cohen, "Fairness and Legitimacy in Justice."

in responsibility-sensitive egalitarian views by way of the examination of an area of debate in which issues of egalitarian responsibility figure prominently—namely the debate concerning procreative distributive justice. In the context of that debate, attending to the distinction in question shows that a commitment to a responsibility-sensitive understanding of equality does not necessarily commend holding parents liable for the costs of children.

1. RESPONSIBILITY-SENSITIVE EGALITARIANISM AND PROCREATIVE JUSTICE

The egalitarian move to responsibility sensitivity involves distinguishing between advantages that are appropriately related to an individual's own responsible choices and those that are not. These responsibility-sensitive egalitarian views—of which the famous so-called luck egalitarian view is arguably the flagship—therefore situate the idea of responsibility centrally when it comes to thinking about the value of equality.² Such views maintain that it is only with respect to responsible choices that inequalities are fair. As Cohen puts it, “luck egalitarianism accounts it an unfairness when some are better off than others through no fault or choice of their own.”³ In shorthand, *unchosen inequality is unfair*. Moreover, this responsibility-sensitive egalitarian approach typically maintains that (relevantly) *chosen inequality is not unfair*.

These responsibility-sensitive egalitarian commitments have played a prominent role in emergent literature concerning procreative justice.⁴ Until recently, comparatively little work among political philosophers has been devoted to addressing the question of who should pay for the costs involved in having and raising children.⁵ Quite clearly, caring for and raising children is costly, and in that way burdensome, not only in the sense that time and resources are

2 See Arneson, “Equality and Equal Opportunity for Welfare”; Cohen, “On the Currency of Egalitarian Justice”; Dworkin, “What Is Equality? Part 2”; Temkin, *Inequality*.

3 Cohen, “Luck and Equality,” 442. See also Temkin, who puts this thought in terms of the worse off when he says “it is bad (unfair and unjust) for some to be worse off than others through no fault (or choice) of their own” (*Inequality*, 13).

4 Important contributions include: Bou-Habib and Olsaretti, “Equality, Autonomy, and the Price of Parenting”; Casal, “Environmentalism, Procreation, and the Principle of Fairness”; Casal and Williams, “Rights, Equality, and Procreation” and “Equality of Resources and Procreative Justice”; Clayton, *Justice and Legitimacy in Upbringing*; Olsaretti, “Children as Public Goods” and “Children as Negative Externalities?”; Rakowski, *Equal Justice*; Tomlin, “Should Kids Pay Their Own Way?”; Steiner and Vallentyne, “Libertarian Theories of Intergenerational Justice”; Vallentyne, “Equality and the Duties of Procreators.”

5 Casal and Williams (“Equality of Resources and Procreative Justice,” 150, 158) mention of some notable exceptions to this relative neglect in the form of Malthus, *An Essay on the Principle of Population*; and George, “Who Should Bear the Cost of Children?”

needed for their development into capable and independent adult members of the community, but also in the sense that as emergent adult members they will have justice claims on others, the satisfaction of which will in turn incur costs.⁶ So children not only need to be cared for, they also, as adults, will have justice entitlements that others may be required to satisfy, the content of which will depend on one's particular conception of justice.⁷

Existing debates surrounding the issue of procreative justice and how the costs of children are covered have tended to fall into two broad camps: the "pro-sharing" camp that favors sharing the costs of children across society, and the "anti-sharing" camp that favors holding particular persons or groups, typically parents, liable for the costs of children.⁸ For reasons that will become clear in what follows, thinking about the question in such dichotomous terms is misleading. It is more appropriate to ask *how much* of the costs of children it is reasonable to expect parents to internalize. As is often emphasized in the discussion of this issue, it is essential to be clear that the question of who should pay is being posed against the background of an otherwise just distribution. Under nonideal, less than fully just conditions, there might be any number of grounds for society at large to bear some of the costs involved in raising children, such as some parents, perhaps especially single parents and women, already being unjustly disadvantaged and being less able (even unable) to provide for their children and/or being more vulnerable in virtue of doing so. The relevant question in the discussion of procreative distributive justice at hand is rather, who should ideally be held liable for these costs, abstracting away from of other such complicating justice considerations.

A cursory consideration of the issue might suggest that responsibility-sensitive egalitarians should favor an anti-sharing stance. When it comes to unchosen advantages or disadvantages, responsibility-sensitive egalitarianism favors pro-sharing—indeed, equal (overall) sharing. But when it comes to the consequences of responsible choices, responsibility-sensitive egalitarianism seems to be against sharing costs and benefits. After all, a child's being born is characteristically the procreative choice of someone—usually those who

6 Such costs may include environmental ones; see Casal, "Environmentalism, Procreation, and the Principle of Fairness."

7 Olsaretti, "Choice, Circumstances, and the Costs of Children."

8 I use the term "parents" to refer to both those who procreate children and those who parent children, in the sense of offering care and nurturing. Though the differences between those choices are important, they do not affect the substance of the argument here. For the view that it should be children themselves who pay such costs (in later life) see Tomlin, "Should Kids Pay Their Own Way?" It is also worth noting that those who affirm an anti-sharing position in several cases take their view to be a *pro tanto* rather than all-things-considered position.

also serve as their parents. Indeed, it is this view, with some caveats, that has proved attractive to some responsibility-sensitive egalitarians. Eric Rakowski elaborates in a passage that has become something of a touchstone for the anti-sharing view in this context.

But babies are not brought by storks whose whims are beyond our control. Specific individuals are responsible for their existing. It is therefore unjust to declare ... that because two people decide to have a child, or through carelessness find themselves with one, *everyone* is required to share their resources with the new arrival, and to the same extent as its parents. With what right can two people force all the rest, through deliberate behavior rather than bad brute luck, to settle for less than their fair shares after resources have been divided justly?⁹

The anti-sharing stance is also defended in various guises by Casal and Williams, Clayton, and Steiner and Vallentyne.¹⁰ The position those authors affirm is that those who have made responsible choices to procreate and parent should, under relevantly ideal conditions, be held liable for the costs associated with the creation of and care for those children. For instance, Casal and Williams state their position as follows:

Though potential parents should be allowed to decide whether or not to increase family size, some injustice exists if resources are redistributed from others to their offspring as a result of their reproductive decisions. Transfers to the latter ... should ideally take place at the expense of only their parents' share of resources and should not impinge upon others.¹¹

In a similar vein, Vallentyne says: "The question is whether [the costs of satisfying a child's equality rights] must be borne by the procreators. A plausible conception of the rights and duties of equality will, I claim, answer affirmatively."¹²

Now, while it is true that children are costly, they also offer benefits. Of specific relevance in this context are the benefits that children offer as economic

9 Rakowski, *Equal Justice*, 153.

10 Casal and Williams, "Rights, Equality, and Procreation" and "Equality of Resources and Procreative Justice"; Clayton, *Justice and Legitimacy in Upbringing*; Steiner and Vallentyne, "Libertarian Theories of Intergenerational Justice."

11 Casal and Williams, "Equality of Resources and Procreative Justice," 161–62. It is worth also noting that Casal and Williams allow that where there are positive externalities resulting from the reproductive decisions then those decisions do not necessarily reflect the impingement of costs on others; see "Rights, Equality, and Procreation," 101–3.

12 Vallentyne, "Equality and the Duties of Procreators," 206–7.

assets in the form of future labor and general social contributors. A good portion of the existing debate engages the issue of whether those positive externalities associated with bearing children can ground an enforceable duty on nonparents to contribute toward the costs of raising and providing for them.¹³ I am not going to address that question directly here, though I will return to it in section 5. Instead, I want to cast doubt on the idea that a commitment to a responsibility-sensitive understanding of equality necessarily commends holding parents liable for the costs of children in the way that these authors argue. In particular, I am going to suggest that the commitment to parental liability is apt to run together two quite distinct grounds for holding persons responsible for the costs of their choices. On the one hand, a fairness-based ground for responsibility—that an agent's being better or worse off as a consequence of their own choices renders the inequality a just one. On the other hand, a cost-internalization basis for responsibility—that others have claims against certain costs being imposed upon them.

I illuminate the tendency to conflate these different grounds for responsibility by examining a prominent objection to a pro-sharing stance from certain responsibility-sensitive egalitarians—namely, that if the costs of caring for children are shared, then nonparents have costs unfairly imposed upon them. That is to say that, independent of a choice they have made themselves, and as a result of someone else's choice, nonparents are, *ceteris paribus*, made worse off. If, as responsibility-sensitive egalitarianism suggests, it is unfair for persons to be worse off than others through no fault or choice of their own, then it seems that there is an egalitarian fairness-based objection to sharing the costs of children with nonparents.

2. OLSARETTI AGAINST ANTI-SHARING

As a backdrop to explaining the anti-sharing argument, it is worth briefly exploring an argument from Serena Olsaretti in response to certain responsibility-sensitive egalitarians who defend the anti-sharing stance. Olsaretti notes that responsibility-sensitive egalitarian accounts differ with respect to how far parents ought to be held liable for the costs of children. She rightly points out that neither a belief in the unfairness of unchosen inequality nor a commitment to the claim that some choice-derived inequalities are fair entail any particular account of *which* inequalities are fair ones.¹⁴ In this way, one can

13 Casal and Williams, "Equality of Resources and Procreative Justice"; Olsaretti, "Children as Public Goods?"; Tomlin, "Should Kids Pay Their Own Way?"

14 Olsaretti, "Responsibility and the Consequences of Choice" and "Children as Public Goods?"

affirm a responsibility-sensitive egalitarian view without being committed to the fairness of any particular inequalities. Therefore, nothing about a commitment to a responsibility-sensitive understanding of the value of equality as such entails any particular account as to which inequalities are considered fair. What is required, in addition, is what Olsaretti calls a *principle of stakes*—the costs and benefits that persons ought to be held liable for or entitled to as a consequence of their choices. Olsaretti illustrates the claim in the context of a general discussion of responsibility-sensitive egalitarianism, not specifically related to issues of proactive justice. She draws on the case of a motorcyclist who is injured as a result of riding recklessly, often discussed in the context of responsibility-sensitive egalitarianism, and asks rhetorically:

Just what should the consequences of the motorcyclist's actions be? Do they include being left to the side of the road, even if this means that she might die there. . . . Or are they that she should be taken to a hospital and pay for the treatment of all her injuries. . . . And at what price should the treatment be charged . . . ? Are the consequences of her action also that passers-by may also appropriate her motorbike from the side of the road? That she may lose her job if . . . her limpness makes her a less attractive employee?¹⁵

It is clear, then, that responsibility-sensitive egalitarianism needs an account that answers such questions, and, furthermore, that such an account is not deducible merely from a commitment to responsibility-sensitive equality itself. In other words, the principle that only choices render inequality just does not entail a particular account as to which choices justify which inequalities.

As Olsaretti explains, responsibility-sensitive egalitarian views have often been presented with an implicit principle of stakes in mind—often, roughly, that people ought to be held liable for the “natural” consequences of their choice, or that they ought to be held liable for the actual consequences of their choice, where those actual consequences are determined by the uncoerced, equality-respecting choices of others.¹⁶ What Olsaretti and others show is that any such claims about the consequences persons ought to be liable for as a consequence of their choices do not follow from a commitment to fairness as such—namely the claim that persons are only justly worse off than others as a consequence of their own choices.¹⁷ We still require a further normative account concerning the

15 Olsaretti, “Responsibility and the Consequences of Choice,” 172.

16 Olsaretti, “Responsibility and the Consequences of Choice,” 174–81.

17 See also Dekker, “Choices, Consequences and Desert”; Fleurbaey, *Fairness, Responsibility and Welfare*; Stemplowska, “Making Justice Sensitive to Responsibility”; Vallentyne, “Brute Luck, Option Luck.”

respects in which individuals ought (or ought not) to be worse off than others, given their choices. The import of this for the procreative justice debate is that it seems, therefore, that an anti-sharing view does not follow from commitment to fairness thus understood. An alternative principle of stakes might, in fact, favor pro-sharing policies instead. An opposition to unfair inequality need not therefore commit us to parents' liability for the costs of children.

Although I think Olsaretti's position here is ultimately correct and indicates that a commitment to fairness does not entail a particular view about which costs, resulting from their choices, persons ought to internalize, it appears vulnerable to a compelling rejoinder. Understanding the nature of the rejoinder, and why it fails, helps to reveal the nature and importance of the distinction that I will defend in what follows.

3. BRUTE LUCK AND OTHER-AFFECTING CHOICE

The rejoinder runs along the following lines. It might be conceded that when we attend only to the *self-affecting* consequences of a person's choice, it is an open question which inequalities are fair and, as such, we require a principle of stakes to determine what it would be fair to hold persons substantively responsible for. We need, that is, an account that explains why certain choices ought to receive certain consequences. That much from Olsaretti's argument can be accepted. However, the rejoinder runs, when we attend to the *other-affecting* consequences of a person's choice, it is clear that the principle of stakes we affirm is itself constrained by considerations of fair equality. Because our choices *have an impact on other people*, what we hold people responsible for must take account of this. Specifically, the argument goes, negative consequences resulting from a person's choices that would otherwise render others *worse off* must be the chooser's liability, lest others be made worse off through no fault or choice of their own. If Olsaretti's motorcyclist crashes into another person's vehicle, causing costly damages, then the owner of the vehicle is worse off despite not being responsible themselves for being worse off. And yet responsibility-sensitive egalitarianism objects, on grounds of fairness, to persons being worse off than others in cases where that is not the result of their own responsible choices. As such, there seems to be an built-in, responsibility-sensitive egalitarian objection to any principle of stakes that fails to maintain that the costs of the motorcyclist's reckless riding should be internalized by her. This is because any such costs that are not borne by the motorcyclist herself look like they must be borne by others. Even if the motorcyclist does not crash into another's car but merely finds herself in need of hospital treatment, this treatment must be funded—if not by the motorcyclist then by someone else. Similarly, procreation imposes costs on others. The

introduction of new members of moral concern into the domain creates burdens of provision on others. Not only is the care of children costly, as we have said, but the adults they eventually become are members of the community that has justice claims on others that also involve costs. If parents are not held liable for those costs then someone else is required to cover them, and so the procreative choices of some would in that case make others worse off. A commitment to responsibility-sensitive equality would therefore seem to militate in favor of procreative liability. That is, cost internalization is implied by a responsibility-sensitive egalitarian principle of fairness precisely because other-affecting (non-internalized) costs constitute unchosen disadvantage for others.

Indeed, something along these lines seems to undergird the position of some of the foremost advocates of the anti-sharing stance. Casal and Williams, for instance, explicitly appeal to the equality of resources view offered by Ronald Dworkin.¹⁸ Briefly, Dworkin's view holds that the value of equality is best understood in terms of a measure of equality of resources, under which, very roughly speaking, persons are equal where they do not prefer one another's bundle of resources, even if, say, their bundle generates for them less welfare than others gain from their respective bundles. In Dworkin's terms, no one "envies" another's bundle.¹⁹ Dworkin articulates and defends his conception of equality of resources via a well-known desert island example in which shipwreck survivors run an auction using clamshells as currency in order to divide up the island's resources and arrive at a distribution that is free of "envy" as Dworkin defines it.²⁰ Crucially, this is a way of offering a measure of the value of resources that takes everyone's preferences into account. The value of any given resource is, through the auction, a function of what others would give up to procure it for themselves.²¹ In this way, the distribution is a fair one precisely because the bundle of resources devoted to each person's life is a function of the cost to others of this person having it. A defining merit of the Dworkinian view, then, is that the fairness of a distribution is defined in terms of the costs one's own life, and the resources devoted to it, impose on others. It is for these reasons that Casal and Williams conclude that there is an egalitarian injustice if the costs of children are shared among procreators and non-procreators in that it involves forcing the latter to pay for the costly choices of the former.²²

18 Casal and Williams, "Equality of Resources and Procreative Justice."

19 Dworkin, "What Is Equality? Part 2," 285.

20 Dworkin, "What Is Equality? Part 2," 285–90.

21 Dworkin, "What Is Equality? Part 2," 294.

22 Casal and Williams, "Equality of Resources," 161–62.

I suggest that such a view obscures the two different bases for responsibility that I contend it is important to disaggregate. To understand why, it is important to distinguish between two different ways in which the choices of some can make others worse off. The first is the *absolute* sense—where someone is worse off than they were prior to a choice, irrespective of any comparison with how well off anyone else is. If one member of a village drains a well on Tuesday, all of the village members are without water and thereby absolutely worse off than they were prior to the well being drained on Monday, given that they are left without water, even though none is worse off than any other. The second is the *person-comparative* sense—where someone is worse off in comparison with others. If the draining of the well only deprives some village members of water and not others, those without water are person-comparatively worse off than those with a water supply.

Applying this to the issue of procreative justice, let us assume that while the procreative choices of parents might render everyone absolutely worse off, the costs are shared in such a way that no one is made person-comparatively worse off—both parents and nonparents are made worse off to the same extent.²³ In this instance it might seem that responsibility-sensitive egalitarianism will *not* have a fairness-based objection to sharing the costs (even if particular principles of stakes object to it). It will not have grounds to object, that is, on the basis that persons are person-comparatively worse off through no choice of their own. After all, no one is person-comparatively worse off under the cost-sharing scheme. It seems, then, that a cost-sharing principle of stakes of this kind will not run afoul of fairness considerations written into responsibility-sensitive egalitarianism. However, although in one respect nonparents are not made person-comparatively worse off than parents, they *are* person-comparatively worse off in another respect. To appreciate this, it is worth attending to the distinction at the center of responsibility-sensitive egalitarian views, between disadvantages that result from an individual's own choices and those that do

23 It is worth noting that Casal and Williams suggest that even in cases where procreation does not leave nonparents worse off than parents, there would still be reasons to require parents to internalize the costs of their procreative choices. Even here, though, their argument seems to depend on an implicit appeal to the comparative advantage parents enjoy. They compare the case of parents demanding others share in the costs of procreation to the case of Louis, offered by Dworkin, who calls for additional resources to satisfy his voluntarily acquired expensive tastes. Casal and Williams cite approvingly Dworkin's conclusion that "It is quite *unfair* that [Louis] should . . . be able, at the expense of others, to lead a life that is *more expensive* than theirs." Casal and Williams, "Rights, Equality, and Procreation," 110, emphasis added. See also their "Equality of Resources and Procreative Justice," 161. It is the contention of the paper that the Dworkin conclusion in fact *fuses* fairness and cost internalization in a way that would be helpfully distinguished.

not—their *brute luck*. Responsibility-sensitive egalitarianism, as I understand it, is committed to the fairness of (at least some) inequalities reflecting the former, and the unfairness of inequalities reflecting brute luck. So, in respect of those gains and losses that *are not the result of (reasonably anticipated, avoidable) choices*, persons ought to be equal.

Under this responsibility-sensitive egalitarian approach, it *does seem* that there is a meaningful sense in which nonparents are person-comparative worse off under a cost-sharing scheme. Let us say that the procreative choices of parents halve everyone's level of absolute advantage (in terms of whatever one's favored metric of advantage is). Nonparents are absolutely half as well off as they were as a result of bad brute luck—namely not as a result of their *own* choices but the procreative choices of parents. In contrast, while parents are also absolutely half as well off as they were, this is a direct result of *their own* choices. As such, they are *not brute-luck worse off at all* but as a result of the exercise of their own responsibility. So it seems that there is an objectionable inequality between parents and nonparents in the respect that the latter experience a form of bad brute luck that the former do not. Unless parents pay for the costs of their own procreative choices, those costs are borne by nonparents in a way that makes them *person-comparatively worse off in brute-luck terms*. Anything less than full cost internalization on the part of parents seems to entail a kind of inequality (of brute luck) that responsibility-sensitive egalitarians explicitly oppose on grounds of fairness. It seems, then, that responsibility-sensitive egalitarianism, if it is committed to brute-luck equality, must force parents to internalize the costs of their choices and must do so on grounds of fairness (that no person should be person-comparatively worse off, other than as a result of their own choice).

Despite the surface appeal of this argument, in fact it reflects what I argue is the conflation between cost internalization and fairness when it comes to the place of responsibility in egalitarian thinking. This is because it trades on a mistaken supposition that inequality in brute luck and unfair inequality are coterminous.²⁴ Once we appreciate that inequality in brute luck and *unfair* inequality are two quite different things, we can better understand that there are two importantly separable ideas playing a role in much egalitarian thinking. In turn we can see that the anti-sharing view defended by Casal and Williams and others cannot trade on fairness alone to contend that the costs of children ought not to be shared, but must be supplemented by a further specific account of why the costs of children ought to be internalized by procreators. This is significant because it demonstrates that fairness *as such*, despite having powerful appeal, does not militate in favor of an anti-sharing stance.

24 See Elford, "Equality and Other-Affecting Choice."

Consider the following simple example to illustrate why brute-luck inequality is not unfair. Michael and Martellus both have ten units of brute-luck advantage. Michael gives Martellus five units of his bundle of advantage units, resulting in the distribution—Michael five, Martellus fifteen. Responsibility-sensitive egalitarians for the most part have no objection to the resulting unequal distribution. Because the inequality between Michael and Martellus is a result of Michael's choice, the inequality is a fair one. This is the responsibility sensitivity of such egalitarian views in action. Notice, though, that not only is there an inequality in advantage (of ten units) but there is also an *inequality in brute-luck* advantage—Martellus's five-unit gain is, from his perspective, a matter of brute luck and not of a choice he made (but a choice of Michael's).²⁵ So the five added units represents a brute-luck gain that Martellus enjoys that Michael does not. And yet this does not seem at all unfair. It does not seem unfair because even though Michael is worse off in brute-luck terms, it is the result of a choice he made (he chose in a way that made Martellus brute-luck better off).²⁶ He could have avoided the brute-luck inequality if he had refrained from giving to Martellus, or, indeed, if he had simply destroyed five units of his bundle. So, I suggest, provided Michael had the (equal) opportunity with Martellus to be as well off, there is no egalitarian unfairness in his being worse off.²⁷ Michael could have remained equal with Martellus at ten units each had he refrained from giving five units.²⁸

Let me offer a further example to more clearly demonstrate the import of the discussion for debates over procreative justice. Suppose that Melody and Matilda live next door to one another and have contrasting tastes in music—Melody likes jazz and Matilda likes country. While both enjoy their respective favorite forms of music, they also appreciate peace and quiet and prefer it at all

- 25 It might be said that Martellus's gain is *not brute luck*, given that his receipt of the five-unit gain will be a consequence of a choice he makes—namely to accept the gain. I do not think this is quite right. First, it is not generally true that in order to enjoy a benefit one must "accept" it; some benefits are unavoidable. Second, and still more pertinent, I would maintain that the mere "opportunity to accept" the five-unit gain is itself an advantage in the relevant sense. To put it another way, a person who enjoyed a far greater range of significant opportunities to gain than others would be advantaged compared with those others even before they chose whether to take advantage of those opportunities.
- 26 One might also maintain that in order for the inequality to be fair it must be reasonable to expect Michael to anticipate his choice resulting in this comparative disadvantage.
- 27 Subject to one's favored account of stakes. That is, one's favored forms of responsibility-sensitive egalitarianism might deny that a choice should result in a given liability. In which case, the fairness of the inequality is not vindicated.
- 28 For the opportunity to be as well off as Martellus to be *equal* it also must be true that Martellus is able (and we might suppose no generally less inclined) to transfer five units to Michael, should he so choose.

times over the other's favored music. Both need to play the music to a certain volume in order to appreciate it and at that volume it is audible in the other's property, supplanting peace and quiet. When Melody plays jazz it makes Matilda worse off than she would have been with peace and quiet and vice versa when Matilda plays country. Assume that the advantage levels of Melody and Matilda are each ranked as follows:

Playing their preferred music alone > both playing preferred music >
neither playing preferred music > not playing music while the other
plays.

Suppose that Melody alone plays. Is this state of affairs unfair? Although Matilda is person-comparatively worse off than Melody and, as I explained above, worse off in brute-luck terms (she endures jazz, while Melody does not endure country), she is nevertheless *person-comparatively* worse off in consequence of her own choices. She has the opportunity to be as well off as Melody. Now, there might be *non-egalitarian* reasons for thinking it is bad if either or both Melody and Matilda play their music.²⁹ The point of relevance, though, is that the mere fact that one person imposes costs on another does not entail that the worse-off person has an egalitarian complaint of unfairness, even though the person is absolutely worse off through no choice of their own. And in fact we tend to find this thought quite intuitive. Take job applications under conditions of background equal opportunity. If Abi and Isobel both have equal opportunity for a job and Abi has already applied, Isobel's applying renders Abi worse off than she would otherwise be if she did not face competition, now that her prospects for the job are worsened with this new competition.³⁰ If Isobel does not apply and hands a brute-luck advantage to Abi in that regard, there is no unfairness given that it is Isobel's choice that results in her being worse off—she could be as well off as Abi should she have so chosen.³¹

The fact that cost imposition does not itself entail unfairness is significant, and illuminates the sense in which the anti-sharing position held by Casal and

29 And, to complicate matters, any favored principle of stakes could require that music-playing costs should be internalized.

30 Assuming Isobel is a genuine competitor, with relevant prospects of securing the job herself.

31 For a similar point see Olsaretti, "Children as Negative Externalities?" 160–61. Isobel's choice is brute luck for Abi only insofar as it is not reasonably foreseeable for Abi when choosing whether or not to apply. If it is something that is, in fact, reasonably foreseeable, then it figures as a determinant of the option luck (in this case, the prospects of the success of the application) resulting from Abi's choice. Similarly, from Isobel's perspective, Abi's applying makes her brute-luck worse off than had Abi not applied, given that it lessens her prospects for a successful application. I am grateful to an anonymous reviewer for drawing my attention to these aspects of the example.

Williams cannot be supported with the claim that a cost-sharing scheme would necessarily entail unfair inequalities in brute luck. If indeed we ought to hold parents liable for the costs of children, this does not straightforwardly follow from a commitment to egalitarian fairness, even of a responsibility-sensitive variety.³² So if each person has an equal opportunity to bear and parent children, then even though nonparents might be made absolutely worse off by sharing in the costs of caring for children that parents are responsible for creating, even if they are *person-comparatively worse off than parents in brute-luck terms* (because the costs they share are not the result of their own choices but result from parents' choices) this does not entail egalitarian unfairness provided that nonparents had the equal opportunity to be parents themselves.³³ The conclusion toward which we have been moving, then, is that procreative liability cannot be supported by a commitment to responsibility-sensitive egalitarian fairness alone. The anti-sharing view therefore requires going beyond egalitarian fairness, thus understood, and necessitates an appeal to a further claim about the costs persons ought to internalize. To be clear, I am not suggesting that the anti-sharing stance is particularly afflicted here, or that this is a reason itself to reject an anti-sharing view. Rather, I am suggesting that an anti-sharing position in the context of procreative justice is apt to seem appealing on grounds of fairness alone but, in fact, depends on further, and contestable, suppositions as to what persons ought to be held liable for.

4. "FAIRNESS" AS BOTH FAIRNESS AND COST INTERNALIZATION

My claim, then, is that an anti-sharing position (and, indeed, any claim about the liability persons have for imposing costs on others) must go beyond an appeal to fairness (i.e., that no person should be person-comparatively worse off unless it is because of a choice of their own) and must depend on an account as to why any given costs ought to be internalized. To fully defend that claim, let me consider two possible objections. First, it might be argued that my way of framing the distinction between fairness and cost internalization fails to take due account of the notion of fairness with which the advocates of the anti-sharing stance defend their view. I mentioned in the foregoing that the anti-sharing position defended by Casal and Williams takes its inspiration from Dworkin's conception

32 I am of course assuming that each person has an equal opportunity to bear and care for children, which is far from the case in the real world.

33 Crucially, an "equal opportunity to be parents" is intended to include the advantages and disadvantages that accrue from bearing and caring for children. For instance, if one set of parents is likely to find it inherently more burdensome than another set of parents, then they do not enjoy an "equal opportunity" to be parents in the relevant sense. I am grateful to an anonymous reviewer for pressing me to clarify this.

of equality of resources. It seems, though, that under that equality of resources view, “fairness” is conceptualized as something that entails *both* fairness, as I conceive it, and cost internalization. On such a view, the distinction between fairness and cost internalization that I have attempted to draw in the preceding discussion is wrongheaded; “fairness” depends on a given individual’s life not being, in certain ways, more costly than the lives of others. Indeed, Dworkin draws the connection between fairness and cost internalization explicitly when he explains that it is a compelling feature of his equality of resources view that “people decide what sorts of life to pursue against a background of information about the actual cost their choices impose upon other people and hence on the total stock of resources that may fairly be used on them.”³⁴ Dworkin writes this in a context where he defends resources as the appropriate measure of egalitarian concern in preference to one of its foremost rivals, equality of *welfare*. One of the critical deficiencies of the equality of welfare view, for Dworkin, is a failure to take account of the costliness to others of satisfying any given individual’s preferences. On the Dworkin view, then, it seems that cost imposition is unfair because the persons who impose the costs have *an unfairly large proportion of resources devoted to their life* as compared with the lives of others. Those with more expensive preferences gain a greater share of the resources under equality of welfare in a way that is wholly insensitive to the loss in resources felt by others.³⁵

However, if that is the sense in which cost imposition is required on grounds of fairness, then it is just not clear that this is required in respect of *other-affecting choice* at all. After all, if A imposes costs on B, then a failure to internalize those costs (e.g., requiring A to compensate B) does not entail devoting more resources to the life of A. To be sure, if A imposes costs on B, it makes B absolutely worse off (this is just what it means to impose costs in this sense). It does not, however, involve using more of the total stock of resources (or whatever currency) on the life of A. To reflect this back to the procreative justice debate: the Dworkinian-inspired objection to cost sharing looked like there was something wrong with nonparents being required to shoulder the costs created by the choices of parents. But this is not a matter of parents gaining more resources than nonparents, but the instantiation of new claimants on resources (children), which under a cost-sharing scheme diminishes the resources available to nonparents (and parents alike). As such, the Dworkinian position—that we should not devote an unfairly large proportion of resources to some lives and not others—does not constitute a basis for objecting to a cost-sharing scheme, given that such a scheme does not require devoting more resources to

34 Dworkin, “What Is Equality? Part 2,” 288.

35 Dworkin, “What Is Equality? Part 1,” 228–40.

some lives over others. Again, fairness—understood now in these Dworkinian terms—does not necessarily commend an anti-sharing stance.

In response to this last claim, perhaps it might be argued that cost imposition through a cost-sharing scheme *does* involve unfairly devoting more resources to the lives of parents who create those costs, because cost sharing is, in effect, a mechanism for compensating parents for the costs they incur as a result of choosing to have children. It therefore represents a way of giving more to parents who have already spent part of their fair share by choosing to bear children. Clearly, though, this argument will not succeed as it begs the question by presupposing that these are parents' costs to bear in full to begin with.³⁶ They *may* be the parents' costs to bear, but we need an independent and prior argument to establish this.

Nor, indeed, can this Dworkinian opposition to cost sharing be defended simply on the basis that under a cost-sharing scheme the choices of parents render nonparents person-comparatively worse off in a way that is outside of the nonparents' control. Now, it is worth registering that a cost-sharing scheme *need not necessarily* make the nonparents person-comparatively worse off than parents. If we have a scheme that takes account of the benefits that parents enjoy and levies higher costs on them to discount for those benefits, then a scheme will not make nonparents person-comparatively worse off than parents. But more importantly, we have already seen that being worse off in this regard (suffering worse brute luck than parents) is not necessarily unfair. Provided that nonparents have the relevantly equal opportunity to bear (and benefit from) children themselves, nonparents are person-comparatively worse off (in, say, brute-luck terms) *qua* remaining nonparents only to the extent that they refrain from bearing and caring for children themselves—as per the argument above. So although nonparents are person-comparatively worse off, they are not person-comparatively worse off *in a way that is relevantly outside of their control* (as they could have imposed the very same costs on parents).

I have thus far argued that the Dworkinian view under scrutiny fails to establish that fairness alone commends an anti-sharing view. It might be said, though, that under the Dworkinian way of conceiving fairness, “fairness” is simply a more complex conception than the thin egalitarian form of fairness that I am describing. Rather, “fairness” amalgamates both the idea that each

36 Olsaretti offers a similar counter when she explains that “it is unjustified, and importantly misleading, to characterize the demand that nonparents share the costs of children as a demand that they ‘settle for less than their fair shares after resources have been divided justly’ [Rakowski, *Equal Justice*, 153, emphasis added]. . . . [This] assumes what is in question, namely, that what constitutes a fair share for a person” (Olsaretti, “Children as Negative Externalities?” 160).

ought to have an equal opportunity to be as well off as others (thin fairness) and a further principle that requires cost internalization. No doubt this is true. And no doubt one can present a version of Dworkin-inspired equality of resources that supports an anti-sharing position. However, it should be clear that this is no answer to the chief contention of the paper that there is an important difference between fairness and cost internalization. In that way it is quite coherent to present such a conception of “fairness,” but we should also be clear that it is a *complex ideal* with distinct (albeit connected) component elements. That is, Dworkinian “fairness,” thus understood, is an umbrella category that encompasses both fairness (as I have articulated it) and a certain view about the costs that individuals ought to internalize. Unless we are clear about that, we may be in danger of erroneously supposing that a commitment to thin egalitarian fairness (no one should be person-comparatively worse off other than in consequence of their own responsible choices) necessarily commends a cost-internalization principle. And, in virtue of that error, we may miss the need for a positive account of the costs it is just to impose on others

Indeed, to further understand that fairness is different from, and does not entail, cost internalization, note that strict cost internalization is quite implausible. Every student of John Stuart Mill is familiar with the challenge to Mill’s famous harm principle that few if any of our acts do not impact others in some way.³⁷ If nearly all of our actions can in one way or another be said to “harm” others, however marginally or indirectly, then the harm principle lacks efficacy as a way of discriminating between harming and non-harming actions and protecting the latter from state and societal interference. Whatever the merits of this as a criticism of Mill specifically, it is of import for the issue under scrutiny. For our choices routinely impose a variety of costs on others. Whenever there is competition for a scarce resource, for instance, one person’s pursuit of it characteristically diminishes another’s opportunity to obtain it. When other people choose to go shopping on a Saturday afternoon it makes what might have otherwise been a stress-free, leisurely perusal of the shops for me a hectic, busy, and time-consuming affair. If cost internalization is required on grounds of fairness, then each and every one of these cost-imposing activities inflicts unfairness.³⁸ The idea that there is some egalitarian requirement that we internalize all of the costs of our own choices is deeply implausible, and, indeed, is not something that

37 Mill, *On Liberty*.

38 Now, it is worth saying that unfairness can indeed be trivial. The egalitarian conclusion, though, is that, if such costs and benefits (trivial or otherwise) even out across persons (assuming they are commensurable), there is no unfair inequality. As such it is hard to see how grounds of egalitarian fairness could condemn the imposition of any particular set of costs on others *before* we first know whether or not the imposed cost manifests an inequality.

those who affirm the anti-sharing position (on Dworkinian or other grounds) would themselves accept.³⁹ An anti-sharing position therefore depends on going beyond an appeal to fairness and requires support from an account as to why the costs of children specifically are unreasonable ones to impose upon others.

Notice that there is a still stronger reason why, under this Dworkinian egalitarian view, cost internalization is not entailed by fairness (in the sense in which I intend the term). This is that knowing what costs one will be required to bear in consequence of different activities is precisely part of what one needs to know in advance in order to determine the value of the resource in question.⁴⁰ That is to say, the value of any given resource depends partly on what one is permitted to do with it and, in that sense, the extent to which one is permitted to use it in ways that impose costs on others that one is not required to internalize. If I need to compensate my neighbor for the noise that starting my car creates each morning, the value of the car is less than it might have been without my being required to do so. Likewise, the value of procreating also depends on the costs of doing so (the resources used for procreation, the levels at which I might want to insure against the need for treatment to successfully procreate, etc.) and whether one is required to internalize them. This again indicates that cost internalization is not something that should be confused with a principle of fairness. Rather, at least on the Dworkin conception of equality of resources, certain issues of cost internalization should be seen as prior to the determination of what constitutes an equal and fair distribution, given that the value of those resources depends on how far one is required to internalize the costs of their use. For this reason there is no basis for claiming that on the grounds of fairness alone people are required to internalize the costs of the choices.

Before concluding, let me respond to a final reservation concerning my claim that considerations of fairness alone do not support an anti-sharing view. It might be said that parents and nonparents differ, for brute-luck reasons, in their preferences for birthing and rearing children, and that a cost-sharing policy therefore subsidizes the preferences of parents in a way that makes parents unfairly *person-comparatively* better off. Because parents' preferred way of life is

39 I suggest, then, that on the Dworkinian conception of equality, the connection between fairness and cost internalization is best understood as pertaining to the process of arriving at a determinate value for resources, rather than as a matter of requiring, on grounds of fairness, that persons internalize the costs of their choices they would otherwise impose on others. In other words, costliness to others figures in determining the fair distribution insofar as it provides a criterion of value for the metric of equality—that every person's preferences are equally taken into account when determining the value of the resources to be distributed.

40 For this point made in a different context, see Miller, *National Responsibility and Global Justice*, 56–60.

made cheaper than that of nonparents, parents have an unfairly better opportunity for advantage compared with nonparents. We therefore have fairness reasons for requiring parents to internalize the costs of their procreative decisions. Such a claim depends, of course, on a metric of advantage that includes preference satisfaction, but it is not for that reason misguided. Rather, it fails as an objection to the contentions of the paper for following reason—that it does not depend on the principle that *fairness requires persons to internalize the costs of their own choices*, but is rather based on the principle that the *brute option sets available to persons should be no more valuable than any other person*. We can see this by noting that it is contingent on whether subsidizing procreative choices will make parents person-comparatively better off than nonparents in brute-luck terms. Suppose, for brute-luck reasons, that Jennifer has an overwhelming desire to be a parent but Kayla does not, and that being a parent is far more expensive, overall, than any of Kayla's preferred pursuits. On the preference satisfaction view we are considering it seems that, all else equal, *subsidizing* Jennifer's procreative choices helps equalize the value of the option sets she and Kayla respectively face by making her preferred option (to parent) no worse, in terms of overall preference satisfaction, than Kayla's. In this instance, subsidizing certain options is what is *required for* a fair distribution, rather than disruptive of it. So it is simply an open question whether subsidizing the option to parent creates unfair inequality—it depends entirely on whether doing so upsets an extant fair distribution. Again, then, a commitment to fairness (that none should be worse off other than in consequence of their own choices) does not imply a requirement that individuals internalize the costs of their choices.

5. FAIR PLAY, STAKES, AND FAIRNESS

As some of the earlier examples illustrate, the idea that persons ought to internalize all of the costs of their choices is deeply implausible and not a position to which any of the authors defending an anti-sharing stance would subscribe. What is required is a constructive substantive account of which costs resulting from person's choices they ought to be required to internalize themselves. To frame this in some of the language deployed to explain Olsaretti's view, what is required is a principle of stakes—a specification of the costs and benefits for which persons ought to be held substantively responsible as a result of their choices. Now, as I mentioned in the foregoing, much of the current literature on procreative justice focuses on whether the beneficial effects of procreation can ground an enforceable duty on non-procreators to contribute to the costs of procreation. To that extent, much of the basis of the disagreement between pro-sharing and anti-sharing views involves contestation as to whether fair-play

considerations mean that the beneficiaries of procreation ought to reciprocate for such benefits by way of sharing in the costs of procreation.⁴¹ That is to say, do the putative benefits of procreation and parenting that accrue to nonparents ground an obligation to contribute to the costs of procreation and parenting? I want to remain agnostic with respect to the success, or otherwise, of the argument from fair play applied to the procreative question. Rather, I want to suggest that the benefits of children that accrue to society resulting from the procreation and parenting of children are relevant directly to the principle of stakes.

To see how the benefits for society offered by the existence of children might play a different role than they do in the argument from fair play, consider the parallel case of the fire service. Roughly, on the standard rehearsal of the fair-play argument in favor of an obligation to contribute, individuals have fairness-grounded obligations to reciprocally contribute to a scheme that provides them with benefits, where others shoulder burdens necessary to supply those benefits, and provided the benefits accruing to the individual outweigh the burdens of contribution. Applying the fair-play argument to fire service provision specifically, those who supply fire service protection, through funding and working in a fire department, provide a benefit to the recipients of that service, which in turn grounds an obligation on the part of those recipients to reciprocate by way of sharing in the burdens of contribution required to provide the service.⁴² Unless the burdens are shared, those who do not contribute to the provision of fire service are in some way free riding on others—they would be taking unfair advantage of others' labor burdens. Notice that this argument does not trade on the idea that those funding or working in the fire service would be unfairly worse off than others as a result of the burdens they willingly bear. Rather, it claims that as recipients of benefits we owe our *fair share* of the contribution for the provision of this good. As such, it is fairness with respect to the burdens, given that everyone enjoys the good, rather than fairness with respect to how much advantage individuals enjoy overall. The fire service worker is owed public money so that they do not unfairly shoulder too great a proportion of the burden of a general public benefit. However, the beneficial character of fire service provision might be thought important in another way. If we assume a responsibility-sensitive egalitarian view that maintains that inequality is fair *only if* it is the result of responsible choice, we then need to appeal to a principle of stakes to identify which consequences of responsible

41 Hart, "Are There Any Natural Rights?"

42 I offer the case of fire-service provision as an illustration. Fire service is ordinarily provided as a component of a broader publicly funded scheme of social cooperation under which any obligations of contribution may take into account other benefits from the scheme and the costs of their provision.

choices are ones that persons ought to be held substantively responsible for such that they would constitute fair inequalities. When determining a principle of stakes, one might argue that the characteristically beneficial character of fire service provision counsels against holding fire service personnel liable for the costs encountered in the course of providing that service, say, for example, through being injured when attending a fire.

It might seem that there is no difference between the fair-play argument and the principle-of-stakes position I have gestured toward. They both, for instance, ground the fairness of burden sharing on the beneficial character of what is provided. The differences between them, however, are subtle but important. First, under the principle of fair play, the duty of alleviating the burdens on fire service personnel necessarily falls on the recipients of the benefit of the service, whereas it is an open question, on the principle-of-stakes position, who has the responsibility to compensate for any costs incurred by fire service personnel.⁴³ Second, on the principle of fair play, the compensation owed to fire service personnel is contingent on their successfully providing a benefit. Even if the benefit in question is only an expected benefit, on standard versions of the fair-play argument it is the *fact of the benefit* that grounds the obligation to reciprocally share in the burdens of provision. On the principle-of-stakes position, the grounds for compensation are not located in the *actual receipt of benefit* but in the character of the choice. It is the nature of fire service provision as a vocation that it is *characteristically beneficial* to the community that renders it inappropriate, on this view, to hold persons substantively responsible for certain costs of that choice to contribute to that provision. To put it a slightly different way, on the principle-of-stakes account, we owe aid to fire personnel not by way of paying them back for some contribution that they would otherwise unfairly shoulder but, rather, because the choice they make just is not of the right kind to render them liable for the costs they would otherwise incur. Such an approach could be grounded on desert-based considerations—that the putatively valuable character of fire service contribution renders it “unfitting” to hold people liable for certain negative consequences—or grounded on consequentialist considerations—that it is good to incentivize certain generally socially valuable contributions.⁴⁴

Distinguishing the principle-of-stakes account from the fair-play argument is important because the fair-play account, at least applied to the issue of proactive justice, is subject to several strong objections, and it is possible that a principle-of-stakes view sidesteps some of the controversy concerning

43 Though there may be second-order duties on others to ensure that the recipients are held to their duties.

44 For a discussion of such approaches, see Olsaretti, “Responsibility and the Consequences,” 182–86.

the relation between being a beneficiary and owing something reciprocally in return.⁴⁵ A defense of a pro-sharing view based on a principle of stakes—one that, for instance, emphasizes the *characteristically* beneficial nature of procreative choices—reframes the procreative justice question as one that asks “Do procreating choices embody the kind of choices that justify a person being worse off than others?” as opposed to asking “Does the receipt of the benefit produced by the choice oblige recipients to bear a fair share of the burdens involved in its production?” Constructing such an account extends well beyond the purview of the paper, but the space for a fair-play-inspired principle of stakes points toward a possible fruitful alternative basis for defending a pro-sharing view.

Finally, then, let me reaffirm why I think it is important to distinguish cost internalization from fairness as a basis for holding people responsible for their choices. Quite apart from the general desirability of perspicuity concerning the reasons that support different normative positions, it is important because it helps us guard against the temptation to think that a concern for *fairness* commands a commitment to holding persons liable for the costs of their choices on others. Failing to distinguish the issue of cost internalization from the issue of fairness thereby embodies the danger that we go awry when thinking about how those considerations are related to one another. Recognizing their distinctness helps us avoid the misguided supposition that by dint of consistency with our commitment to egalitarian fairness we must also conclude that persons should be required to shoulder costs that they would otherwise impose on others. The issue of which inequalities are fair in fact depends on a prior account of the costs it is reasonable to require persons to internalize, and not the other way around.⁴⁶

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- 45 For an account that maintains that, in order for the fair-play principle to apply, the benefits in question must be *accepted*, see Simmons, “The Principle of Fair Play.” For the claim that the benefits must be *intended*, see Casal, “Environmentalism, Procreation, and the Principle of Fairness”; and Casal and Williams, “Rights, Equality, and Procreation.”
- 46 I am grateful to an anonymous reviewer for some very helpful comments. I am also indebted to Andrew Williams for some eminently helpful thoughts on an earlier draft of the paper.

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