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Rights, Equality and Procreation

Abstract: Individual decisions about how to exercise the legal right to procreative liberty may generate either positive or negative externalities. From within a resource egalitarian perspective, such as that of Ronald Dworkin, it can be argued that procreative justice is asymmetric in the following respect. Justice need not require that parents be subsidised if they produce a public good, yet its ideal achievement may require their activities be taxed if they threaten to produce a public bad.

1. Introduction

Procreative decisions raise many questions for moral and political philosophy. A number of these, such as the ethical and legal status of abortion, are widely discussed, and have been examined with great subtlety by Ronald Dworkin (see Dworkin 1992; 1993). Here we address another aspect of procreation, which concerns the relationship between a right to procreative liberty and an egalitarian view of distributive justice.

Although the issue we examine is relatively neglected at present, in the past it was the subject of considerable debate. Most famously, Thomas Malthus criticised egalitarian radicals, like William Godwin, by claiming that their proposals were vulnerable to a fatal demographic counter-argument.² According to it, systems of

¹ For very helpful suggestions we thank J. Burley, M. G. Clayton, G. A. Cohen, P. P. Nicholson, H. Steiner and K. Watson.

² The argument is developed in the chapters "Of Systems of Equality. Godwin" and "Of Systems of Equality (continued)" but see especially Malthus 1992, 78-80. There Malthus asks, "What ... is to prevent the division of the produce of the soil to each individual from becoming every year less and less, till the whole society and every individual member of it are pressed down by want and misery?", and provides two answers. The *illiberal egalitarian solution* holds that "... in a state of equality, the necessary restraint could only be effected by some general law", but fails to satisfy Malthus, who proceeds to ask "... how is this law to be supported, and how are the violations of it to be punished? Is the man who marries early to be pointed at with the finger of scorn? is he to be whipped at the cart's tail? is he to be confined for years in a prison? is he to have his children exposed? Are not all direct punishments for an offence of this kind shocking and unnatural to the last degree?" In sharp contrast, the *liberal inegalitarian solution* is "so natural, so just, [and] so consonant to the laws of God and to the best laws framed by the most enlightened men". It requires that "... each individual should be responsible for the maintenance of his own children", but

equality, involving common ownership of resources and provision of welfare, face the following trilemma. Such schemes will either fail to check the standing tendency for population to grow more rapidly than the supply of resources, so leading to a continual decline in individual living standards. Or instead they will succeed in doing so, but only by jeopardising procreative liberty to an intolerable degree or by abandoning their own fundamental principles. Thus, on the basis of certain assumptions about fertility and scarcity, Malthus argued that prosperity, liberty and equality could not be achieved jointly. Faced with the need to choose, he claimed his contemporaries should reject equality.

Because of the flawed empirical assumptions Malthus relied upon, a frequent response to his work is dismissive. But, we suggest, the question he posed about the relationship between fertility and egalitarianism remains of interest. To establish its importance, we shall explore not collectivist egalitarianism, but Dworkin's very different conception of *equality of resources*, in which private ownership plays a central role. We shall assume that individuals should be accorded a legal right to determine the size of their families free of penalties by the criminal law, and ask how the exercise of that right bears upon equality of resources. Having outlined the most salient aspects of that conception, we proceed as follows.

First, we distinguish two types of effect which the production of children might generate, namely a positive and a negative externality, and then explain their relevance to one particular resourcist treatment of procreative justice. Second, considering the former effect, we examine the suggestion that, for reasons of fairness, the costs of child-bearing should be borne not only by parents but by non-parents who benefit from the public good of additional children. Whilst accepting some distinct incentive arguments for socialising the costs of production of public goods which otherwise would be undersupplied, we express scepticism about the suggestion. Third, discussing the more morally urgent case of negative externalities, we argue that, when overpopulation threatens, resource egalitarianism ideally demands that individual parents bear the costs of their actions. Thus, we suggest that if equality of resources is sound, then procreative justice is asymmetric: very roughly, even if parents produce a public good, justice need not require their activity be subsidised, yet when their actions threaten a public bad, it may require that they be taxed.

2. Welfarist and Resourcist Egalitarianism

In a series of important articles, building upon attempts within economics to define a non-welfarist criterion of equity, Dworkin has developed one of the leading liberal egalitarian conceptions of distributive justice within contemporary political

demands a departure from radical principles since "... the operation of this natural check depends exclusively upon the existence of laws of property, and succession; and in a state of equality and community of property could only be replaced by some artificial regulation of a very different stamp, and a much more unnatural character."

philosophy.³ We begin with the briefest sketch of that conception, a central aspect of which we then emphasize.

In developing his view, Dworkin criticises *welfare equality* as a plausible ideal for justice in the distribution of privately-owned *impersonal resources*, or "parts of the environment which can be owned and transferred", such as raw materials or manufactured goods (see Dworkin 1990, 37). On that view, justice requires that each set of resources devoted to individuals' lives is equal in value, in the following respect: with their set of resources, each owner either does, or could, achieve a similar level of personal success, estimated according to their own judgement of what renders their life valuable to them.⁴ In opposition to welfare equality, Dworkin defends what he now terms *liberal equality*, and initially termed *equality of resources*. According to that less familiar ideal, a just distribution of resources is one which could have emerged from a specific hypothetical process, involving actual individuals aware of their values and tastes. It possesses the following three features, which Dworkin alleges confer moral appeal upon its potential outcomes.

First, the process involves an auction over private-ownership rights in impersonal resources for which individuals have equal purchasing power. And second, within that auction lots are divided in a way which is maximally sensitive to the preferences of the participants. Because of these two features, Dworkin suggests, the distribution resulting from the auction will, in important respects, escape both *unfairness* and *arbitrariness*. Thus, since symmetrically situated in the bidding process, on completion of the auction no individual will prefer (or *envy*) any other individual's share of resources. Furthermore, that condition, termed *envy-freedom*, will have been attained not in a manner rigged by a particular distributor, but in which each individual played an equal role.

Despite these merits, Dworkin recognises that the resulting distribution might still suffer from a further form of unfairness if some individuals suffer from brute bad luck in their *personal resources*, or "qualities of mind and body that affect people's success in achieving their plans and projects", such as "physical and mental health, strength and talent" (see Dworkin 1990, 37). For example, the congenitally disabled might still envy the capabilities of the able-bodied, or, once production and trade are possible, the less talented might prefer the greater access to impersonal resources enjoyed by the more talented. To remedy this distinct source of unfairness, the hypothetical process involves a third important feature, a

³ Most importantly, see Dworkin 1981a; 1981b; 1987; 1990; and also Varian 1974.

⁴ The distinction between actual and potential welfare levels is necessary to accommodate views such as Richard Arneson's principle of equal opportunity for welfare within welfare equality. That view employs a modified welfarist standard of interpersonal comparison, sensitive to the extent to which each individual is responsible for their level of welfare compared to that of others, for example, because of their deliberate cultivation of preferences which are more expensive to satisfy than those of others. It may escape counterexamples to welfare equality such Dworkin's case of Louis, but, he argues, remains vulnerable to the case of Jude. For Arneson's view see Arneson 1989, and for the two cases see Dworkin 1981a, 229, 239. Since our concern is to assess the implications of liberal equality, rather than oppose welfarism, we shall assume that Dworkin is correct, but for further discussion see Cohen 1989, 925.

fair insurance market. Within it, individuals – aware of their preferences and the distribution of good and bad luck but ignorant of their personal fortune or vulnerability – are able to purchase cover against what they consider to be brute bad luck. Thus, even if the hypothetical process does not fully achieve envy-freedom, it will involve a mechanism for redistribution, the extent of which will depend on the aggregate operation of the insurance market.

To appreciate more fully the dissimilarity between the two ideals previously sketched, note the different ways in which welfare and resource egalitarians relate the two fundamental aspects of an individual's life referred to by Dworkin as *personality* and *circumstance*. The former term designates the individual's reflective convictions about, and preferences for, her own good, whilst the latter encompasses those conditions which she conceives to advance or to limit her own good, either instrumentally or intrinsically (see Dworkin 1990, 106-110; cp. 1981b, 302-303). Personality, then, is manifest in the individual's conative states – providing she does not prefer their absence – such as taste, ambition, attachment and preference, whilst circumstance, in contrast, encompasses at least the individual's *impersonal* and *personal resources*. Hence, a diver's passion for exploring submarine landscapes, for example, is an aspect of her personality, which renders her diving gear and fitness, respectively, important impersonal and personal resources.

In calculating the value of the circumstance an individual occupies, welfare equality focuses upon the relation between that circumstance and her own personality. Thus, in determining when distinct individuals' circumstances are equal in value, welfarists ask how much welfare they do, or could, derive from those circumstances, given their specific personalities. For them, whether circumstances are equal depends only on whether individuals do, or could, enjoy equal welfare. The costs in terms of foregone resources to others of them doing so is considered irrelevant to the requirements of equality, since those individuals are not regarded as entitled to resources as such, but only insofar as they contribute to their welfare.

Such a thought, however, is alien to resource egalitarianism. As Dworkin continually emphasizes, it requires that the value of resources devoted to each life be equalised in a manner which depends on their value not to only their owners but to non-owners. Its ideal achievement demands, amongst other things, that nobody attaches a higher value to another's resources than to her own, but is quite consistent with some failing to attain similar levels of personal success to others. Thus, in calculating the value of the economic circumstance an individual occupies, liberal equality focuses on the relation between that circumstance and the personality of others. The extent of that value depends not on the welfare prospect of its occupant, but rather on the *opportunity costs* borne by non-occupants, measured in terms of how much they would bid for that circumstance in the hypothetical auction. Its value does not exceed that of the circumstances of others only if they would not pay more for it than for their own.

The central role which the relation between ones circumstance and others' personalities plays in his view compared with that of welfare egalitarians has frequently been stressed by Dworkin. For example, he writes,

"Under equality of welfare, people are meant to decide what sorts of life they want independently of information relevant to determining how much their choices will reduce or enhance the ability of others to have what they want. ... Under equality of resources, however, *people decide what sorts of life to pursue against a background of information about the actual costs their choices impose upon other people and hence on the total stock of resources that may fairly be used by them.*" (Dworkin 1981b, 288, emphasis added, cp. 294)⁵

Thus, the achievement of distributive justice requires that each individual can become, as Dworkin puts it, "... someone who forms his ambitions with a sense of their cost to others against some presumed initial equality of economic power" (Dworkin 1981b, 302).⁶ In the following sections we attempt to establish what implications, if any, this aspect of liberal equality has for the ambition to procreate.

3. Resource Egalitarianism and Procreation

To do so, it is germane to return to the Robinsonade which Dworkin usefully employs to illustrate the market procedure favoured by liberal equality. Describing it, he asks us to

"Suppose a number of shipwreck survivors are washed up on a desert island which has abundant resources and no native population, and any rescue is many years away. These immigrants accept the principle that no one is antecedently entitled to any of these resources, but that they shall instead be divided equally among them." (Dworkin 1981b, 285)

In applying that principle Dworkin suggests the immigrants would be concerned to combat envy, to eliminate arbitrariness and to compensate for brute bad luck, and so would attempt to implement, or mimic, the auction-insurance scheme sketched above.

Now let us complicate the initial scenario by imagining not merely the production and exchange of manufactured goods, but human reproduction. Suppose that, having implemented the auction-insurance scheme, different groups of immigrants then produce children at varying rates and that their doing so reflects differences in their personalities rather than their circumstances.⁷ For example, none are driven by a parental or sexual craving they wish gone, and there is no variation in individual couples' capability to conceive, or vulnerability to unwanted pregnancy, which

⁵ See also Dworkin 1987, 26, where he writes "Equality of resources uses the special metric of opportunity costs: it fixes the value of any transferable resource one person has as the value others forgo by his having it."

⁶ More recently Dworkin has argued that the achievement of personal well-being itself requires such circumstances, since it is best understood as a response to a challenge in which the possession of a just share of resources is a parameter against which success is to be judged. See Dworkin 1990, 71-75, 93-98.

⁷ To preempt misconstrual of later suggestions, note that they are meant to apply in societies which have achieved the other demands of liberal equality, and not necessarily in societies such as our own, which fall severely short of that standard.

gives rise to envy of others' personal resources. Thus, parenthood is not a condition which calls for compensation at some level to be calculated according to the hypothetical insurance market.

Instead the variation in fertility has its origins within individual personality and option luck. It arises because of diversity in individuals' desire to procreate, or willingness to risk procreation as an unintended consequence of sexual activity. Some immigrants decide upon a life with many children, for instance, because of their religious beliefs or their enjoyment of the delights and challenges of parenthood. Others aim for fewer or no children, because of their convictions about the grave and daunting moral responsibilities of parenthood or their valuing alternative forms of human creativity to a greater degree. Given a resource egalitarian concern that "people decide what sorts of life to pursue against a background of information about the actual costs their choices impose upon other people", we might now wish to ask how they should conceive those costs and attempt to ensure their just distribution.

In addressing those questions, as we shall see, complexity abounds. However, to dispel one potential misunderstanding at the outset, note what posing that question does not require. The thought that procreation might involve costs to others which are relevant for distributive justice is independent of the assumption that if some view others' children as obstacles or vehicles to their good, and so have preferences about the number of children others decide to have, then those decisions impose costs upon them. Consider one construal of Dworkin's general statement that liberal equality "aims to make them equal in their circumstances, and *it understands someone's circumstances as the set of opportunities and limitations he encounters in identifying and pursuing what he deems, after reflection, to be an appropriate life for him*" (Dworkin 1990, 108, emphasis added). It might appear to support the assumption that the immigrants could regard the presence or absence of others' children as morally relevant in itself. However, we shall assume this is not the case. Misanthropes, for example, cannot claim that the mere addition of further people changes their circumstances in a way which jeopardises the achievement of egalitarian justice.

We instead assume that procreative choices may have effects which are of moral relevance because they concern another aspect of the immigrants' circumstances, namely the share of impersonal resources available to each of them. Such effects might vary greatly depending, amongst other things, on what background institutions are in place. Here, however, we shall be concerned primarily with effects arising because of the immigrants' shared commitment to equality of resources. Given such a commitment, we suppose, the immigrants would strive to ensure that the impersonal resources devoted to the lives of newly-born islanders be of no less value than those enjoyed by the previous generation, with whom they will interact and form a political community.⁸ Had those newcomers arrived by accident rather

⁸ As applied to the first two generations of immigrants, the assumption is consistent with Dworkin's remarks about inheritance, or "the troublesome issue whether those who have amassed wealth through sacrifices in their own lives should be allowed to pass this on as extra wealth for their children", and his suggestion that "Equality of resources might find

than by design at different times then there would be weighty egalitarian reasons against giving latecomers fewer initial resources merely because of their time of entry. We presume then that the newly-born might object to any thing less than equality on similar grounds. Such a presumption is debatable, but without powerful opposing reasons, seems warranted.⁹

If this presumption is granted, then acting on a desire for children may produce outcomes strikingly different from those associated with many other ambitions. For example, if after the auction one group of adventurous immigrants decides to invest their own resources in a risky commercial enterprise then, even if that venture fails, their undertaking it will not in itself diminish the initial share of resources legitimately available to others. However, so long as the total stock of resources available for distribution does not increase with the addition of further children, the same need not be true if the group decides instead to reproduce. To consider the matter starkly, suppose that couples within the former group each produce four children, whilst the remaining immigrants forego parenthood. If so, and total resources remain constant, then, even if each couple divides their resources amongst their offspring on reaching maturity, those children may still prefer the resources enjoyed by members of the former group. Thus, an equal share of resources can be secured for them only if the share of those who remained childless is diminished. If we grant the initial assumption, then those childless islanders are required to relinquish some of their resources not because of their own choices but those of others.

The previous example possesses an important further feature. Recall that the addition of extra children did not increase the stock of resources available for distribution to an extent which maintained its size per capita.¹⁰ That feature is

some way to recognize and at least reduce inequality generated in this way, perhaps ... by regarding one's situation as a beneficiary as an in principle insurable hazard." See, respectively, Dworkin 1981b, 334; 1990, 105, fn. 53. The assumption is also consistent with Dworkin's view that "our concern for future generations is not a matter of justice" since that view concerns distant individuals whose identity is not yet fixed. See Dworkin 1993, 77-78 and, for further discussion of the general issue, or 'Non-Identity Problem', Parfit 1984, Ch. 16.

⁹ Similarly Rakowski claims that "everyone born into a society is entitled, at a minimum, to the same quantity of resources that all who participated in the original division of the community's goods and land received" (Rakowski 1991, 150, and, for a plausible qualification, fn. 2).

¹⁰ Note that Dworkin himself recognises that treating justice as a parameter on personal well-being does not preclude regarding aggregate as well as distributive matters as appropriate objects of ethical concern. For example, in Dworkin 1990, 73, 94, fn. 49, he suggests that, providing distributive justice is secured, individuals have reason to be concerned with the magnitude of resources available for distribution. Thus, denying that he is concerned exclusively with distribution, he writes, "I do not mean, of course, that the absolute value or quality of the resources a person commands makes no difference to the life he can lead, so long as he has a just share of whatever there is. Someone who lives in a richer community or age, with a just share of its wealth, faces a more interesting and valuable challenge, and can lead a more exciting, diverse, complex and creative life just for that reason ... I could have a better life, I assume, if circumstances changed so that justice allowed me more resources." He subsequently notes that "the challenge a person faces is more interesting and valuable as

important, since if the contrary were the case, and procreation always did so, then it would be less pressing to ask the extent to which some individuals can be required to bear the economic costs of others' children. However, unfortunately for both the immigrants and humanity, that feature is not unrealistic. Population growth under some actual conditions will lead not only to diminished per capita resource availability in the short term, but also greater depletion of non-renewable resources and pollution in the long run.¹¹ Nevertheless it is important to remember that under other conditions procreation will possess the benign consequence it elsewhere lacks. For children, as many have observed, need not be simply a form of consumption for their parents. They may also be a form of investment which, via the creation of human capital, enhances the stock of resources available for distribution in a way preferable not only to their parents but to others. For example, on maturity they may ensure that the initial generation of immigrants enjoys a level of goods and services which otherwise would have been unavailable. Moreover, population growth might also stimulate technological changes, or facilitate economies of scale, which enable the immigrants to use the finite natural resources available to them more efficiently.

Thus, depending on circumstances, the arrival of further children may have very different aggregative implications on the total stock of resources available for egalitarian distribution. We shall, therefore, assume that procreative acts, like other forms of production or consumption, may possess both *negative* and *positive externalities*. They may confer either costs or benefits upon non-producers which arrive without their consent and are not intended by the agents producing them.¹² Before elucidating the present relevance of this distinction, we turn to the question of how the immigrants might ensure that newly born islanders enjoy an equal share of resources. We begin with a suggestion made by Eric Rakowski in a recent attempt to develop a theory of distributive justice, termed *equality of fortune*, broadly inspired by equality of resources.¹³

his and his community's prosperity increases; so we prefer to have a greater to a lesser stock of resources, provided that in each case our stock is just."

¹¹ Indeed many think such conditions hold in the world today, and that rapid population growth – along with other factors such as domestic and international injustice, and corrupt and inefficient political and economic institutions – is one fundamental source of human misery. Dworkin may have such a view in mind when he writes in Dworkin 1993, 115, that "no American state could plausibly claim an interest in increasing its population: it is a general assumption throughout the world that overpopulation is a more serious threat than underpopulation". For further discussion of this highly complex issue see, for example, Pearce 1993, Ch. 6, Lee/Miller 1991, and Sen 1994.

¹² For an illuminating discussion of various competing definitions of externality see Hausman 1992, 93-98, 110-113.

¹³ How other resourcist conceptions address problems of procreative justice is an interesting question, worth further study. For example, Hillel Steiner's left-libertarian conception does not balk at taxing parents, but justifies it as the payment of rent for a natural resource (*germ-line genetic information*) that they have unilaterally appropriated, but to which a common entitlement exists. See Steiner 1994, 273-280.

4. Equality of Fortune

Rakowski's suggestion contrasts two general methods whereby the immigrants might attempt to ensure that each newly born islander receives an equal share.¹⁴ According the first, which we shall term *universal provision*, each islander contributes, whilst on the latter method of *parental provision*, the requirement to do so is confined to those responsible for the new individual's existence.

Rakowski forcefully argues that the first proposal is vulnerable to a decisive objection. He writes,

"If new people just appeared in the world from time to time, like fresh boatloads of unwitting settlers, and did not owe their birth to the actions of present members of society, then the foregoing principles [i.e. of universal provision] would come into play. But babies are not brought by storks whose whims are beyond our control. Specific individuals are responsible for their existence. 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." (Rakowski 1991, 153)¹⁵

Posing the following challenge he immediately adds,

"With what right can two people force all the rest, through deliberate behaviour rather than brute bad luck, to settle for less than their fair shares after resources have been divided justly? If the cultivation of expensive tastes, or silly gambles, or any other intentional action cannot give rise to redistributive claims, how can procreation?"

Rakowski's remarks may persuade some proponents of universal provision to pause, but they are not as decisive as they first appear.¹⁶ His objection rests, we shall argue, on a minor premise which his opponent need not accept.

According to that premise, as Rakowski himself states it, if universal provision is instituted then each immigrant "is required to share their resources with the new arrival" in a way which forces them "settle for less than their fair shares after resources have been divided justly". Our previous remarks about the positive external effects of procreation, however, suggest that universal provision need involve no such requirement. For an expansion in the island's population could, through the various mechanisms mentioned, increase the total resources available for redistribution. Furthermore, it could do so to such an extent that each individual would

¹⁴ See Rakowski 1991, 150-55. The first method involves a number of variations depending on whether population size is constant, falling or growing.

¹⁵ Displaying similar exasperation, John Stuart Mill writes, "... when persons are once married, the idea, in this country, never seems to enter any one's mind that having or not having a family, or the number of which it shall consist, is amenable to their own control. One would imagine that children were rained down upon married people, direct from heaven, without their being art or part in the matter; that it was really, as the common phrases have it, God's will, and not their own, which decided the numbers of their offspring." (Mill 1965, 369)

¹⁶ For example, Steiner describes the passages quoted above, with the exception of Rakowski's first sentence, as "surely correct". See Steiner 1994, 278.

prefer the set of resources associated with the expansion to the set which they would otherwise have held.¹⁷ If that were in fact the case, then even if the childless were required through compulsory taxation to contribute to the production of human capital, in the form of others' children, then their being made to do so would not jeopardise their initial share of resources. In such fortunate circumstances those children's parents could credibly claim that they, as Locke's original appropriators might remark in their defence, "do not lessen but increase the common stock of mankind" (Locke 1960, ch. 5, sec. 37, 294).

Thus, even if the advocate of universal provision were to grant Rakowski's major premise, that no individual be forced to accept less than they would have enjoyed in an equal initial division, she need not concede his objection, without considering the extent to which procreation exhibits a positive externality. To express the same thought somewhat differently, consider the following analogy. If one islander burns vegetation on her property, which deposits fertility-enhancing ash on her neighbours' land, then they cannot automatically reject her request to supply resources to clean her property, or condemn her seizing such resources, *on the ground that doing so would diminish their initial share of resources*. Whether they can in fact do so will depend upon possibly complex counterfactuals about the resources they would have enjoyed without her activity, and their preferences regarding them.

Before proceeding to express agreement with other aspects of Rakowski's position, we first attempt to explain why he does not anticipate the previous reply to his objection, despite the fact he recognises population growth might be claimed to produce positive externalities. Such is the case, we conjecture, because he envisages the advocate of universal provision appealing to those externalities as a defence of her position rather than as merely a rebuttal of his objection. Believing that such an appeal is ill-equipped to serve the former purpose, Rakowski implicitly infers that it cannot play the latter more modest role. His inference, however, is invalid. The mere fact that population growth is universally advantageous does not, as we shall later argue, establish an enforceable requirement for all its beneficiaries to contribute something to the costs of its production. Nevertheless, it may suffice, as we have already shown, to establish that the requirement is not as demanding as Rakowski supposes, and therefore perhaps unobjectionable on resource egalitarian grounds.

To confirm this conjecture, consider how Rakowski treats the appeal to positive externalities, which he states as follows:

"One might try to argue that because additional persons will in time benefit people other than their parents, *everyone ought to contribute to the stock of resources to which those additional persons are entitled*; it would be unjust to allow them to profit without paying the price." (Rakowski 1991, 153, emphasis added)

¹⁷ Because such changes would be preferred they could be considered improvements even if Dworkin is correct to claim that "Once social wealth is divorced from utility ... it loses all plausibility as a component of value. ... It is false that ... an individual is necessarily better off if he has more wealth, once having more wealth is taken to be independent of utility information." (Dworkin 1985, 245)

Clearly then, as the italicised phrase suggests, he envisages the appeal constituting what we have termed a defence rather rebuttal. Insofar as he undermines it only in the former guise, our reply to his objection retains force. To assess whether that is the case, note how Rakowski dismisses the relevance of positive externalities to his position. He does so by arguing that,

"... externalities of this sort rarely seem significant, and in any event parents and siblings are apt to be by far the major beneficiaries. It is highly questionable, furthermore, whether one person may compel another to pay for a benefit the latter did not request. If A landscapes B's yard while B is away on holiday and then demands that B pay him for his trouble, even though B never agreed to pay, then B has no legal right to payment. Nor does he appear to have a moral claim." (Rakowski 1991, 153-54)

The bulk of this statement leaves our objection untouched. In his initial remark about the probability and distribution of procreative externalities, however, Rakowski does challenge not only one defence of universal provision but also our rebuttal of his objection. The challenge, however, lacks force for at least two reasons. First, it does not question the occurrence on some occasions of significant externalities but only their frequency. Yet this is inadequate to warrant the constant opposition to universal provision which Rakowski's statements express. Second, his doubts about the frequency of positive externalities require some empirical support but receive none, and for that reason are unpersuasive. Our suggestion that an advocate of universal provision might reject the minor premise of Rakowski's argument, therefore, remains intact.

5. Procreation and the Appeal to Fairness

From the previous discussion of one treatment of procreative justice we may conclude that whether the production of children is accompanied by positive or negative external effects upon a community's stock of resources has moral relevance to the demands of justice. The presence of the former may suffice to establish that procreators are not akin to polluters, who can justly be required to compensate those whose resources diminish in value because of their activity. Some, though as we saw not Rakowski, argue for a more ambitious conclusion.¹⁸ According to them justice demands that, where procreation generates a sufficiently large non-excludable positive externality, the financial burden of producing children should be shared. It should, for reasons of fairness, be borne by all those who willingly benefit from those children's existence, rather than solely by those responsible for it.

In this section we turn to criticise that suggestion, which is commonly voiced by, amongst others, those who fear the long term effects of population decline on current adults within the developed industrial economies.¹⁹ Before describing the suggestion in greater detail, it is important to note that it need not be animated by any such fear, for it appeals to a conception of justice rather than merely

¹⁸ For provocative and original discussion see George 1987, 1994.

¹⁹ For a popular expression of the view see Rauch 1989.

efficiency.²⁰ Thus, it does not possess the following form, familiar from economic arguments for the collective provision of public goods. According to that type of argument if at least some of the benefits of additional children are non-excludable, whilst their financial costs are considerable, then there is a danger of the good being undersupplied. Intervention is then warranted if it changes the structure of incentives facing potential parents in a way which improves everyone's prospects. We shall not discuss such arguments further, but suppose that they could be accommodated within liberal equality. Indeed, their form has been endorsed by Dworkin in dealing with the provision of other public goods, and some transaction cost problems.²¹

Rather, the argument we are about to consider applies even if there is no risk of undersupply. It might be voiced by immigrants who are confident that sufficient individuals will choose to become parents, but nevertheless are unsure whether those parents should be left to bear the full costs of feeding, clothing and educating their children out of their fair share of resources, or should instead be the beneficiaries of subsidies or tax allowances. Furthermore, it is also important to emphasize that the argument is not animated by a concern for the interests of children themselves. It is consistent with such a concern, which quite appropriately should possess great weight in actual societies, where economic inequality abounds, and no perfect mechanism exists to ensure that the just level of transfer between parents and their children takes place. But the argument still applies even if there is no risk that children will receive an unjust initial share of resources when individuals other than their parents are not required to contribute to it.

As we initially mentioned, a principle of fairness, rather than attention to either inefficiency or vulnerability, grounds the present argument for universal provision. To understand its source consider Rawls' widely-discussed statement of one such principle, according to which

"... a person is required to do his part as defined by the rules of an institution when two conditions are met: first, the institution is just (or fair), that is, it satisfies the two principles of justice; and second, one has voluntarily accepted the benefits of the arrangement or taken advantage of the opportunities it offers to further one's interests." (Rawls 1971, 111-12, 342-350)

Explaining its intuitive rationale, Rawls adds,

"The main idea is that when a number of persons engage in a mutually advantageous cooperative venture according to rules, and thus restrict their liberty in ways necessary to yield advantages to all, those who have submitted to these restrictions have a right to similar acquiescence on the part of those who have benefited from their submission. We are not to gain from the cooperative labors of others without doing our fair share."

What then are the implications of fairness, thus conceived, for the choice between universal and parental provision facing Dworkin's immigrants?

²⁰ For the latter type of argument for subsidised procreation see, for example, Folbre 1994 and Burggraf 1993.

²¹ See, for example, Dworkin 1985b, 223, and his discussion of the "Principle Of Correction" in Dworkin 1987, 31-34.

An advocate of the former proposal, inspired by the principle of fairness, might advance the following argument for child allowances or parental tax exemptions. The initial distribution of resources is *ex hypothesis* fair. Furthermore, additional children create a positive externality which those with few or no children willingly enjoy, or would be prepared to pay for even if, as is in fact not the case, they could be excluded from those benefits. Yet the production of those children, let alone guaranteeing them a fair initial share of resources, has financial costs for their parents, who, since they cannot acquire ownership rights in their children, receive no return for bearing those costs. Thus, other things being equal, they will enjoy a lesser share of resources than those who have fewer children. Under such circumstances, it is unfair for the latter to contribute nothing to the production costs of children from whom they benefit. They should, therefore, be required to share those costs through universal provision via child allowances or tax exemptions.

The previous argument, we suggest, has some force. Furthermore, it actually is invoked, in a rough form, by many who argue that the costs of producing further children should be socialised because their benefits cannot be internalised. For example, Rolf George condemns what he describes as the *imbalance* between parental burdens and non-parental benefits by appealing, amongst other considerations, to a principle of fairness (see George 1987, 28-31). Stressing the non-excludable positive externalities they generate, he writes

"Children grow up and become, among other things, providers of pensions. They are, or should be, free agents, but they are also production goods, capital investments. They cost a substantial sum to produce. Now since they are free agents, escaping thus the control of their investors, they become *res omnia*, benefit everyone. Who should reap the benefits they have to dispense?" (George 1987, 31)

He then proceeds to draw a comparison, clearly intended to be forceful, in which appeal to a principle of fairness is implicit. He asks us to

"Imagine a group of people who get together to build a dam, or some other public project. Now suppose that the benefits of the dam are turned over, without compensation, to those who did *not* help build it. Not only that, they are given those benefits precisely *because* they did not help. Would this not be unjust? In what does this injustice differ from the imbalance? I suggest there is no relevant difference. The imbalance is unjust ..."²²

We now turn to ask how much force such an appeal actually possesses. Should liberal equality endorse Rawls' principle of fairness, and if so, does it secure George's conclusion? The former question is the subject of considerable debate, since the principle has been subject to frequent criticism.²³ Referring to it under a

²² George stipulates that those who eventually benefit from the dam do so *because* they did not create it, in order to maintain an analogy with an earlier example in which parents, having spent more on their children, are less able in later life to purchase their labour than non-parents, who chose instead to save. For the example see George 1987, 1-3.

²³ See, for example, Nozick 1974, 90-95, and Simmons 1979, 101-142. For a more favourable account see Arneson 1982.

different name, and echoing one of Robert Nozick's notorious objections, Dworkin himself has written that,

"... the fair play argument assumes that *people can incur obligations simply by receiving what they do not seek and would reject if they had the chance*. This seems unreasonable. Suppose a philosopher broadcasts a stunning and valuable lecture from a sound truck. Do all those who hear it – even all those who enjoy and profit from it – owe him a lecture fee?" (Dworkin 1986, 194, emphasis added)

The appeal to fairness stated above, however, need not possess the italicised feature which Nozick and Dworkin – arguably incorrectly – find present in Rawls' view. Thus, even if their objection is acceptable, it is inapplicable, since the above argument assumed that individuals would prefer population growth even if they were required partly to finance it.

Suppose then that the appeal to fairness survives the Nozickian challenge rehearsed by Dworkin. Its critics might rather pursue another libertarian route, mentioned by Rakowski, which asserts that an actual request is necessary in order to generate an enforceable obligation toward ones beneficiaries. But since the price of such pursuit, amongst other things, the rejection of the principle of fairness in any form, we shall adopt a more economical strategy. It suggests that, even if the principle, modified to escape Dworkin's remarks, is plausible, it will not sustain universal provision as its conclusion.

To understand why the inference from principle to conclusion is invalid, note that the principle concerns a very specific class of positive externalities. It does *not* claim that individuals are required to contribute to the costs of producing *any* spill-overs from which they benefit, even if they would be willing to pay the requisite price. Such a claim, which renders all such externalities the source of corresponding enforceable obligations, would be highly implausible. Instead the principle concerns non-excludable goods which are produced by *cooperative activity* in which individuals *bear some cost*, which they would not otherwise bear, *in order to produce the good*. Thus, both the intentions of, and the costs borne by, producers of public goods are central to the appeal of the principle of fairness. It condemns those who take advantage of such individuals rather than simply those who freely enjoy goods for which they would be prepared to pay.

If the previous diagnosis of the attraction of the principle of fairness is plausible, then merely enjoying the beneficial consequences of others' procreative activities need not violate the principle. Such is the case for at least two reasons. First, the production of those externalities is consistent with a wide range of parental motivation. For example, in having children, parents might not aim to produce those effects either by themselves or as part of a cooperative venture. Instead they might have those children regardless of others' cooperation, or whether a positive or even negative externality resulted from their decision.²⁴ Second, in describing the immigrants we assumed that those who chose to procreate did so because it

²⁴ Indeed, to claim that the production of children generates positive *externalities* implies, on Hausman's aforementioned account, that their effects on third parties were not intended.

advanced their own well-being, or that of their loved ones. Furthermore, that assumption was not an extravagant one to make either about fictional or actual parents, in our own society. In such circumstances, we conclude, the principle of fairness is unsuitable as a defence of universal provision.²⁵

Admittedly, however, the moral significance of procreation might be different in other circumstances. Suppose, for example, the immigrants resemble members of an endangered tribe who feel morally bound to reproduce, perhaps at considerable costs to themselves as individuals, in order to maintain the continuity of their community. Although an appeal to the principle of fairness might have more force in such circumstances, they are nevertheless very different from the imaginary or actual conditions we address. For, as George himself stresses, developments in advanced economies "... have left for most people only one motivation for having children (when children are intentionally conceived), namely, the expected gratifications of parenthood. These may range from the enjoyment of infant cuteness to pride in the children's achievements to such things as the perpetuation of a name or keeping wealth or a business in the family, etc." (George 1994, 209-10) But, he goes on, "... it is absurd to suppose, that people have children in order to give those who have none a more comfortable retirement".

In thus characterising parenthood, George himself supplies a morally relevant difference which damages the comparison to which he appeals. Presumably the labour performed by the workers in his dam-building example, unlike that of parents on his own admission, was both arduous and undergone as a means to produce certain beneficial consequences. Had those consequences been a pleasant surprise, which followed an enjoyable physical activity, one would regard an appeal to some principle of fairness on their behalf very differently – perhaps as humour but not as compelling argument. Thus, even if we grant that such workers suffer an injustice when they receive fewer benefits from their toil than non-workers, little follows in the quite dissimilar case of parents.

George's example, however, does suggest a convenient means of introducing the issue to which we now turn. Modifying it, let us suppose that instead of some public good, the builders' labour threatens to produce some negative externality, such as flooding or loss of fertility in adjacent land, the price of which consequently diminishes. Should those landowners be compensated by the builders for such a loss? Or should they instead be expected to bear it, and even pay the builders for their unsolicited and harmful construction? In the following section we ask analogous questions about procreation.

²⁵ Those who doubt this conclusion should ask themselves whether fairness requires a subsidy for those who, in circumstances where population reduction is a public good, unintentionally and costlessly produce positive externalities by choosing not to become parents. The fact that an evenhanded appeal to fairness would accept such an implication is frequently, and conveniently, overlooked.

6. Internalising the Effects of Procreation

Those questions arise since, as we have already mentioned, under some circumstances the addition of new members to a society may, on balance, diminish rather than improve the circumstances of some previously existing members. Such burdens might involve the following: a diminution in the per capita share of both privately and publicly-owned natural resources (mineral reserves, energy sources, fisheries, forests, *etc*); an increase in pollution, crowding, noise and environmental problems; an excess supply of labour and thus increased unemployment; and greater demand for public health and education.²⁶ Our remaining remarks address the implications of resource egalitarianism in such circumstances.

Clearly the presence, extent and distribution of many such burdens will depend greatly on the institutional background adopted by a society. *Laissez-faire* institutions, for example, might leave the funding of children's education to the discretion of parents or charities, in which case reproduction would lead to a lesser diminution in others' resources than might otherwise be the case. More interventionist institutions, however, would confer upon children an enforceable entitlement to education, thereby producing such a burdens. Nevertheless such institutions could exhibit important variations in how they distributed such burdens. Some, like many existing welfare states, might require each tax-payer to share the child's educational expenses, thus subsidising the ambitions of parents at the expense of those with no or fewer children. Others might adopt Mill's position and, insofar as circumstances allow, legally require the cost to be borne by parents, providing educational subsidies only to the poor.²⁷

As this case illustrates, the specific character of background institutions will affect whether procreation has negative externalities or whether instead its costs are internalised. Thus, children will generate an externality in a welfare state. However, providing no parents are too poor to finance the required transfers to their children, they need not do so in a Millian society. We assume that in a resource egalitarian society no parents would, through brute bad luck, suffer such impoverished circumstances. The question then is whether the background institutions of such an egalitarian society would, in addition, ensure that the effects of procreation are internalised or whether they would rather permit parents to produce negative externalities.

²⁶ For further discussion of the positive as well as negative economic consequences of procreation, and an attempt to quantify their combined value in different countries, see Lee/Miller 1990; 1991. Other effects, such as an unwelcome reduction in our moral options induced by the needs of yet more human beings or distress at their suffering, although important to many, are less amenable to economic analysis.

²⁷ See Mill 1991, ch. 5, 117, where he writes, "It still remains unrecognized, that to bring a child into existence without a fair prospect of being able, not only to provide food for its body, but instruction and training for its mind, is a moral crime, both against the unfortunate offspring and against society; and that if the parent does not fulfil this obligation, then the state ought to see it fulfilled, at the charge, as far as possible, of the parent." Cp. Mill 1994, Bk. V, sec. 8, 339-341.

Suppose, for example, that one immigrant couple have a single child, while their neighbours produce six. Should the former subsidise the education and health needs of the larger family, bear the greater environmental costs they generate, and, moreover, perhaps relinquish a portion of their wealth to ensure that each new inhabitant eventually enjoys an equal share of resources across her life?

Some of Dworkin's remarks, quoted earlier, suggest that resource egalitarians should resist such a proposal for the following reason. They, unlike welfare egalitarians, want the background institutions, such as the price system, of a just society to ensure that,

"... people decide what sorts of life to pursue against a background of information about the actual costs their choices impose upon other people and hence on the total stock of resources that may fairly be used by them."

(Dworkin 1981b, 288)

Institutions which are not designed to internalise, to any degree, the negative effects of procreation will not ensure that potential parents are aware of the costs to others of them enlarging their society. Thus, just as in actual societies the environmental costs of many products are not reflected in the market prices paid by their consumers, the true opportunity costs to others' resources of reproduction may be masked to parents. As already mentioned, discrepancies such as these may be morally significant if they result in inefficient outcomes.²⁸ But they are not of concern to egalitarians *only* if they do so, since if individual shares are not protected from diminution caused by others' expensive ambitions, then the achievement of equality of resources itself may be jeopardised. Given such a possibility, we provisionally conclude, resource egalitarians have a reason to ensure that the costs generated by additional children are not completely socialised but, at least to some degree, internalised. Only by doing so can individuals form their parental ambitions in the manner considered appropriate by Dworkin, namely "with a sense of their cost to others against some presumed initial equality of economic power" (Dworkin 1981b, 302). Such a conclusion, however, might meet with a number of critical responses, two of which we address in our remaining remarks.

The first such response denies that institutions which socialise the costs of children jeopardise equality even if they diminish individuals' per capita share of impersonal resources. It claims that equality of resources is preserved, providing that such institutions allocate the burdens equally and the distribution of resources remains envy free. Thus, it is perfectly consistent with ideal justice, construed as equality of resources, that some bear the economic costs of others' procreative ambitions. Although some resource egalitarians might welcome this suggestion, there are good reasons to doubt that it is available to them. The suggestion supposes that the maintenance of envy freedom is sufficient to preserve equality of resources. But, as we have already seen, the elimination of envy is but one aspect of that ideal. Some other components, we now argue, render negative procreative externalities more problematic.

²⁸ For discussion see Miller/Sartorius 1979.

Suppose, for a counter-example to the first response, that some immigrants, inspired by the Easter Islanders, propose a compulsory head tax in order to create a fund which subsidises sculpture, making viewing and production available to all in public places and studios. With some provisos soon to be discussed, we assume that Dworkin's view opposes such a proposal, on the grounds that it would unjustly deprive other immigrants of resources which are legitimately theirs. In this respect it resembles the welfare egalitarian's view that more privately-owned resources should be awarded to finance the ambitions of those with expensive tastes. It differs merely because in depriving some of their privately-owned resources it does not transfer those same ownership rights to other individuals. Rather it converts them into publicly-owned resources earmarked for a specific purpose, thereby preserving envy freedom whilst still favouring the ambitions of sculptors over non-sculptors.

As noted earlier, Dworkin objects to the egalitarian welfarist view by, amongst other things, describing the case of Louis, who contemplates acquiring certain expensive tastes, for instance, for fine food, opera or skiing. Here, Dworkin claims, egalitarian justice demands only that,

"Louis has a choice. He may chose to keep the presently equal resources I said he had, and settle for a life with the enjoyment he now has but without the tastes and ambitions he proposes to cultivate. Or he may keep his present resources and settle for a life that *he* deems more successful overall than his present life, but one that contains less enjoyment." (Dworkin 1981a, 237)

Nevertheless, he immediately insists,

"It is quite unfair that he should have a third choice, that he should be able, at the expense of others, to lead a life that is more expensive than theirs at no sacrifice in enjoyment to himself just because he would, quite naturally, consider *that* life a more successful life overall than either of the other two."

In respect of the latter type of choice, we suggest resource egalitarians have reason to treat individuals contemplating having children similarly. Thus, though potential parents should be allowed to decide whether or not to increase family size, an injustice exists if resources are redistributed from others to their offspring as a result of their reproductive decision. Transfers to the latter, in the case without positive procreative externalities presently under consideration, should ideally take place at the expense of only their parents' share of resources and should not impinge upon others.²⁹

We noted earlier, however, the provisional nature of the above resource egalitarian objection to the public provision of a good such as sculpture. We now briefly explain why such an objection is provisional, namely because Dworkin acknowledges that there are at least two legitimate reasons for intervention even in egalitarian market processes. The former arises from a *derivative* concern with persons' interests, whilst the latter stems from a *detached* concern with the achievement of certain impersonal goods, which Dworkin terms intrinsically valuable. Even if each

²⁹ In this respect the analogy with Louis is only imperfect, since he keeps his initial share of resources even if he adopts an expensive ambition.

reason has force in relation to some other activities, we shall suggest that in neither case do such considerations support subsidies to procreation.

Consider first the derivative argument. In addressing the question "Can a Liberal State Support Art?", Dworkin has replied affirmatively, at least where doing so is necessary in order to preserve individuals' awareness of the complex and diverse forms of life open to them.³⁰ Thus, under appropriate circumstances, public funding of sculpture would not unjustly deprive some of resources they legitimately hold. Suppose that conclusion is granted. It is surely implausible to think that the concern to sustain a diverse cultural environment could support a similar conclusion about procreation. Though it might become still more expensive, such an entrenched and familiar form of life as parenthood is unlikely, in the foreseeable future, to slip from public awareness in the same way as the endangered cultural structures Dworkin has in mind. Does the detached argument fare any better than the derivative argument as a means to exempt procreators from the presumption that individuals should bear the costs of their own ambitions?³¹

More recently, in *Life's Dominion*, Dworkin suggests that it can be legitimate for the state to protect certain objects of cultural or environmental value not (merely) because of their contribution to the well-being of particular individuals but due to their intrinsic worth.³² Perhaps there are circumstances under which such an

³⁰ For further discussion see Dworkin 1985b, 233, where he claims, "We inherited a cultural structure, and we have some duty, out of simple justice, to leave that structure at least as rich as we found it." Endorsing that claim, see also Dworkin 1990, fn. 44, where he insists "citizens should choose against a background that includes opportunities and examples that have been thought to be a part of living well by reflective people in the past and that are part of a cultural heritage".

³¹ The question is complicated by the fact that Dworkin subsequently entertains, but does not explicitly endorse, a further derivative argument for collective provision. It involves substantive considerations about what personal goals are worthy of desire rather than simply procedural considerations about the importance of choices being informed by an inheritance and made in conditions of diversity. Thus, in the footnote previously cited, he proceeds to emphasize that "nothing in my argument here denies that a state that has fulfilled the requirements of justice can properly use public funds to support what the market will allow to perish, on the substantive ground that art improves the value of lives available in the community". It is debatable whether Dworkin could endorse such an argument consistently with employing the view that justice is a so-called parameter on well-being in order to render ineffective certain attempts to advance substantive conceptions of the good. Doing the latter, in Dworkin 1990, 116, he insists that individuals "cannot make their own lives better by ignoring the limits justice sets to their power to have a cultural or social environment more congenial to them, because justice is a parameter of the life good for them". Whatever force this type of claim has as a strategic limit on political perfectionism depends on the extent to which wealth, if at all, can be set aside from the process of equal dividing privately-owned resources and employed to advance some other legitimate political aspiration than justice. If one argues that it is considerable, and such resources may be employed to subsidise procreation because so doing improves the value of lives available, one jeopardises an important element of liberal equality. We shall not, therefore, pursue the suggestion further here, since our aim is to address procreation from within liberal equality.

³² See Dworkin 1993, 154, where he writes, "government sometimes acts properly when it coerces people in order to protect certain intrinsic values: when it collects taxes to finance

argument might be extended to procreation. Imagine, to take extreme instances, that the continued flourishing of either humanity itself or of some specific human community is intrinsically valuable, and can be secured only by reproductive subsidies funded by compulsory taxation. If subsidisation of art or nature does not compromise equality of resources, as Dworkin's suggestion implies, then why does that of human reproduction do so, even where it diminishes the size of per capita resources?

A full treatment of this important question must await another day. It would address whether resource egalitarianism can coherently leave sufficient moral space for the collective pursuit of cultural and environmental goods on grounds other than the correction of market failure or the achievement of informed choice against a background of diversity. Even without such a treatment, however, there is a more immediate reason to be sceptical, namely the fact that, under foreseeable conditions, the quantity of impersonal goods produced by procreators is not about to fall below any morally significant threshold. Here we concur apparently with Dworkin's previously noted observation that "... it is a general assumption throughout the world that overpopulation is a more serious threat than underpopulation" (Dworkin 1993, 115). Since the detached argument fares no better, we conclude the provisos on our earlier assumption do not undermine its significance.

7. Tolerating Externalities

It remains, however, to describe and evaluate a second response to the conclusion that institutions which externalise the costs of children jeopardise equality. It claims that to internalise those costs risks jeopardising equality to an even greater degree. Requiring high procreators to shoulder such burdens would produce unacceptable inequalities in the circumstances of children from small and large families, since it would be beyond the means of many parents with numerous offspring to ensure that they did not envy some other children's circumstances. For example, parental income and wealth might not be sufficiently large to eliminate envy.³³ Moreover, even if parents could obtain sufficient impersonal resources by choosing to work for longer hours, or in less desirable positions, that might itself disadvantage their offspring in some other no less morally relevant respect. Therefore, the second response concludes, governments with a genuine concern for equality should tolerate the existence of procreative externalities.

national museums or when it imposes conservation measures to protect endangered animal species ..."

³³ Dworkin 1990, 105, fn. 53, touches upon this possibility. There Dworkin writes "Suppose ... I have more children than you and so must divide their inheritance in smaller shares. Then, although neither of us has invaded resources properly belonging to another, our children will not have equal resources: some will envy what others have. Equality of resources must find some way to recognize and at least reduce inequality generated in this way, perhaps ... by regarding ones situation as a beneficiary as an in principle insurable hazard." It is unclear why he does not consider whether differential reproduction could involve invasion.

It is noteworthy that the second response does not reject our central claim that the achievement of *ideal* justice requires the absence of negative procreative externalities. Indeed, if only imperfections can be tolerated, then the description of the response as tolerant suggests as much. The response merely warns that even greater evils will arise if steps are taken to eliminate such an imperfection. Such a view is quite consistent, for there is no logical difficulty in claiming that a society which socialises the costs of children is *in one way* unjust, whilst conceding that one which refused to do so might display an even greater injustice.

For illustration, compare G. A. Cohen's recent treatment of Rawls' difference principle, which forcefully argues that Rawlsians should recognise the injustice of certain types of incentive-generating inequality (see Cohen 1992). It does so on roughly the ground that such inequalities would not be required if the ethos characteristic of a truly just society was widespread. Individuals would then be animated by non-enforceable egalitarian norms in their occupational choices, as well as their political decisions, and so large incentive payments would not be necessary to increase the expectations of the least advantaged. In this respect, Cohen suggests, many actual incentives resemble ransom payments: for they reward actions the performance of which is required rather than optional, and would be forthcoming if each individual fully complied with the demands of justice.

Nevertheless, Cohen acknowledges, the judgement that an incentive-generating inequality is unjust is quite consistent with conceding that, all things considered, such an inequality should not be eliminated. Indeed, as he explains, overall justice itself may mandate its preservation. Thus,

"One might say, to a child's guardian: the kidnapper is unjustly threatening the safety of the child, and justice to the child demands that you pay him. And one might say, to legislators in a structurally unequal society: the talented are unjustly indifferent to the plight of the poor, and justice to the poor therefore demands that you do not impose very high taxation." (Cohen 1992, 326)

Since we have not so far suggested how, all things considered, resource egalitarian institutions should respond to individuals whose reproductive decisions threaten others' resources, we could address the second response to our argument similarly. So, echoing Cohen, we might say to legislators in a society where some parents are unjustly indifferent to the effects on others of their procreative decisions, that justice to their children demands that they not be taxed more highly. To do so, however, need not exempt those parents from criticism at the bar of egalitarian justice. The fact that requiring others to share the costs of their procreative ambitions is the lesser of two evils, does not render their conduct just, any more than complying with a ransom demand grants the legitimacy of kidnapping. Nor need it preclude attempts to create an ethos inhospitable to their indifference, which might diminish its incidence in the long term.

Indeed J. S. Mill himself recognised the latter possibility. Responding to Malthusian fears about egalitarian overpopulation, he writes,

"There would certainly be much ground for this apprehension if Communism provided no motives to restraint, equivalent to those which it would

take away. But Communism is precisely the state of things in which opinion might be expected to declare itself with greatest intensity against this kind of selfish intemperance. Any augmentation of numbers which diminished the comfort or increased the toil of the mass, would then cause (which it now does not) immediate and unmistakeable inconvenience to every individual in the association...In such altered circumstances opinion could not fail to reprobate, and if reprobation did not suffice, to repress by penalties of some description, this or any other culpable self-indulgence at the expense of the community." (Mill 1965, 206)

Whilst he does not recommend the 'penalties' this passage appears to condone, it is worth noting that a concern with aspects of the moral environment is present in Dworkin's work as well as that of Mill.

Thus, examining the famous Supreme Court decision in *Roe v. Wade*, he concludes,

"States do have a legitimate interest in regulating decisions its citizens make about abortion. It was mysterious, in *Roe* and other judicial decisions, what that interest was, but we have identified it as the legitimate interest in maintaining a moral environment in which decisions about life and death are taken seriously and treated as matters of moral gravity." (Dworkin 1993, 168, and cp. 148-54)

Although here Dworkin aims to ensure only that individuals make decisions in a spirit sensitive to their gravity, rather than to encourage specific choices, it is clear he recognises that a society may be deficient in its mores as well as its legislation and governmental policies. It appears that he would not reject attempts to secure an ethos inhospitable to indifference on the ground that public institutions, rather than individual sentiments, are the appropriate objects of political concern.

We suggest then that, even if the second response is correct in suggesting that the enforced elimination of negative externalities will produce even greater injustices, our previous conclusion still possesses philosophical importance, and may be relevant to practice.³⁴ For the response does not even engage with the central theoretical claim that such externalities jeopardise ideal justice, understood as equality of resources. Furthermore, the response does not undermine attempts to create an ethos fostering responsibility in the exercise of procreative liberty. If egalitarians now take such suggestions more seriously than they otherwise would, then our task for the moment is complete.

³⁴ Moreover, the suggestion may not hold in certain circumstances. Much will depend on the range of policies available to the state to achieve redistribution within the family. For example, as Rakowski 1991, 166, notes, it might be possible to allow parents to pay the cost of their children after the latter have reached maturity. If it were feasible to prevent them saving at an earlier date to cover such payment, then such a scheme would be more likely to internalise costs without jeopardising the upbringing of children from large families.

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