https://doi.org/10.1017/S026505250219114X Published online by Cambridge University Press

HOW EQUALITY MATTERS*

By Hillel Steiner

I. Introduction

"Should differences in income and wealth matter?" is a paralyzingly big question. Does it refer to some differences? All differences? Daily differences, periodic ones, initial ones? Do they matter regardless of how income and wealth are acquired? Regardless of what can be done with them? Regardless, indeed, of what 'mattering' means?

To escape the paralysis, we evidently have to constrain our attempts to answer the original question; we do this by making various simplifying assumptions. More specifically, what we do is to get hold of some roadworthy moral intuition—in this case, one that I will call *sibling parity*—and then see how the aforementioned battery of assumptions steers this intuition in the direction of an answer. Doubtless, whatever gets filtered out by those assumptions inevitably makes a heavy contribution to counterarguments aimed at circumventing the given answer. So, on that cautionary note, let us begin with the assumptions.

II. Assumptions

Mattering, I will suppose, can have a general sense and at least one more specific sense. For something to matter in the general sense, it looks like its presence or occurrence must have positive (or negative) moral value, and its absence or nonoccurrence must accordingly be an object of moral concern (or approbation). It matters that my young children go for a regular dental checkup, but it does not matter whether they go on Tuesday or Wednesday. Of course, it could come to matter on which of these days they go: Wednesday might turn out to be the only day that they can have their after-school music lessons. But if it does not, and if no other such constraining consideration arises, then the choice of day for going to the dentist does not matter.

A more specific sense of mattering is motivated by the fact that, typically, more than one thing matters in the general sense of mattering. My childrens' attending their music lessons matters, as does their having their dental checkup. If two or more things matter positively, and if the

* This essay has benefited considerably from comments supplied by Jerry Cohen, Peter Vallentyne, Andrew Williams, the editors of *Social Philosophy and Policy*, and the other contributors to this volume.

 © 2002 Social Philosophy & Policy Foundation. Printed in the USA.

disjunctively performable actions respectively required to achieve them are—as is so often the case—*jointly unperformable*, we find ourselves uncomfortably having to determine which one matters more. Philosophers offer various different accounts of how these determinations can be made. One method is to find some single common underlying value that itself explains why both of these jointly unachievable things matter, and then to ascertain which of them would realize that value to a greater extent. Often enough, the different things that matter to us are readily subjected to this sort of commensurating calculus.

But some appear not to be. Where a single underlying common value is not to be found, we are perforce compelled to consider which *kinds* of mattering thing matter more, and which matter less, than others. That is, we are compelled to *rank* these independently valuable kinds of thing.[1] Just how these rankings can be determined is a subject of profound complexity, and one into which I shall not enter here.[2] But however uncertain this manner of determination may be, there is one thing we can know for sure: one of these ranked kinds of mattering thing will be found to matter *most*. It will enjoy lexical primacy over the rest, and any demand instantiating it will thus be more important—will matter more—than any other kind of demand with which it is jointly unsatisfiable.[3] In the context of political philosophy—that is, in the context of what makes its concerns a distinct subset of those of moral philosophy—the demands of this lexically prime value will have a claim to *legal enforcement* that is denied to others. This is the more specific sense of mattering that I have in mind.

That is one simplifying assumption. Here is another, or rather, two more. Should differences in income and wealth matter, regardless of what

[1] Or we can, alternatively, *weight* them (i.e., numerically). I will here confine my remarks, on the additional complications raised by this possibility, to footnoted asides, since they do not centrally affect the main thrust of this essay. Ranking reflects an incommensurability, a discontinuity, between different kinds of mattering thing. Weighting reflects an exogenous continuity between them: lacking any *shared* empirical (i.e., measurable) property that is valued, their relative scaling is determined by reference to numbers assigned to them as a matter of logically unconstrained moral choice. This is importantly distinct from the endogenous continuity implied by a single common underlying value; where such a value is present, all mattering things are presumed to share a particular measurable empirical property that is valued (such as being productive of happiness), and their relative scaling is deducible solely from the magnitude of that property. Those kinds of mattering thing that are ranked or weighted are, so to speak, values in their own right. But whereas the 'better than' relation—mattering more—is represented *ordinally* in a ranked set of values, in a weighted set of values it is expressed *cardinally*.

[2] Cf. Hillel Steiner, *An Essay on Rights* (Oxford: Blackwell, 1994), chap. 4, where I argue that *some* of these rankings can be deduced from others, while those others are themselves not deducible. The same is not true of weightings.

[3] This is not true in a set of *weighted* independent values. There, questions of which of two competing demands of different kinds matters more are answered not only by reference to the weights of the independent values respectively underpinning them, but also by reference to the extent to which satisfying either demand would realize its underpinning value. If family loyalty and patriotism are two such independent underpinning values, then even if the former is the more heavily weighted, it is nonetheless possible that a major act of patriotism matters more than does a minor act of family loyalty.

https://doi.org/10.1017/S026505250219114X Published online by Cambridge University Press

can be done with them? I am going to assume that one thing that can be done with income and wealth is mutual conversion: that (contractually unencumbered) income and wealth can be readily substituted for each other by those who have them—loans can convert income into wealth, annuities do the reverse, and so on. That is, I am not going to devote separate discussion to income and wealth when considering whether differential holdings of them should matter: hereafter, I will just refer to them jointly as *wealth*. There are undoubtedly many interesting issues that could be raised by such separate treatment. And, in many legal and political contexts, glossing over this distinction, as I propose to do, would be a surefire recipe for irrelevance.

My excuse for avoiding that distinction here is prompted by a further assumption: namely, that the legal and political context I shall take as the background for what follows—as what matters in the more specific sense—is a classical liberal or libertarian one: one in which all or most property titles are held by private individuals or groups, in which the prevailing legal regime is relatively permissive on what are loosely called "social issues," in which the state exercises little or no regulatory power over the economy, and in which everyone is possessed of all the standard personal rights and civil liberties comprising what many of us think of as self-ownership.[4] What can be done with income and wealth in such a society is immensely variable and certainly includes mutual conversion.

One final simplifying assumption is needed to provide the argument that follows with its desired focus. Wealth matters,[5] I take it, for the well-being it delivers. By "well-being" I here mean nothing more than preference-satisfaction. I shall not suppose that this instrumental relation between wealth and well-being is an isomorphic one: the much-discussed

[4] I take *libertarianism* and *classical liberalism* to refer to any political theory or doctrine that exhibits the following three properties: (a) the content of all the particular moral rights it underwrites is constrained by the requirements of self-ownership; (b) the duties correlative to those rights enjoy lexical priority over—are side constraints on the pursuit of—all other moral duties; and (c) those rights are construed along the lines of the will or choice theory of rights (rather than the rival interest or benefit theory), whereby right-holders are vested with the Hohfeldian powers to waive and, alternatively, demand/enforce compliance with the duties correlative to their rights (i.e., right-holders *control* the duties owed to them). These three properties are jointly necessary and sufficient to entail a *historical entitlement* conception of distributive justice. An explication and defense of the will theory is to be found in Steiner, *An Essay on Rights*, chap. 3, sec. A, and in Hillel Steiner, "Working Rights," in Matthew H. Kramer, N. E. Simmonds, and Hillel Steiner, *A Debate over Rights* (Oxford: Clarendon Press, 1998), 233–301. An argument for the aforesaid lexical priority is offered in Steiner, *An Essay on Rights*, chap. 6, secs. A and B. The particular version of libertarianism advanced in this essay has been called *left-libertarianism*. Embracing the above properties, left-libertarianism further maintains that natural resources are justly owned in some egalitarian manner. For an indication of the variety of positions derived from all of these premises, see Peter Vallentyne and Hillel Steiner, eds., *The Origins of Left-Libertarianism: An Anthology of Historical Writings* (Basingstoke, UK: Palgrave, 2000); and Peter Vallentyne and Hillel Steiner, eds., *Left-Libertarianism and Its Critics: The Contemporary Debate* (Basingstoke, UK: Palgrave, 2000).

[5] In the general sense of 'matters' sketched above.

https://doi.org/10.1017/S026505250219114X Published online by Cambridge University Press

existence of both ascetics and epicures proves otherwise.[6] What I shall suppose is captured in the thought that an ascetic and an epicure *both* get more preference-satisfaction if the former transfers some of his wealth to the latter than they would get if the ascetic lacked that wealth to transfer in the first place. That is, broadly speaking and within the constraints imposed by everyone's rights,[7] others' wealth, as well as our own, delivers well-being to its possessors. This fairly loose connection between wealth and well-being seems to me sufficiently plausible as not to require much defense. So if well-being matters, wealth matters—even to an ascetic.

Let us suppose that well-being does indeed matter. Although this, too, is an assumption, I am disinclined to regard it as a simplifying one. We could, it is true, *try* to imagine a world consisting *solely* of really stringent ascetics. But a moment's reflection suggests that even with its unrealism aside, this is no easy thought experiment. What would a world of universal and pervasive self-denial look like? I frankly have no idea, and I find quite obscure those religious and other moral doctrines that seem to celebrate such a world as an ideal. And as soon as we reduce, even only slightly, the imagined scale of this comprehensive self-denial—either in some or all of such a world's inhabitants—then, on the previously introduced assumption, well-being, and therefore wealth, matter.

III. Sibling Parity

Since wealth matters, should *differences* in wealth matter, at least in the general sense of 'matter'? It seems hardly open to doubt that at least some such differences should so matter, and matter profoundly. The standard case is siblings. No parent of several offspring seems to be in much doubt that, ceteris paribus, they should each enjoy equal well-being, and hence, ceteris paribus, should each possess equal wealth. And I take it that such parents can therefore have no reason for denying that, ceteris paribus again, the same parity relation should hold within each set of siblings who are the offspring of others. Of course, "ceteris" are rarely "paribus." In addition to ability-level differentials between siblings, factors as arcane as primogeniture rules and as diverse as adult offspring's self-chosen lifestyles have played significant roles in modifying this moral presumption of sibling parity.

[6] As does the existence of disabled persons. For what is relevantly true of epicures here is also true of the disabled—namely, that compared to ascetics, they are both inefficient transformers of wealth into well-being. It takes more wealth for an epicure or a disabled person to attain any given level of preference-satisfaction than it takes for an ascetic to reach the same level.

[7] I enter this additional constraint—rights—to exclude from our accounting the well-being of sadists, or at least the well-being of those sadists who do not confine their characteristic interpersonal activities to masochists.

https://doi.org/10.1017/S026505250219114X Published online by Cambridge University Press

But this is hardly an objection to the presumption as a presumption. For all these modifying factors simply reflect other independently valuable considerations that, as was previously observed, need to be incorporated into the ranking or weighting that also incorporates the value of sibling parity. (This is so, regardless of whether what matters is ranked or weighted.) The presence of these modifying or crosscutting considerations, when they are present, evidently does not imply that sibling parity does not matter. For instance, the fact that some consideration subserved by primogeniture matters does not imply that sibling parity does not matter. All that it implies is that such parity may not invariably matter *most*. Not mattering most is, certainly in principle, entirely different from not mattering at all. And it seems reasonable to expect that the world will continue to allow us the space for these two ideas to be different in practice as well.

Why, then, would not the same also be true of the comparative wealth holdings of *nonsiblings*? Here, I take myself to be pushing at an open door, for the kind of normative latitude opened up by the foregoing paragraph seems to undercut any plausible basis for dissent from the suggestion that it should matter that nonsiblings have equal amounts of wealth. So long as the demand for such parity is conceived of as constrainable by competing other values, that demand looks like an exercise of an entirely uncontroversial—because it is discountable—bearing on our moral reasoning about distributive questions.

That said, however, what the discussion of ordering independent values *does* do is give us an elementary framework for thinking more systematically about the apparently numerous kinds of considerations that would reasonably permit, and even mandate, departures from such universal parity. We need to gather these considerations into a manageable taxonomy that will more clearly illuminate the differences between those mattering things that plausibly justify or permit such departures and those that do not. In this way, we might expect to arrive at some overall view of whether there are interpersonal wealth disparities that matter sufficiently—matter in the more specific sense—to warrant elimination by law.

IV. Permissible Disparity

Let us return to the case of siblings. One reason I might well have for believing that a wealth disparity between two of my adult offspring should *not* matter negatively could arise in the event of one of them being disabled. Indeed, in such circumstances, many would concur with the view that my disabled son *should* have more wealth than his able-bodied sibling, in order that they each enjoy equal levels of well-being. Such a view is, for instance, often reflected in parental bequests.

Of course, even this view could plausibly be held to be subject to a variety of qualifications, most of them having to do with the *source* of the

https://doi.org/10.1017/S026505250219114X Published online by Cambridge University Press

relevant disability. If the disability arose from an action—or, more generally, a lifestyle—that was chosen by the disabled individual and that he knew carried a risk of such disablement, then our inclination to judge the aforesaid wealth disparity as warranted might diminish, and we would tend to regard our sibling-parity commitment as overriding. But if, alternatively, the disability arose from the deliberate or negligent injurious actions of others, then we would regard that disparity as warranted. And, moreover—at least in a libertarian society—those injuring others would be legally required to supply that disparity-making increment in the form of compensation, thereby restoring sibling parity of well-being. For libertarians, it matters, in the more specific sense, that such compensation be paid and that it be paid by the injurers.

What if an individual's disability arose from neither of these two types of sources—neither self-choice nor the choices of others? What if, that is, it was the result of *brute bad luck*? Here, I think, libertarians implicitly divide. Virtually all libertarians would presumably agree that achieving the compensating wealth disparity—so as to restore sibling parity of well-being—should matter. But many of them would insist that it matters only in the general sense: it would be good if a disabled person whose disability is neither his own fault nor anyone else's were to have that compensating wealth increment. Persons who voluntarily supply it are doing a good thing, and persons who decline to supply it, for no sufficiently mattering reason, are acting wrongly.

Other libertarians implicitly take a more stringent view. For them, the supply of the compensating increment also matters in the more specific, legally enforceable sense. But the reason it matters for them in this more stringent way is not simply that without it, the disabled individual will secure less well-being than will his able-bodied sibling. If that were their sole reason, these libertarians would be logically committed to thinking that the provision of the increment would also matter, in the enforceable sense, in the case of self-incurred disability. But they do not think that.

What they believe is that a person's well-being should no more be subject to destruction by brute bad luck than by the injurious acts of others. How do they sustain such a view? On the face of it, it looks like legally enforcing a wealth transfer to a disabled individual to offset a disparity, caused by brute bad luck, between his well-being and that of his able-bodied sibling amounts to the morally unprofitable exercise of depriving one innocent person to avert another innocent person's deprivation. If sibling parity matters that much, it could be objected, why balk at taking the same redistributive measure when the disabled individual's disability is self-inflicted? In short, what's so special about brute bad luck? To answer this question and see how some libertarians have inferred that enforceable redistribution in this case is indeed warranted, we need to take a brief detour to reflect on what, in general, brute bad luck is.

https://doi.org/10.1017/S026505250219114X Published online by Cambridge University Press

V. Luck and Responsibility

Most current discussions of brute bad luck and its proper relation to distributive justice are motivated by a desire to distinguish strongly between two kinds of egalitarianism. On the one hand, we have *strict egalitarianism*, according to which all interpersonal disparities of well-being should be eliminated, by legal enforcement if necessary. This seems to me a perfectly coherent view, and few, if any, of the numerous objections leveled at it cast—or are even intended to cast—serious doubt on its intelligibility.[8] What these objections do succeed in doing is showing that such an egalitarianism simply allows no space for a range of other strongly embedded moral values, the most significant of which is captured in the notion of *personal responsibility*. An egalitarianism that is to avoid imposing compensatory liability on innocent others for my self-incurred adversities cannot be a strict egalitarianism.

Accordingly, to create some conceptual space for the distributive relevance of personal responsibility, *liberal egalitarian* theories have urged the enforceable elimination, not of interpersonal well-being disparities per se, but rather of interpersonal disparities in the necessary conditions for securing well-being. Such theories hold that equality of *resources* for well-being, or equality of *opportunities* for well-being, is a necessary and sufficient condition for justice, and hence warrants legal enforcement.[9] If people are equally situated with respect to these necessary conditions, then what each person chooses to do under them is properly and solely a function of his ambitions, preferences, and other moral values, and is no concern of justice.[10] If, by virtue of his own choices or negligence, an individual in this situation incurs adversities, it is (sometimes) a good thing to help him, but a bad—indeed, unjust—thing to force other per-

[8] The objection that strict egalitarianism creates *moral hazard*, though broadly true, is essentially a moral objection and not one challenging the intelligibility, nor even the practicability, of strict egalitarianism. This objection reflects an aspect of the disvalue we usually ascribe to policies that have the effect of *leveling down*. Strict egalitarianism, in reducing incentives to behave prudently, achieves its equality at the cost of fostering absolute losses of aggregate well-being. But since its concerns are solely with comparative shares of well-being, it is not strictly inconsistent in neglecting such losses.

[9] That is, like other theories of justice, liberal egalitarian theories standardly assign lexical primacy to justice in an ordered plurality of independent moral values. I should also note that in referring jointly to equal-resource and equal-opportunity theories, I do not wish to suggest that they are alike in all respects. They are not, since they often embrace different lists of what are to count as necessary conditions of well-being.

[10] Some liberal egalitarian theories, however, seem to me less clear than others as to whether this equality with respect to necessary conditions is to be conceived as only an initial equality or a more recurrent one. Evidently, the space for personal responsibility in liberal egalitarian theories, and the corresponding distance of such theories from strict egalitarianism, are both truncated by more continuous conceptions of the required equality. This is because different resources or opportunities for well-being are standardly linked to each other in causal sequences, such that a person's neglecting or choosing not to exploit an accessible antecedent resource or opportunity is often a sufficient condition for the inaccessibility of a subsequent resource or opportunity. Sequenced educational levels are an obvious example of this.

https://doi.org/10.1017/S026505250219114X Published online by Cambridge University Press

sons to help him. Liability for the self-incurred adversities should lie with him alone. On the other hand, where those adversities are not self-incurred, liberal egalitarianism treats them *all* as brute bad luck, and the object of distributively just taxation and public-provision policies is said to be to establish the individual at the position of parity.

One failing of many such liberal egalitarian theories, it seems to me, lies in their inconsistent—because incomplete—understanding of the space needed for personal responsibility. In exhaustively dividing liability-occasioning adversities into only two categories—those that are self-incurred and those that are not—these theories neglect the fact that the latter category itself relevantly subdivides into two subcategories: my non-self-incurred adversities can be caused either by particular others or by no one. So a more consistent understanding of the shape of that required space for personal responsibility would operate with this *three-fold* division of liability-occasioning adversities.[11] And it would, as libertarians do, assign enforceable compensatory liability to only those particular others who injure me, rather than assigning it to innocent taxpayers in general. It is those particular others who bear personal responsibility for the adversities their actions inflict on me, and the public should no more be forced to indemnify me for those injurious doings than it should be forced to indemnify me for my self-incurred adversities.

Now, a striking fact, and one that brings us squarely back to the problem of brute bad luck, is that a symmetrical failing seems to beset many libertarian views. For they, too, operate with only a binary classification of liability-occasioning adversities: those that are self-incurred and those imposed by the actions of particular others.[12] That is, whereas liberal egalitarians neglect—regard as distributively irrelevant—the fact that some of the adversities that I can experience may be caused by particular others, many libertarians correspondingly neglect the fact that some of my adversities may be caused by no one. They regard this as distributively irrelevant inasmuch as they permit the liability for those adversities—like liability for my self-incurred adversities—to remain with me.

Such neglect is certainly inconsistent with the requirement that we each be held liable for all and only those adversities that we cause, whether to ourselves or others. If choice and personal responsibility are to be given their proper conceptual space in distributive matters—if the latter is to be isomorphic with the former—then our respective liabilities cannot be extended to include liabilities for those adversities that are caused neither by

[11] This, too, is a simplifying assumption, and radically so. In the real world, many adversities are multifactorial rather than unifactorial: they are the joint products of factors issuing from more than one of these three kinds of sources. Accurate assignments of liability must, therefore, take such proportional considerations into account.

[12] A clear presentation of these libertarian views can be found in Richard Epstein, "Luck," *Social Philosophy and Policy* 6, no. 1 (1988): 17–38, where Epstein demonstrates their embodiment in common law principles of redress and argues for their moral desirability. See also note 18 below.

https://doi.org/10.1017/S026505250219114X Published online by Cambridge University Press

us nor by particular others. Those adversities, and those adversities alone, it seems to me, are the ones that are properly labeled as "brute bad luck."

VI. Luck and Nature

I am going to take it as given that any scientifically respectable conception of causation must attribute brute bad luck to the *doings of nature*. If none of us did *x*, what—other than nature—could have done so? So, if nature inflicts an adversity on me, who should be liable to compensate me?

If your dog bites my leg, should you be liable? The answer obviously must depend on a number of considerations, all of which have to do with norms that bear on the *circumstances* of such an adversity and that are taken, very broadly, to signify the presence or absence of consent—yours or mine—to such an eventuality. If I were trespassing on your property and/or you had posted signs around about your dog, then we would be inclined to regard my adversity as self-incurred. If, on the other hand, the bite occurred on my property, onto which your dog had strayed, the liability should be yours. If I knew that the dog was bad-tempered and nonetheless allowed you to bring it into my house, then maybe I am liable. If you had failed to comply with some dog owners' obedience-training requirement, then maybe the liability is yours. And so forth. In all these instances, the adverse occurrence is *constructively subsumed* under the set of events for which one or the other of us can sensibly be held to be personally responsible. By virtue of such subsumption, the effects of the doings of nature are converted from instances of brute luck into instances of option luck—which, being optional, are held to fall within the domain of the personal responsibility of those who so opt.

What if, instead of being bitten by your dog, I am struck by lightning or buried by an earthquake? Again, we will probably want to know where—on whose property—this doing of nature occurred, how foreseeable it was, and whether it could have been avoided. Can we plausibly convert this sort of doing of nature into a piece of option (bad) luck? Well, maybe. We might, for instance, plausibly say that if the incident occurred on my property, then maybe it was self-incurred. Maybe the exposure of the relevant piece of land to lightning storms or earthquakes is a well-known fact, and perhaps even one that was reported in the real estate survey I commissioned before buying the property. Or maybe it was not, or maybe the property was not my land.[13] But even if the land's riskiness was not known or the property was not mine, isn't it necessarily true that, faced with a given adverse doing of nature, I could have chosen simply

[13] I leave aside the epicyclic objection that even if some specific danger was not known or knowable, it could have been generically insured against. This objection *is* epicyclic inasmuch as it simply transforms, rather than answers, the distributive question here into one of who should have to purchase such insurance—the person injured or the landowner (where they are different persons)—or, if both of them are insured, whose insurance company should be liable to pay.

https://doi.org/10.1017/S026505250219114X Published online by Cambridge University Press

to move myself out of its path or not to have put myself in it in the first place?

In general, aren't we justified in taking the view that all those natural adversities that befall me could have been avoided by my having chosen to *locate* myself elsewhere? And if so, aren't those libertarians who operate with only a binary classification of liability-occasioning adversities—self-incurred and other-imposed—correct? I think that binary view is indeed often correct in particular cases, but not in general.

For each such natural adversity, it is possible that I could have chosen to locate myself elsewhere: I might have chosen to be here, away from where the adversity would have occurred, rather than there. But what I have absolutely, and not merely probably, *no* choice about is being *somewhere*. And while this lamentable restriction is one that besets not merely me but all of us, what is also true is that it besets some of us a great deal more than it does others. Some of us are, even initially, better placed than others are to escape from the path of a lightning storm without running headlong into an earthquake zone.[14] Whether I have five other places I could *permissibly* be and you have none, or whether I can run five times as fast as you can, the adversity we would each experience from a lightning strike would be the same. However, the personal responsibility we would each have for that adversity would differ.

If we want the allocation of liability for adversities to track, rather than distort, the contours of the space for personal responsibility, it looks like we have to ensure that there is some initial parity in the extent to which the aforesaid restriction that we must be somewhere bears down upon each of us. We need, in the current phrase, to *level the playing field*, to share out equally its high and low sections, making sure that one set of goalposts is not on top of the mountain while the other is down in the valley. With that (enforceably) in place, people can justly get on with their various liability-occasioning activities—injuring themselves and others—and paying the corresponding prices.

It is, I think, precisely this parity that forms the morally significant core of Locke's "enough and as good" proviso on the interpersonal distribution of entitlements to the use of nature. That proviso famously stipulates that any person's just appropriation of unowned natural resources is constrained by a duty either to leave an equivalent amount for others or to make compensatory redress to others for an appropriation in excess of that amount.[15] Such a duty is readily motivated by the premise that in the

[14] By "initially," I mean when we first attain moral agency. Prior to that, we are in the custody of particular others who, accordingly, bear personal responsibility for what happens to us. On some of the distributive complexities introduced by this consideration, see the references listed in note 17 below.

[15] Another normative function of the proviso is to supply intergenerationally durable validity to the duties that are correlative both to the property titles created by initial appropriation and to the rights successively derived from exercise of those titles; cf. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 176; and Steiner, *An Essay on Rights*, 106–8.

https://doi.org/10.1017/S026505250219114X Published online by Cambridge University Press

absence of the appropriation, those others would possess an equal liberty to use the relevant resources: an excessive and unredressed appropriation thus violates persons' foundational rights to equal liberty. Although the appropriate basis for calculating the compensatory redress has been the subject of some scholarly dispute, the motivation for the duty to supply it has been examined less.[16] My reason for mentioning the Lockean proviso here is that brute luck's relation to justice is tightly linked to this motivation, and can therefore plausibly be brought within the purview of Lockean foundational premises.

For nature's doings are major causes of both adversities and benefits. Being the effects of no person's choices, these doings' equal allocation undercuts no one's self-ownership, while their unequal allocation distorts the shape of the space for personal responsibility—in much the same sense that runners' personal responsibility for their respective outcomes in a running race would be distorted by a failure to start them all at the same starting-line. If the sources of brute luck were pooled, this initial parity would ensure that the adversities for which persons are respectively liable would bear an isomorphic relation to their chosen (and negligent) conduct. Elsewhere I have argued that a serviceable conception of such pooling, among persons who are distributed over an indefinitely large number of overlapping generations in a fully appropriated world, broadly consists in a *global fund*: each current person has an enforceable right to an equal part of the fund's assests, and each current owner of a portion of nature enforceably owes to the fund a payment—a tax—equal to the current (rental) value of that portion.[17] One's right to a part of the fund's assets, it should be noted, cannot be assimilated to the various sorts of foundational *positive* rights that are centrally characteristic of many current redistributive regimes and that libertarians correctly reject as entailing encroachments on individuals' rights of self-ownership and,

[16] Cf. John Locke, *Second Treatise of Government*, in Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1967), chap. v; Nozick, *Anarchy, State, and Utopia*, 174–82; Eric Mack, "Distributive Justice and the Tensions of Lockeanism," *Social Philosophy and Policy* 1, no. 1 (1983): 132–50; Hillel Steiner, "Capitalism, Justice, and Equal Starts," *Social Philosophy and Policy* 5, no. 1 (1987): 49–71; and Steiner, *An Essay on Rights*, chaps. 7, 8. Anticipations and elaborations of the Lockean proviso, as well as current debate on it, are presented in Vallentyne and Steiner, eds., *The Origins of Left-Libertarianism*; and Vallentyne and Steiner, eds., *Left-Libertarianism and Its Critics*.

[17] Cf. Steiner, *An Essay on Rights*, chaps. 7, 8. These chapters also advance arguments, the elaboration of which here would take us too far afield, (a) against the coherence of the idea of posthumous rights, and (b) for the inclusion, in what counts as "nature" here, of germ-line genetic information. The former argument is shown to entail the justifiability of annexing the full value of dead persons' estates to the global fund, while the latter entails that appropriators of germ-line genetic information—biological parents—owe payments to the fund in the same way that other appropriators of natural resources do. This latter argument is further refined, in the light of the growing prospect of extensive genetic manipulability, in Hillel Steiner, "Silver Spoons and Golden Genes: Talent Differentials and Distributive Justice," in Justine Burley, ed., *The Genetic Revolution and Human Rights: The Oxford Amnesty Lectures, 1998* (Oxford: Oxford University Press, 1999).

https://doi.org/10.1017/S026505250219114X Published online by Cambridge University Press

more generally, on individuals' negative rights to others' forbearance. As a right to redress, it no more signifies a foundational positive right than do any standard restitutional claims against perpetrators of theft, personal injury, or contractual default—claims of a kind that libertarianism strongly underwrites. These redress rights are rights to compensation for particular persons' failures to respect individuals' foundational *negative* rights; they do this by engrossing a larger amount of natural resources than is compatible with leaving "enough and as good" for each other individual.[18] So, taking some such entitlement as given, we can now factor it into our thinking about sibling parity.

VII. Sibling Parity Again

What was previously suggested about sibling wealth parity is that it should matter, but only ceteris paribus. Because wealth matters only as a deliverer of well-being, the value of sibling wealth parity is conditional on its delivery of sibling well-being parity. But the value of sibling well-being parity, we will suppose, is itself constrained by considerations of personal responsibility. Where one of my adult children has made disabling choices that reduce either his well-being or his means to it below that of his sibling, I will place less value on the elimination of that disparity than I would if the disability had occurred as a result of others', or no one's, choices. In these latter cases, conversely, elimination of the disparity will have very great value and, in a Lockean-proviso-based libertarian society, will be legally enforceable.[19]

What if these two siblings are an ascetic and an epicure? That is, what if one of them can transform wealth into well-being much more efficiently than the other, with the consequence that wealth parity between them results in well-being disparity?[20] Since it is parity of well-being, rather than wealth, that matters, shouldn't we look favorably on the idea of the epicure getting an offsetting increment of wealth?

[18] Such failures are readily attributable to those engrossers on the basis of the conception of *strict liability* ably defended in Richard Epstein, "A Theory of Strict Liability," *Journal of Legal Studies* 2, no. 1 (1973): 151–205; and many other writings. However, in Epstein, "Luck," 26–28, Epstein's argument *for* the legitimacy of unencumbered natural resource titles derived from first possession—and thereby *against* the aforesaid redress for persons deprived by others' natural resource acquisitions—turns on the claim that the informational requirements and transaction costs of such apportionment exceed any identifiable social gains that would make it worthwhile. This claim, if true, obviously does warrant weighty consideration. But Epstein is mistaken if he is suggesting that, weighty or not, the claim can count as a reason for *libertarians* to deny the validity of the redress right. (It can, of course, count as such a reason for *utilitarians*.) For libertarians, it can count only as a reason why the holders of those redress rights should themselves each choose to waive them.

[19] It will be enforceable ex ante (through the global fund mechanism) in the case of disabilities that are not caused by particular others, and ex post (through civil/private lawsuits) in the case of those that are.

[20] That is, the epicure just cannot get through a day without consuming several Havana cigars and a generous helping of caviar.

https://doi.org/10.1017/S026505250219114X Published online by Cambridge University Press

The answer, I think, depends on whether the epicure's inability to transform wealth more efficiently should be regarded as a disability and, if so, what caused it. The case for regarding it as a disability seems clear: described at this level of abstraction, the inability generates the same preference-stultifying effects as most conditions conventionally regarded as disabling. Hence, what needs consideration is whether this disability, like any other, is self-incurred or externally imposed, either by others or by nature. If it is self-incurred—if the epicure, having arrived at the threshold of moral agency unencumbered by it, proceeded to cultivate expensive tastes—then believers in personal responsibility as well as sibling parity would be disinclined to regard the resultant sibling well-being disparity as warranting an offsetting departure from wealth parity. If, however, the disability is nature-imposed (i.e., genetically driven), then the global fund mechanism for nature-pooling that I just discussed seems to apply, and some offsetting wealth disparity is warranted.[21]

Could the epicure's disability be one imposed by particular others? I have no definite views on this. But what does seem clear is that the answer depends, inter alia, both on the details of our understanding of *moral agency* and on what the point is of the various norms relating to the conduct of minors' custodians. The problem is this. On the one hand, it is probably part of our very concept of moral agents that they can revise their pre-agency commitments and preferences. At the same time, many of our custodial norms—let alone our willingness to expend enormous resources on entrenching them—are predicated on the belief that what we experience, as minors, strongly shapes not only what we choose, but also what we *can* choose, in later life. There is obviously some considerable tension between these two thoughts, and identifying the point (if there is one) where they are in equilibrium seems to be a necessary condition for supplying a plausible answer to this paragraph's opening question. So the most that can be said here is a reiteration that *if* the epicure's disability can meaningfully and accurately be described as imposed by particular others, and *if* sibling well-being parity *and* personal responsibility matter, then it matters that there be some offsetting wealth disparity between the epicure and the ascetic. And moreover, it matters in the specific, enforceable, sense that the offsetting increment be supplied by those others.

VIII. Conclusion

Where we have gotten to so far is a moral position in which the value of sibling wealth parity is constrained by that of personal responsibility, with all its attendant complexities. What happens, then, when we try to extend this normative structure in the direction of *nonsibling* parity? Is

[21] Again, the details of how this mechanism might be applied to genetic differentials are discussed in the work mentioned in note 17 above.

https://doi.org/10.1017/S026505250219114X Published online by Cambridge University Press

this a bridge too far? What values might intervene to block this extension? More precisely, what values *that do not intervene* in—outrank or override—the pursuit of sibling parity might nonetheless plausibly do so with respect to its nonsibling counterpart?

Am I being pathetically blinkered or unimaginative in finding that there are few of these values to be discovered? On the face of it, we might be inclined to suppose that quite a few independent values could intervene in this way. The fact that I think there ought to be wealth parity between my sons Josh, Sam, and Jacob seems, at first sight, to go nowhere in the direction of extending the desirability of that parity to their friend Ben. But once we have allowed that the desirability of sibling wealth parity is conditional on its realization of sibling well-being parity, and that the latter is in turn desirably constrained by considerations of personal responsibility, what reasons could I have for not including Ben's wealth in this same complex distributive nexus?

One reason I *cannot* have is that Ben's lifestyle yields him less wealth—or more—than my sons' lifestyles do, since that is already covered by our personal responsibility caveat: a caveat that, as we have seen, may equally apply to disparities between Josh, Sam, and Jacob. I could perhaps say, "Look, Ben, unlike the others, is not my son, and that is a good enough reason." But this depends on how much magic we are prepared to find in the adjective "my." Can the bare fact that something is mine make it matter more than an identical thing that is yours? This looks to be implausible.

We might try conjoining such bare proprietorial facts with some moral premise to the effect that each of us should enjoy a protected liberty to do what he wishes with what is his. But this premise, utterly indisputable in my view—and fully enforceable in a libertarian society—just will not do the job here. For no one is disputing that it would be wrong to *force* me, or anyone, to establish parity between Ben's wealth and that of my sons. (Here it is important to recall that I have advanced no argument to suggest that even *sibling* parity, of either wealth or well-being—even when constrained by personal responsibility—should matter in the more specific, enforceable, sense.) What is in question is *not* whether Ben has a right to such parity, but whether I and/or others *exercise our rightful liberties wrongly* in withholding it from him. We know that people *can* exercise their rightful liberties wrongly: I can, with rightful impunity, refuse to hold the door open for a colleague who is heavily laden with books and papers. Why wouldn't our failing to bring about Ben's parity count as just such a wrong exercise?

One kind of answer could go like this:

> Yes, Ben's parity—nonsibling parity, in general—matters. But other things matter, too. And some of these other things matter more, perhaps much more, than nonsibling parity. So where its demands get in the way of the demands of these other things, it is the demands

https://doi.org/10.1017/S026505250219114X Published online by Cambridge University Press

> of nonsibling parity that must be overridden. Failing to bring about that parity is, under these conditions, regrettable but not wrong. Indeed, it would be wrong to do otherwise.

This answer makes sense. Perhaps there are seventeen other kinds of thing that matter more than nonsibling parity.[22] And the world being as it is, there is no doubt that the demands of these things frequently conflict with the demands of nonsibling parity, as well as with each other. The problem, as I see it, is to find a compelling reason why the demands of these other things do not equally override those of *sibling* parity. "They just don't" does not seem to be that reason.

Philosophy, University of Manchester

[22] *Not* includable among these, however, is the loving conduct that parents unquestionably have a duty to bestow upon their own young children. A lucidly persuasive essay, Jennifer Roback Morse, "No Families, No Freedom," *Social Philosophy and Policy* 16, no. 1 (1999): 290–314, argues (a) that such conduct is a necessary condition for the childhood development of durable trusting and, therefore, trustworthy dispositions in adults; (b) that such dispositions are necessary to sustain the framework of free societies; and (c) that such loving conduct is considerably less likely to deliver the development of trusting when it is bestowed by commercial or state agencies. Nothing in this argument, however, suggests that the capacity of parents to discharge this duty is diminished by the redistributive demands of nonsibling parity.

https://doi.org/10.1017/S026505250219114X Published online by Cambridge University Press