

# What Do We Owe Parents?

## Distributing the Costs of Children

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## Abstract

The topic of this thesis is the just distribution of the costs of children. In particular, it asks whether an ideal liberal egalitarian society owes it *to the parents* to ensure that the costs of children are shared between parents and non-parents. This issue has received relatively little attention from political philosophers, yet it seems pertinent to a concern that is central to any distributive justice theory: identifying the agents who are responsible for giving the new members of society what they are owed. The thesis provides a comprehensive investigation into the grounds in virtue of which parents can raise claims to have the costs of children socialized. It argues that the prospects for successfully establishing such claims are very limited. This is either because (i) they would offend against the liberal egalitarian commitment to personal responsibility for procreative choice, or against (ii) the commitment to state neutrality between different conceptions of the good. Finally, I show that a relatively widely endorsed family of arguments that support parents' claims (iii) rest on specific versions of a controversial normative principle, namely the fairness principle, that upon examination turn out to be implausible. The thesis then develops a new account of fairness, which I call the Shared Preference View. On this account, typical parents do not have claims of fairness to parental subsidies. The account of fairness I develop has important implications beyond the debate regarding the fair distribution of the costs of children, including for environmental justice and for establishing a moral obligation to obey the law.

## Resumen

El tema de esta tesis es la justa distribución de los costes de los niños. En concreto, se plantea la pregunta de si una sociedad liberal igualitaria ideal debe a los padres asegurar que los costes de los niños se comparten entre los padres y los no-padres. Esta cuestión ha recibido relativamente poca atención por parte de los filósofos políticos, pero resulta pertinente a una preocupación fundamental para cualquier teoría distributiva: identificar a los agentes responsables de asegurar a los nuevos miembros de la sociedad lo que se les debe. La tesis proporciona una investigación exhaustiva sobre los motivos en virtud de los cuales los padres pueden pretender que se socialicen los costes de los niños. La tesis alega que las posibilidades de establecer con éxito tales reclamaciones son muy limitadas. Esto se debe a que estas reclamaciones (i) irían en contra del compromiso igualitario liberal con la responsabilidad personal de la elección procreativa, o (ii) en contra del compromiso con la neutralidad del estado entre diferentes concepciones del bien. Finalmente, muestra que una familia de argumentos ampliamente respaldados que apoyan las reclamaciones de los padres (iii) están basados en versiones específicas de un controvertido principio normativo, a saber, el principio de equidad, que bajo escrutinio resultan inverosímiles. A continuación, la tesis desarrolla un nuevo significado del concepto de equidad, al que llamo Teoría de las Preferencias Compartidas. Según esta teoría, los padres típicos no pueden extender demandas de equidad con respecto a los subsidios genitoriales. La teoría de la equidad que desarrollo tiene implicaciones importantes más allá del debate sobre la justa distribución de los costes de los niños, incluyendo aspectos de justicia ambiental y el establecimiento de una obligación moral de obedecer la ley.





## TABLE OF CONTENTS

<b>Acknowledgments</b> .....	<b>iii</b>
<b>Abstract</b> .....	<b>vi</b>
<b>Resumen</b> .....	<b>vii</b>
<b>Chapter 1</b> .....	<b>1</b>
<b>Introduction</b> .....	<b>1</b>
1.1. The question of parental justice.....	3
1.2. The costs of children .....	10
1.3. The plausible pro-sharing argument .....	13
1.4. Preview of the thesis.....	15
<b>Chapter 2</b> .....	<b>18</b>
<b>The Argument from Insurance</b> .....	<b>18</b>
2.1. Dworkin’s hypothetical insurance device.....	21
2.2. The insurance argument for parental subsidies .....	23
2.3. Adequate parenting and the costs at stake behind the veil .....	26
2.4. Underemployment insurance would be rather modest: so what?.....	32
2.5. Are parental subsidies the more cost-effective form of insurance? .....	36
2.6. Conclusion .....	45
<b>Chapter 3</b> .....	<b>48</b>
<b>The Argument from Autonomy</b> .....	<b>48</b>
3.1. Alstott’s autonomy-based challenge to parental justice.....	50
3.2. The burdens of childrearing .....	52
3.2.1. <i>No Exit</i> .....	53
3.2.2. <i>Giving children a good upbringing</i> .....	56
3.2.3. <i>Being on call</i> .....	57
3.3. Autonomy costs, responsibility costs, and the issue of stakes.....	58
3.3.1. <i>The question of responsibility stakes</i> .....	60
3.3.2. <i>The question of autonomy stakes</i> .....	62
3.4. Hierarchical accounts of autonomy .....	65
3.5. Substantive views of autonomy .....	71
3.5.1. <i>The constraints of self-respect</i> .....	72
3.5.2. <i>The self-authorship account</i> .....	74
3.6. Relational autonomy.....	85
3.7. The demands of equal autonomy from behind a veil of ignorance.....	89
3.8. Conclusion .....	95
<b>Chapter 4</b> .....	<b>97</b>
<b>The Argument from Fairness</b> .....	<b>97</b>
4.1. The empirical premise of fairness-based arguments: parents’ contribution to society.....	98

4.2. The normative premise of fairness-based arguments: Fair Play .....	100
4.3. The Fair Play debate.....	103
4.4. Unfair free riding as a failure of impartiality.....	108
4.5. The Shared Preference View of Fair Play .....	113
4.6. The Shared Preference View and morally required goods.....	119
4.7. Benefits recipients who lack Fair Play obligations .....	125
4.8. Benefits producers who lack Fair Play claims .....	127
4.9. Conclusion .....	139
<b>Chapter 5 .....</b>	<b>141</b>
<b>Are Non-Parents Unfair Free Riders? .....</b>	<b>141</b>
5.1. Children as public goods .....	141
5.2. Children as morally required goods.....	153
5.2.1. <i>The challenge from irrelevant intentions</i> .....	157
5.2.2. <i>The challenge from double-counting</i> .....	162
5.3. Children as socialized goods.....	163
5.4. Conclusion .....	171
<b>Chapter 6 .....</b>	<b>173</b>
<b>Are Kids Unfair Free Riders? .....</b>	<b>173</b>
6.1. Tomlin's Kids Pay View.....	174
6.1.1. <i>Kids Pay: the grounds for a Fair Play obligation</i> .....	176
6.1.2. <i>The missing step in the Kids Pay argument</i> .....	182
6.2. Kids Pay and the Shared Preference View.....	188
6.2.1. <i>The morally required goods of an upbringing</i> .....	192
6.2.2. <i>The optional goods of an upbringing</i> .....	197
6.3. The Shared Preference View and filial obligations .....	202
6.4. Conclusion .....	206
<b>7. Conclusion .....</b>	<b>208</b>
<b>Bibliography .....</b>	<b>213</b>



# Chapter 1

## Introduction

As parents know all too well, raising children is expensive. The latest figures from the US Government show that a family composed of two parents and two children spends \$233,610 per child to raise them to the age of 17.<sup>1</sup> And children impose costs not only on parents, but society at large too. Children generate costs for society for two key reasons. First, they add to the number of citizens that can lay claims on the natural and socioeconomic resources of a state. Secondly, in many countries, costs-sharing schemes are in place which spread out the costs of raising children. For instance, children often receive publicly funded health care and education. Tax breaks are often applied in respect of children, and paid parental leave is often made available to families with newborn babies. The fact that children generate substantial costs for a number of different agents raises an important question of justice: What is the just distribution of the costs of children? How should the costs of children be shared between the parents, the rest of society, and, perhaps, the children themselves?

A complete answer to this question would have to balance a number of important considerations including children's rights, the interest that women have in a gender-egalitarian distribution of childrearing costs, and the interests of society at large. In addition to these well-recognized considerations of justice, which I will not address, there is another set of interests that should bear on how the costs of children should be distributed. The latter have, regrettably, received relatively little attention. These are the interests of parents *qua* parents, and they form the subject of this thesis.

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<sup>1</sup> Lino, Kuczynski, Rodriguez and Schap 2017.

This dissertation provides a comprehensive investigation into the grounds in virtue of which parents can lay claims of justice to have the costs of children socialized by a just liberal egalitarian society. It argues that the prospects for successfully establishing such claims are very limited. The most promising avenue for parents can be summarized by the following claim. Unless the costs of caring for infants and young children is socialized, those who care for them full-time would suffer deficits of personal autonomy that are incompatible with the liberal egalitarian commitment to personal freedom. This conclusion would be in line with widespread feminist views on the matter,<sup>2</sup> and would support policies such as paid parental leave, publicly funded childcare facilities, workplace accommodation for parents of young children and the like.

I show, further, that other arguments that seem, *prima facie*, to provide parents with distinctive claims to having the costs of children shared are not successful. This is either because (i) they offend against the liberal egalitarian commitment to personal responsibility for procreative choice, or against (ii) the liberal egalitarian commitment to state neutrality between different conceptions of the good. Finally, I show that a relatively widely endorsed family of arguments that support parents' claims (iii) rest on specific versions of what is already a controversial normative principle, namely the fairness principle,<sup>3</sup> that upon examination turn out to be implausible. The thesis then develops a new account of fairness, which I call the Shared Preference View. According to this account, typical procreative parents do not have fairness claims to be subsidized.

In this introduction I will explain in more detail the question that this thesis is concerned with, namely, the question of parental justice. I do this in Section 1.1, where I also lay out the background assumptions and the general motivation behind tackling

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<sup>2</sup> See e.g. Bubeck 1995; Anderson 1999.

<sup>3</sup> Hart 1995; Rawls 1999a.

this issue. In Section 1.2 I explore in a bit more depth how much parents, as well as the rest of society, spend on children, and I clarify which of these costs are up for socializing under the sorts of arguments I discuss. In Section 1.3 I lay out the criteria that a plausible argument establishing parents' claims of justice ought to meet. Finally, Section 1.4 offers a preview of the rest of the thesis.

## **1.1. The question of parental justice**

Philosophers subscribing to some version of liberal egalitarianism have generally tended to overlook the implications of their view for what Serena Olsaretti calls *the central question of parental justice*: What, if anything, does a just society owe parents in virtue of having and raising children?<sup>4</sup>

Mainstream liberal egalitarian views of justice are fundamentally committed to three main values: the value of equality, the value of personal freedom and, finally, the value of personal responsibility. The overwhelming contemporary interest in this type of view can be traced back to the seminal work of John Rawls,<sup>5</sup> which, as Nagel notes, combines “the very strong principles of social and economic equality associated with European socialism with the equally strong principles of pluralistic toleration and personal freedom associated with American liberalism, and he has done so in a theory that traces them to a common foundation.”<sup>6</sup> Liberal egalitarianism dominates the contemporary political philosophy literature, and it holds, in a nutshell, that the inequalities traceable to unfavorable circumstances are unjust and should be

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<sup>4</sup> Olsaretti 2013; Bou-Habib and Olsaretti 2013.

<sup>5</sup> Rawls 1999a.

<sup>6</sup> Nagel 2002, p. 88.

redressed, while the inequalities traceable to people's choices or ambitions are not unjust.<sup>7</sup>

A central commitment of contemporary liberal egalitarian views, then, is to hold people responsible for what they make of their own lives. But what exactly they choose to make of their lives they are free to decide for themselves, without the state interfering with their choices and without it favoring one lifestyle over another through the policies it adopts. Or so it is maintained by those liberal egalitarian views that are also committed to a principle of political neutrality. Political neutrality provides a principled constraint on what counts as legitimate state action. It holds that legitimate state action should be neutral in the face of the plurality of views of the good life that its citizens may adopt. Rawls's own view of justice as fairness is committed to this principle, and he explains it as follows.

[Justice as fairness does not] try to evaluate the relative merits of different conceptions of the good. Instead, it is assumed that the members of society are rational persons able to adjust their conceptions of the good to their situation. There is no necessity to compare the worth of the conceptions of different persons once it is supposed they are compatible with the principles of justice. Everyone is assured an equal liberty to pursue whatever plan of life he pleases so long as it does not violate what justice demands.<sup>8</sup>

A critic of political neutrality, Alasdair MacIntyre, defines political neutrality this way:

[A] community is simply an arena in which individuals each pursue their own self-chosen conception of the good life, and political institutions exist to provide that degree of order which makes such self-determined activity possible. Government and law are, or ought to be, neutral between rival conceptions of the good life for man, and hence,

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<sup>7</sup> Philosophers who have developed other versions of liberal egalitarian theories include Dworkin 1981; Arneson 1989; Cohen 1989; Roemer 1993, 1996, 1998; Fleurbaey 1995a, b.

<sup>8</sup> Rawls 1999a, pp. 80-81.

although it is the task of government to promote law-abidingness, it is (...) no part of the legitimate function of government to inculcate any one moral outlook.<sup>9</sup>

In this thesis I am interested in the positive answers to the central question of parental justice that could be formulated within the framework of liberal egalitarian theories of justice that are committed both to holding people responsible for their choices, as well as to the principle of political neutrality. This is partly for pragmatic reasons: the majority of contemporary liberal egalitarians subscribe to such a view.<sup>10</sup> It is worth adopting this framework, then, if the arguments explored in this thesis are to appeal to as wide an audience as possible. But more importantly, the reasons in favor of the neutrality constraint on state action seem compelling on their own. The justification for state neutrality begins from the basic moral assumption that all of us are born free and equal. As such, we are not naturally under anyone's, or any institution's, authority. If a person or an institution wishes to exercise authority over people, they can only legitimately do so if they can justify the use of authority to the people over which they wish to exercise it. The legitimate use of power, therefore, requires that a justification is provided which free and equal people can accept. But free and equal people in liberal societies have deep-seated disagreements over what is valuable and what makes for a good life. Given the fact of reasonable pluralism,<sup>11</sup> therefore, if the state is to exercise legitimate power over all of its citizens it must refrain from taking sides on what makes for a good life.<sup>12</sup>

Given the political neutrality constraint, then, in this thesis I will leave aside any arguments that might seek to establish parents' claims to having the costs of children shared by society by appealing to the value of parenting as a worthwhile way of life that should be protected or encouraged by the state. I will limit the inquiry to those arguments that have the potential, at least *prima facie*, to establish parental

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<sup>9</sup> MacIntyre 1984, p. 195.

<sup>10</sup> Perhaps the most notable exception from the commitment to state neutrality is Raz 1986.

<sup>11</sup> Rawls 1993, ch 1.

<sup>12</sup> For a recent and elaborate defence of political neutrality see Quong 2011.



entitlements by appealing to reasons that free and equal citizens can accept regardless of their particular view of the good life.

That the costs of children, or at least a subset of them, should be shared in some form or another by the entire society seems like a common-sense view to hold. Liberal egalitarians, too, have tended to assume that the costs of children ought to be shared. Policies such as publicly funded education or health care for children are considered to be compatible with, or even required by, these views. Yet one direct implication of one of the basic tenets of liberal egalitarianism, namely that people ought to bear the costs that they are responsible for creating, seems to point to the conclusion that parents ought to bear all of the costs of children themselves. Insofar as parents are responsible for creating the need for someone to meet the costs of children (by knowingly bringing children into existence when they could have avoided this course of action), it seems that they should be the ones to meet those costs. Conversely, having to participate in meeting the costs that *other people* have created by having children seems like an unjust imposition on those who choose to remain childless. Indeed, the costs imposed on the childless by those with children seem relevantly akin to a stroke of bad luck rather than something they can justly be held responsible for paying.<sup>13</sup> Based on this, several philosophers have concluded that responsibility-sensitive liberal egalitarian views demand that, at least as a matter of basic justice between parents and the childless, parents should bear all the costs of children, just as those responsible for adopting other sorts of expensive lifestyles should be held responsible for the costs that their ambitions generate. We can call this the *anti-cost-sharing view*, or anti-sharing view for short.<sup>14</sup>

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<sup>13</sup> The general point that the negative effects of individuals' choices on third parties should be treated as a form of bad luck for those third parties can be traced back to Steiner 1997.

<sup>14</sup> I borrow this label from Olsaretti 2013, p. 229. Various versions of the anti-sharing view have been defended by Ackerman 1980; Casal 1999; Casal and Williams 1995, 2004, 2008; Clayton 2006; Rakowski 1991; Steiner and Vallentyne 2009; Vallentyne 2002.

This thesis provides a comprehensive investigation into those arguments that attempt to establish that, *despite* parents' being responsible for creating the need to meet the costs of children, basic justice *between parents and non-parents* requires that some of those costs be shared by the rest of society, even on a responsibility-sensitive liberal egalitarian theory. This family of views has been labelled *pro-cost-sharing*, or pro-sharing for short.<sup>15</sup>

The question of parental justice deserves careful treatment at the very least because a theory of justice, insofar as it is a theory about how to distribute benefits and burdens within a society, is incomplete without settling the matter of how burdens should be distributed among parents and non-parents.<sup>16</sup> More importantly, a theory of justice is incomplete if it ignores the question of parental justice because some of the costs of children are costs that need to be borne in order to give every person his or her just due.<sup>17</sup> New members of society, both during their childhood, and once they have reached adulthood, have rights that must be met by someone. The question of parental justice, then, seeks to identify the agents who should bear the responsibility to help meet the rights these new persons have. Thus, the question of parental justice concerns a central question about justice in general: whether or not everyone should share the costs of meeting everyone else's claims of justice, or whether these costs should only be incurred by the ones responsible for the existence of new citizens, namely their biological parents.

To be sure, even if pro-sharing answers to the question of parental justice fail, governments may still step in to ensure that children in disadvantaged families have their basic needs taken care of, or that they have their rights met where this might include more than just having their basic needs met, when their parents cannot discharge these obligations themselves. The state may also institute specific policies to redress other kinds of injustice arising in the family, such as gender-related

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<sup>15</sup> Olsaretti 2013, p. 229.

<sup>16</sup> Olsaretti 2017.

<sup>17</sup> Bou-Habib and Olsaretti 2013, p. 422.

injustices. Most current societies do have such policies in place to one extent or another. But the question this thesis will be focused on is whether parents have claims to have the costs of children shared by the rest of society in virtue of what these activities themselves entitle them to as matter of ideal justice, even on responsibility-sensitive views of justice.

My approach to answering the question of parental justice, then, is an exercise in ideal political theory. The term “ideal theory” refers to the methodology pioneered by Rawls for identifying principles of justice that apply to basic social institutions.<sup>18</sup> It is defined in contrast to non-ideal theorizing, and it involves devising principles of justice against two fundamental assumptions. The first assumption is that of full compliance. Principles of justice are to be identified on the assumption that everyone, or nearly everyone, complies with those principles. By contrast, non-ideal theory deals with questions of non-compliance. One way to see this contrast is to think of non-ideal theory as asking what the appropriate responses should be in the face of injustice, which is why typical non-ideal theory topics include theories of punishment, compensatory justice or the just responses to unjust political regimes, among which civil disobedience is one.<sup>19</sup> Ideal theorizing, on the other hand, sets aside the possibility that people might not comply with the demands of justice and attempts to establish what a perfectly just society would be like in the first place. The second assumption of ideal theory is that there exist favorable socioeconomic circumstances for the establishment of just institutions. This assumption should not be understood as referring to conditions that are so favorable that they would be *impossible* in the real world, but rather to conditions that are favorable and which are also feasible. Non-ideal theory, by contrast, is concerned with the socioeconomic limitations to justice.<sup>20</sup>

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<sup>18</sup> Rawls 1999a.

<sup>19</sup> Rawls 1999a, p. 8.

<sup>20</sup> For a helpful discussion of the distinction between ideal and non-ideal theory see Stemplowska and Swift 2012.

In reality, of course, injustice abounds, including injustices suffered by children which could be redressed better and/or quicker by pooling all of society's resources as opposed to only the parents'. If the ultimate aim of political theory is to find solutions to "the pressing and urgent matters"<sup>21</sup> that confront society, one might wonder what the point is of engaging in ideal theory. According to Rawls, establishing the demands of ideal justice is worth doing for its own sake, but more importantly, it is the necessary first step in attempting to solve the problems of everyday life. Systematic thinking about justice in the real world must begin by first determining "the nature and aims of a perfectly just society"<sup>22</sup> which we can use as a standard to then evaluate the current state of affairs. Ideal theory can function as a standard both in the sense of providing an aim for non-ideal theory to work towards, as well as a way of evaluating the urgency of particular injustices by reference to how large the gap is between our real-world circumstances and the circumstances of ideal justice.<sup>23</sup>

I fully subscribe to the Rawlsian idea that systematic theorizing about justice requires us to first establish what perfect justice looks like in a "realistic utopia"<sup>24</sup> where there are no socioeconomic limitations to establishing just institutions and where we can count on full compliance. I believe we should regard the distinctive claims of justice that parents might have in virtue of having and raising children as one piece of the puzzle of what a perfectly just distribution of the costs of children looks like.

In addition to the two standard assumptions of ideal theory, in what follows I will work with a number of other simplifying assumptions, which it is important to mention here. First, by "parents" I will refer to those who are their children's procreators as well as their custodians, even though these two categories can come apart, and often do come apart in reality, for instance in the case of adoption. I will also assume, second, that parents have ample opportunity to avoid becoming parents

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<sup>21</sup> Rawls 1999a, p. 8.

<sup>22</sup> Rawls 1999a, p. 8.

<sup>23</sup> Stemplowska and Swift 2012, p. 376.

<sup>24</sup> Rawls 1999b, pp. 11-12.

but positively choose to have and raise children. By “non-parents”, conversely, I refer to those who choose to remain childless. I make these assumptions in the spirit of approaching the central question of parental justice in a careful and systematic manner that attempts, as a first step, to establish the demands of perfect justice as they apply to cases that are simple in the respects I highlighted. A second step would involve reintroducing these complications and checking to what extent, and in what ways, doing so would affect our conclusions about parents’ just claims. In this thesis I will limit myself, however, to dealing with the simplified cases.

I also make an assumption about the moral permissibility of procreation, namely that bringing children into existence can be morally permissible, but is not morally required. This position is in line both with common-sense morality as well as with most of the procreative ethics literature.<sup>25</sup> Assuming that procreation can be permissible at least under certain conditions is also necessary to get the parental justice debate off the ground, for we might think that if procreation were morally impermissible, this would undermine parents’ claims to have the costs of children shared by the rest of society. If bringing people into existence were always morally impermissible, we might think that parents should not only bear the costs of children’s upbringing, but also of compensating them, and perhaps society at large, for wrongfully having brought them into existence. I do not consider these possibilities in what follows.

## **1.2. The costs of children**

The costs of raising children vary widely, not only across countries, but also within each country, depending on factors such as geographical location, family composition

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<sup>25</sup> See e.g. Parfit 1984, p. 358 and Appendix G; McMahan 1981, pp. 104-105; Narveson 1978, p. 48; Velleman 2008a, pp. 242-244; Velleman 2008b, pp. 247-250.

and income level. A report published in 2017 by the US Department of Agriculture estimated that a married-couple, two-children, middle-income family would spend \$233,610 raising a child born in 2015 to the age of 17. A two-parent family with only one child will spend 27 percent more.<sup>26</sup> In the UK, a two-person family would spend £75,436 to raise a child to the age of 18, though this figure does not include the costs of housing, health care, and council tax. Also excluding these costs, a one-parent household in the UK would have to spend £102,627 on childrearing expenses.<sup>27</sup>

All of the above figures capture only the direct expenses made by parents and do not include indirect expenses such as time investments, forgone earnings and forgone career opportunities. For measuring the financial value of the time that parents devote to childrearing, the economist Nancy Folbre uses a “replacement costs approach”. This involves determining how much it would cost society to provide childcare of acceptable quality if parents were unable or unwilling to care for them.<sup>28</sup> She estimates “a lower bound for the replacement cost of parental services per child in a two-parent, two-child family of about \$13,352” per year.<sup>29</sup>

Parental spending does not stop once children reach adulthood. Many parents contribute to their grown children’s expenses, including higher education costs, housing, or wedding expenses. A survey study commissioned by the Bank of America Merrill Lynch showed that 79 percent of American parents continue to transfer considerable amounts of resources to their adult children (between 18 and 34 years old), spending twice the amount of money to meet their needs than they contribute toward their own private retirement funds.<sup>30</sup>

Finally, consider the public expenditure on childrearing. This, of course, varies considerably from country from country. Many industrialized countries provide direct

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<sup>26</sup> Lino, Kuczynski, Rodriguez and Schap 2017.

<sup>27</sup> Hirsch 2017.

<sup>28</sup> Folbre 2008, p. 130.

<sup>29</sup> Folbre 2008, p. 130.

<sup>30</sup> Merrill Lynch and Age Wave 2018.

cash transfers and/or tax exemptions to parents, and support for childcare, health care, and public education.<sup>31</sup> When it comes to public education, for example, OECD countries spend on average \$10,759 a year per student, from primary to tertiary education.<sup>32</sup> In the US, the average amount spent per elementary and secondary school student in the year 2014-2015 was \$13,119, adding up to a total of \$668 billion.<sup>33</sup>

These figures lend support to the idea that, as Folbre puts it, “children are an expensive crop.”<sup>34</sup> But which of these costs are actually plausible contenders for being socialized on grounds of parental justice?

In order to answer this, it is worth noting two clarifications about which costs are relevant. Both points are due to Olsaretti.<sup>35</sup> First, the costs of children refer both to the costs of care as well as to the costs that these children will impose once they become adults. The costs of care include the loss of time, opportunities, and financial resources that parents incur in the process of raising their children to be self-sufficient adults (conventionally, up until the age of 18 years). Sharing these costs with parents would involve things like universally funded childcare, parental leave, or giving tax breaks to families. The costs of “added adult members”, as Olsaretti calls them, refer to the costs of meeting whatever claims their children will make as adults, which depending on our conception of justice, might include their claims to a fair share of resources, to equal capabilities, to a basic minimum, and so on. As Olsaretti points out, sharing the costs of added adult members simply involves contributing equal shares, through their taxes, “to any publicly funded scheme for citizens (aimed at protecting either negative or positive rights), rather than being liable to a lesser tax

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<sup>31</sup> See Folbre 2008, pp. 139-177.

<sup>32</sup> OECD 2017.

<sup>33</sup> US Department of Education, National Center for Education Statistics 2018.

<sup>34</sup> Folbre 2008, p. 65.

<sup>35</sup> Olsaretti 2013, pp. 229-232.

burden, such that they could be said to have their share *unaffected*, insofar as this is feasible, by parents' choices to create new persons."<sup>36</sup>

A second clarification about the relevant costs of children is key for understanding what is at stake in the parental justice debate. The costs that are up for socializing include only a subset of all the costs of care and the costs of added adult members, namely those costs of care and those costs of added adult members that are morally required. For the burdens that children might impose on their parents or on third parties can include, and often do include, burdens that are morally optional or morally unjustified. For instance, parents often go beyond meeting the just claims of children in their attempt to give their children the best upbringing they possibly can. They might even end up showering their children with luxury goods. However, the claims of justice they can raise against the rest of society can only refer to the range of costs that children have a claim to receiving. And the same goes for the new adults: the rest of society can only be enjoined to contribute to meeting the new members' just claims, but not to meeting the claims that they might raise which are morally indifferent or unjustified.<sup>37</sup>

### **1.3. The plausible pro-sharing argument**

For the purpose of investigating the prospects of success of the pro-sharing parental justice case, it is useful to set out the criteria for what I take to be a plausible pro-sharing argument. Before I do this, let me mention one type of pro-sharing argument I will not consider.

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<sup>36</sup> Olsaretti 2013, p. 230.

<sup>37</sup> See Olsaretti 2013, p. 230.



One type of pro-sharing argument that I will not spend time on is the one according to which society ought to share the costs of children so as to incentivize people to become parents in order to reach a desired population size (with a view to growing or maintaining a country's economy, for example). The reason I leave such incentive-based arguments aside is that, for one thing, they are not very philosophically challenging. In principle, if society needs to incentivize fertility, sharing some of the costs of children, thereby lowering the costs of parenthood for the prospective parents, seems like a permissible way to do so taken on its own (that is, bracketing other considerations that might make increasing fertility impermissible, such as the worries about the carbon footprint of an increased population). More importantly, this sort of argument merely establishes the permissibility of sharing the costs of children, rather than an entitlement on the part of parents. This thesis is concerned with those arguments that take up the more challenging task of grounding parental claims of justice.

A plausible pro-sharing argument will exhibit the following features. First, it will attempt to establish an entitlement on the part of parents to have some or all of the costs of children shared by society, rather than merely establishing that it is permissible to do so. Second, it will attempt to do so by identifying a normatively relevant feature of parenting itself, or its effects, that can ground parental entitlements. More specifically, my discussion focuses on arguments that identify an interest that parents have that would be undermined if they had to bear all the costs of procreating and childrearing. This interest must not be reducible to the interest of children in having their needs met, nor to the interest that women have in gender justice. The plausible pro-sharing argument, then, must show that the state *would be failing parents themselves* (as opposed to children, or women) if it did not socialize the costs of children. Thirdly, the plausible pro-sharing argument must show that the relevant parental interest it identifies as relevant is one that the state should be committed to protecting. In other words, it must show that the state would be failing parents along some important dimension of justice in a way that would ground a

complaint on the part of parents. And it must do so, fourth, compatibly with the liberal egalitarian commitment to personal responsibility, and, fifth, compatibly with the principle of political neutrality. Finally, the plausible parental entitlement thus established should only apply to the morally required costs of children, rather than also the morally optional or the morally impermissible costs that children might create.

In summary, a plausible pro-sharing argument for parental justice is one that establishes, compatibly with the commitment to personal responsibility and to political neutrality, an obligation of basic justice on the part of the liberal egalitarian state to share (some of) the morally required costs of children by appealing to an interest that parents have *qua* parents, which would be undermined if the state failed to socialize those costs, and which parents have a claim to have protected.

#### **1.4. Preview of the thesis**

I begin the investigation in Chapter 2 by considering an argument that attempts to show that one brand of liberal egalitarianism that seems particularly averse to parents' claims, Ronald Dworkin's equality of resources, can in fact support them. This view is defended by Paul Bou-Habib and it holds, in a nutshell, that the state should subsidize parents if it is true that most people would take out "insurance cover" to cover some of the costs of children under the hypothetical insurance conditions specified by the equality of resources view.<sup>38</sup>

I begin with this argument because, if successful, it would provide a particularly strong case for parents. This is because, first, it explicitly sets out to show that a pro-sharing conclusion can be reached compatibly with the liberal commitments to

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<sup>38</sup> Bou-Habib 2012.

personal responsibility and to state neutrality. And secondly, it would establish parents' claims against non-parents without appealing to any further principles or reasons external to the basic tenets of equality of resources itself. Despite its initial plausibility, I show that this argument does not succeed because it ultimately fails to ground distinctive claims of justice on the part of parents.

In Chapter 3 I consider an argument that holds more promise as far as grounding *distinctive* parental justice claims, namely the argument according to which parents would suffer an autonomy deficit if they were forced to bear all the costs of children.<sup>39</sup> I show that, while it is the most promising avenue for parental justice, this line of argument is incomplete. It is incomplete because, first, on most accounts of personal autonomy it is difficult to even identify a set of costs that should count as autonomy-undermining in a way that is (a) plausible and (b) compatible with political neutrality. Second, even once we have managed to identify one possible set of such costs, namely the costs that full-time carers of infants and young children face, it is not clear what citizens' just claims of autonomy amount to. It is not clear, that is, that the autonomy deficits that full-time carers suffer can ground a claim of justice that the state should restore their autonomy for the time they are full-time carers.

Chapter 4 begins the investigation into a family of views that has enjoyed the most popularity in the pro-sharing camp: fairness-based arguments. In a nutshell, they claim that parents produce public goods by having and raising children that the entire society enjoys, including non-parents. Allowing non-parents to internalize the benefits of children without enjoining them to help share the costs would allow them to unfairly free ride on parents' efforts of having and raising children. In this chapter I briefly introduce these views and I focus most of my attention on the normative principle on which they rely to establish parents' claims. This is the Hart-Rawls principle of fairness, or Fair Play. Noting that the Fair Play debate has proceeded largely through piecemeal discussions, I set out to offer a systematic approach to Fair

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<sup>39</sup> Alstott 2004.

Play. I develop a new account of Fair Play, which I call the Shared Preference View. On this view, free riding counts as wrongful when we can justifiably ascribe to both the benefits producers and the free riders a qualified preference for free riding.

In Chapter 5 I draw out the implication of the Shared Preference View of Fair Play for parental justice. I argue that, on this view, parents do not have claims of fairness against non-parents.

Finally, Chapter 6 considers another version of a parental justice argument that appeals to a principle of Fair Play for its normative support. This is the Kids Pay view,<sup>40</sup> and it claims that grown children should be viewed as unfair free riders if they internalize the benefits of an upbringing that their parents provide without sharing the costs for them once they become adults and are able to pay their share. I argue that this argument, too, has only very limited success. On the Shared Preference View, the only benefits of an upbringing for which parents may have fairness claims are the morally optional goods of a good parent-child relationship. But since these are morally optional goods, arguably there is no claim for these fairness-based claims to be enforced by the state by extracting taxes from grown children who were benefited.

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<sup>40</sup> Tomlin 2015.

## Chapter 2

### The Argument from Insurance

Of all the theories of distributive justice on offer, the one on which it seems most straightforward that parents lack claims of justice to have the costs of children shared by the childless is Ronald Dworkin's equality of resources. On this view, inequalities in people's shares of resources that are traceable to people's endowments are unjust while the inequalities traceable to their ambitions are not. The goal is to neutralize the effects of differential luck on people's shares, which is why equality of resources has since been included under the umbrella term "luck egalitarianism."<sup>41</sup> By contrast, justice does not require, on this view, that we compensate people for disadvantages that are due to their life plans or to their expensive tastes.<sup>42</sup>

It is easy to see why it has been thought that parents lack claims to assistance from non-parents on this view. Insofar as children are the result of people's ambition (as we may assume as a matter of ideal theory), everything else being equal, it looks like the costs that are attached to the choice of becoming a parent ought to be borne by those who made that choice, namely the parents themselves. Or so most commentators on this issue have maintained.<sup>43</sup> For instance, Justine Burley writes, "as a matter of principle, Dworkin's theory does not endorse redistribution to people

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<sup>41</sup> In a seminal critical paper, Elizabeth Anderson (1999, p. 289) coins the term luck egalitarianism. Other luck egalitarian theories apart from Dworkin's equality of resources include Arneson 1989; Cohen 1989; Rakowski 1991; Roemer 1994; Temkin 1993.

<sup>42</sup> See Dworkin 2000, pp. 65-68.

<sup>43</sup> Burley 2000, p. 138; Casal 1999, pp. 367-368; Casal and Williams 1995, pp. 97-98; Casal and Williams 2004, pp. 156-159; Clayton 2006, p. 169; Rakowski 1991, p. 153.

whose inferior economic position is traceable to a preference for children when this preference forms part of their view of what leading a good life is.”<sup>44</sup>

However, Paul Bou-Habib mounts a case to the contrary.<sup>45</sup> He argues that non-parents ought to share the costs of children as a matter of basic egalitarian justice even on a view like equality of resources.<sup>46</sup> This pro-sharing argument, which Bou-Habib calls the insurance argument,<sup>47</sup> starts from the assumption that we should design our tax system in the way Dworkin recommends, namely, so as to reflect which pieces of bad luck people would choose to take out insurance against in a hypothetical insurance scenario under conditions of equality. Among other things, individuals would likely choose, the argument continues, to fund a means tested subsidy earmarked to partially cover childrearing expenses. For most individuals in this hypothetical insurance scenario would worry about how the bad luck of lacking the talents to attract a generous income would affect their prospects for being able to raise children adequately. Most people in our society, Bou-Habib argues, would be so uniquely averse to facing this unfortunate prospect that (i) they would want to insure themselves against it even if, at the time of making this hypothetical decision, they were not certain they would end up wanting to have children after all, and (ii) they would not feel as compelled to insure other potential expensive pursuits in a similar fashion.

Whether the argument from insurance works matters for several reasons. First, if it is right, it would be significant for understanding the implications of equality of resources, since it would uproot what seems to be a straightforward implication for one kind of ambition that individuals can pursue and which can land them at a disadvantage relative to those who do not pursue it: becoming a parent. Secondly, this

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<sup>44</sup> Burley 2000, p. 138.

<sup>45</sup> Bou-Habib 2012.

<sup>46</sup> In fact, Dworkin himself denies that his view implies parents should internalize all the costs of children, though he offers different reasons than Bou-Habib. See Dworkin 2004, pp. 361-362.

<sup>47</sup> Bou-Habib 2012, p. 198.

would be a powerful pro-sharing argument within the parental justice debate, since it starts from the most seemingly-unfriendly (to parents) premises of equality of resources but would nevertheless show that parents have claims against non-parents without appealing to any further principles or reasons external to the basic tenets of equality of resources itself. Moreover, crucially, the argument from insurance aims to show that a pro-sharing conclusion can be reached *compatibly with the commitment to liberal neutrality*, which is to say, without appealing to the comprehensive value of parenting as a life plan.

In this chapter I aim to draw attention to some aspects of the pro-sharing argument from insurance that are either ambiguous or underexplored, and which, once examined more closely, cast serious doubts on its success. In particular, they cast doubt on its success as an argument *for parental justice* as such. I show that the best we can hope from this argument is that it supports the conclusion that the benefits to which poor people have a claim should be more generous than was previously thought, but that these benefits should not be restricted to parents (non-parents, too, could be eligible if they earned below the income guaranteed by society). As such, the hypothetical insurance device establishes no distinctive claims for parents, but merely offers reasons to think that the impoverished should receive benefits that *could* cover more childrearing expenses than they currently do, if the poor also happened to be parents and wished to spend the additional income that way.

I begin by explaining, in the first section, how the Dworkinian hypothetical insurance exercise works. In Section 2.2 I lay out Bou-Habib's insurance argument in some detail. Section 2.3 clarifies which costs of children are being considered behind the veil of ignorance, and what the ambition to parent adequately amounts to. In Section 2.4 I raise the possibility that the parental ambition is already (satisfactorily) captured by Dworkin's theory. This is something that Bou-Habib has to reject in order to clear the way for his proposal that people would need to choose a *further*, more circumscribed form of insurance earmarked for childrearing expenses. In Section 2.5 I

raise doubts about whether the proposed parental subsidies would indeed be chosen from behind the veil of ignorance. I show that it would be more prudent for people *not* to insure in a way that restricts eligibility to parents, and that this means that the argument from insurance does not ground distinctive parental claims. I conclude by highlighting the limitations of the Dworkin-inspired argument from insurance for the purposes of parental justice.

## 2.1. Dworkin's hypothetical insurance device

Dworkin's theory of justice requires that everyone enjoy equality of resources, where this can obtain only if no one envies anyone else's bundle of resources. A just distribution of natural resources would obtain only if everyone had equal purchasing power and could bid against one another for all of the available resources. The resulting distribution would not be equal in the sense that people's bundles of resources would look the same, but it would be equal in the sense that no one else would prefer anyone else's bundle, since, by hypothesis, they *could* have bought it in this hypothetical auction. Whichever bundle of resources individuals end up with, this must be because they preferred it overall, and cannot complain that they are disadvantaged relative to others.<sup>48</sup>

They might have grounds for complaint if, as time goes on, they end up at a relative disadvantage as a result of various forms of what Dworkin calls brute bad luck. Bad brute luck is contrasted with bad option luck, the latter being the result of calculated gambles that could have been avoided.<sup>49</sup> Calculated gambles that turn out badly are attributed to people's choices (of taking on the gambles) and, as such, offer no grounds for complaint. But various pieces of bad brute luck such as accidents,

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<sup>48</sup> Dworkin 2011, p. 356.

<sup>49</sup> Dworkin 1981, p. 293.



disabilities, or lack of valued marketable talents are beyond a person's control and lead to justified envy of those who, through mere good fortune, command relatively more resources. The answer to this problem, Dworkin argues, is to consider what sort of compensation, if any, individuals themselves would choose if they were offered a fair opportunity to take out insurance against various forms of bad brute luck before any of them materialized, and pay the corresponding premiums for it.

So how does the hypothetical insurance market work? Roughly, Dworkin suggests that we are to imagine everyone having the same bidding power and facing the same risk of being struck by brute misfortune. Individuals would be making such insurance decisions from behind a thin veil of ignorance where they would know what their inclinations and ambitions were. However, no one would know their particular exposure to the risk of being afflicted by various forms of bad brute luck (for example, no one would know whether they were likely to have a genetic condition that would develop into a disability). No one would have any reason to assume they are safer from such hazards than anyone else, though they would know that such hazards do happen, and they would also know their incidence within their society. This is important because this is what ensures the fairness of the insurance device, and, in turn, the fairness of the resulting taxation scheme. It would be unfair to let only those of us who actually face high risks of disabilities and other kinds of brute bad luck bear the burdens of this fact, and, accordingly, to have to take out more comprehensive insurance, or to be charged more by an insurance company, because bad luck is morally arbitrary. Instead, we ought to share the risks of bad brute luck equally, and decide what level of insurance is appropriate in the face of it, taking into account the opportunity costs of these insurance choices.

Consider now the bad luck of not having income-earning talent. On Dworkin's view, being relatively disadvantaged due to lacking the powers and talents needed to produce valuable goods or provide services that are valued in one's economy is relevantly akin to being disadvantaged due to disability or accidents. We cannot know

how each individual person would actually insure against the risk of finding themselves untalented in this sense, and exactly what premium they would be willing to pay for it. But we can arguably make some conjectures of a *statistical* nature as to how most people would choose. One such conclusion, Dworkin argues, is that most people would not run the risk of being entirely uncovered in the face of unemployment or underemployment, if they turned out to lack talent. Most people, that is, would agree to pay into an insurance scheme in return for being guaranteed *some* level of income. It would be rational for them to pay into a scheme that guaranteed them what we might call a safety net, should they ever need one. And the lower the guaranteed safety net, the stronger the argument that *most* people would indeed find it worthwhile to insure.<sup>50</sup>

## **2.2. The insurance argument for parental subsidies**

Now Bou-Habib proposes that, in this hypothetical insurance situation, one kind of consideration that would be on most people's minds as they deliberated about how to insure against lack of income-earning talent would be how this piece of bad luck would affect the possibility of their being able adequately to raise children at some point in their lives. Most people in our society, he suggests, are "moderates" about the preference for children, which is to say they know they *might* someday want to have children, even though they might not be certain of it now. Further, the prospect of not being able to do so due to insufficient funds would arguably be a particularly distressing one. This potential ambition is so central to people's lives, Bou-Habib suggests, that individuals would be especially concerned to keep this option open for themselves in case they decided they wanted to pursue it.

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<sup>50</sup> Idem, pp. 97-98.

Presumably, most people in our society are either certain they want to become parents, or they are what Bou-Habib calls moderates about parenting. A minority of people are certain about never wanting to parent. Given that childrearing is very expensive, in a hypothetical choice situation where everyone faces equal risk of having the brute bad luck of not having enough income-earning talent, most individuals, Bou-Habib contends, would want to make sure that at least some of the costs of childrearing would be publicly funded through what he calls *partial means tested parental subsidies*. These are subsidies that would “(1) cover some, but not all of the costs of childrearing, (2) be adjusted for the income level of recipients, and (3) be funded through a progressive income tax”.<sup>51</sup>

In summary, the argument from insurance aims to show that (i) contrary to what most theorists have thought, a Dworkin-inspired ambition-sensitive view of justice is compatible with subsidizing parental expenses, (ii) in a way that would not generalize to other expensive pursuits that people might have, and (iii) which is compatible with liberal neutrality.

If successful, this argument would offer a powerful principled reason of basic justice to subsidize parenting. Such arguments are stronger than the more popular forward-looking reasoning according to which the state is permitted to subsidize parenting as an incentive for the creation of new generations.<sup>52</sup> Incentive-based arguments are weaker in two respects. First, they as was noticed earlier, for the permissibility of sharing the costs of children rather than establish a requirement of justice. Second, whether a state adopts costs-sharing policies can depend on contingent empirical facts regarding the fertility levels of a population at a particular time, and the aims the state might have for wanting to incentivize procreation or not. For instance, if enough individuals in a particular society have a robust enough desire to become parents even without any incentives, and if that state is happy with the resulting fertility

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<sup>51</sup> *Idem*, p. 208.

<sup>52</sup> Folbre 1994, 2008.

levels, it may see no incentive-based reasons to subsidize parenting. By contrast, the argument from insurance would require states to subsidize those parents that do not earn enough to parent adequately regardless of contingent facts like existing fertility levels and the like.

Another feature of the insurance argument that can constitute an advantage is that the parental subsidies recommended by Bou-Habib, while universally funded, would be sensitive to parents' level of income. In particular, very rich parents would not receive them. Since these subsidies are justified as payments meant to redress the bad luck of not having high income-earning talent, there would be no reason for the very talented, rich parents, who have no financial impediments to parenting adequately, to cash in on their insurance. This would be a welcomed feature for those who might find it troubling to subsidize parents indiscriminately, the very poor and the very rich alike.<sup>53</sup>

For the purposes of this chapter I grant the empirical assumptions that the argument from insurance makes about the widespread preference for parenting. It seems to be true in our society that most people are at least moderates about the prospect of parenting. I also grant that this preference is a central one for those who have it, including for the moderates, and that this can make people particularly sensitive about the possibility of not being able to pursue it on account of bad luck. What I want to focus on is how exactly such considerations about parenting would feature into the hypothetical insurance experiment, and what sorts of conclusions we can draw in light of such considerations, consistently with equality of resources.

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<sup>53</sup> Casal 1999, p. 374.

### 2.3. Adequate parenting and the costs at stake behind the veil

In order to assess the argument from insurance we need to clarify, first, which costs of children individuals are supposed to be contemplating behind the veil, and what exactly the parenting ambition amounts to.

First, we have to settle which costs of children are being considered behind the veil. In setting up the problem, Bou-Habib asks: “In most industrialized countries, parents pay the lion’s share of clothing, shelter, food, and toys, while the taxpayer funds education and health care. Is that division of responsibility correct or should the balance shift in one direction or another?”<sup>54</sup>

One way of understanding his project, then, is to say that by using the hypothetical insurance device in the way that he suggests we are settling the answer to the fundamental question of who should bear the costs of raising children, where *the entirety* of these costs is at stake. However, it is not entirely clear that, as Bou-Habib’s argument progresses, the entire range of childrearing costs are being kept firmly in mind. When making their insurance decisions, are individuals behind the veil only considering the costs that parents in most current-day developed societies have to bear themselves, or are they contemplating the risk of having to bear all the costs of children, *including all the costs which are now in most societies already publicly subsidized*, i.e. typically education and health care?

What hinges on clarifying which costs of childrearing are at stake behind the veil? If individuals are contemplating all the costs of children, on the one hand, this strengthens the contention that people would be extremely distraught by the thought of not earning enough to be able to give children even minimally adequate education or health care – mainly because most people would be facing this risk, and, if it materialized, it would be disastrous for both children and parents. One would

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<sup>54</sup> Idem, p. 201.

presumably have to earn close to the highest levels of income possible in one's society to be able to cover all of the costs of raising children on their own. But this also means that (a) a large proportion of society would be eligible to cash in (as *most* people who parent will not earn at such high levels of income), and the amount that they would need to cash in to cover all those costs would be fairly substantial. This could drive up the cost of premiums to the point of rendering the insurance scheme non-prudent.

Of course, as Bou-Habib is careful to point out, individuals would not choose to cover the full cost of whichever range of childrearing expenses are at stake anyway, precisely because this would raise the cost of premiums too much. But if, under the veil, the *whole* range of childrearing costs is at stake, it is plausible to contend that the partial means tested parental subsidies that would be chosen would only amount to a sum large enough to cover for the crucial, and very expensive, costs of health care and education, and little more. In this case, the division of costs between society and parents that the insurance argument would recommend would not be much different from the division of costs that already exists in most Western societies, in which parents are expected to bear all the costs of childrearing apart from, at least, basic health care and education, which is publicly funded. Cover much more, and the premiums would skyrocket.

This result would render the argument from insurance considerably less interesting from a practical point of view, though it would remain of great theoretical interest that subsidizing things like health care and education for children would be a matter of justice to (non-rich, unlucky) parents, rather than to the children themselves – arguably controversially. It would also imply, perhaps problematically, that the children of rich parents are not entitled to publicly funded health care and education.

We need to look at whether the costs of health care and education for children would be independently covered within Dworkin's framework such that they would not be on the table for the individuals behind the veil contemplating the risk of not earning a

generous income. A direct argument for this is provided by Dworkin himself, also by appeal to the hypothetical insurance device, but as a matter of rectifying brute luck inequality affecting children themselves, rather than parents. He considers the possibility of being born to poor or unemployed parents as a distinct piece of bad brute luck that children themselves are victims of. They could choose to take out insurance against this, or, rather, we can imagine that prudent guardians of their interests could:

We can ask: How much insurance, at what terms, would prudent guardians buy on their behalf, on the understanding that premiums were to be paid later, on some long-delayed instalment plan, by the children themselves? It seems plain that a prudent guardian would buy insurance to provide enough coverage to allow an infant to live with its own parents, and to receive enough medical care and education to survive and qualify for employment when appropriate.<sup>55</sup>

Dworkin's argument shares the potentially problematic implication that children of rich parents are not entitled to publicly funded health care and education, but I leave that to one side. If we take this argument on board (or, really, any argument that would be compatible with Dworkin's framework and which would secure health care and education for children on independent grounds), adult individuals behind the veil who are least "moderates" about their preference for parenting would only have to worry about being unlucky enough to fail to earn at a level that could cover the remaining costs of childrearing. These presumably include the costs of housing, food, clothing, school materials, toys, extracurricular activities, and so on, which, no doubt, are still substantial, but considerably less than the sums needed to *also* provide health care and education.

Just how worrisome the risk of not earning enough to provide for these other costs, and whether it would make sense for people to insure against it, depends on a few

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<sup>55</sup> Dworkin 2002, p. 339.

other factors. These include, first, what the particular standard of adequate parenting requires in the society we are imagining. If the moral standard for adequate parenting is very low, for example, if it coincides with the legal standard of non-neglect and non-abuse, it is plausible that most people in this society would earn enough to cover the remaining costs to meet this minimal standard. Paying a premium to insure for this, then, might not seem appealing.

Second, it also depends on how many children they think they will want to have. Of course, if they plan to have more than three children, say, suddenly it could seem difficult to meet even the minimal standards of adequate child care, and signing up to an insurance scheme would become attractive again. But surely it is not the case that prudent people behind the veil, many of whom have only a moderate preference for parenting, would want to protect the opportunity to parent several children adequately, given the corresponding premium costs that would be attached to that choice. Most likely, people would want to protect the opportunity to parent at least one child adequately since the most distressing risk of all is that one might miss out on the opportunity to parent even one child due to economic hardship. But once again, if the moral standard of parenting adequately is as low as the standard of non-abuse and non-neglect, most people will be able to meet this threshold for at least one child through their own income-earning talent. There would not be a *majority* behind the veil willing to take out insurance against the risk of not being able to parent even one child by such a minimal adequacy standard, especially when they know that health care and education are already covered independently.

Of course, the moral standard for parenting adequately could (and should) be much higher than a legal threshold of non-abuse and non-neglect. Perhaps parenting adequately requires one to raise their child in such a way that she will have an open future.<sup>56</sup> Of course, the higher the standard of adequate parenting, the higher the costs associated with that. But we are here keeping firmly in mind that health care and

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<sup>56</sup> See Feinberg 1992.



education, and perhaps even a bit more than that, are already secured, so this presumably does some of the work of securing an open future for children.

There are many unknowns, and many empirical complexities here that prevent us from drawing any firm conclusion about whether people would insure or not: it really depends on what the standard for adequate parenting is in a particular society, how expensive meeting it would be for parents themselves if they did not insure, and how costly the premiums would be if they did insure. But note, also, that we are here assuming that, in making hypothetical insurance decisions, parents *really would* care about meeting those standards, whatever they are. Throughout most of history people have had children without careful thought about their ability to meet children's just claims (at least if we have a demanding view of what these are), but here we seem to be assuming individuals behind the veil to be modern, enlightened citizens that would rather miss out on the experience of parenting altogether than be inadequate parents in the sense of not meeting this threshold of adequate parenting. This would be a welcome psychological feature of individuals behind the veil, if true, but remember that behind Dworkin's veil we have "real" people, not fully rational and morally impeccable versions of them. We do have a stylized version of them in the sense that they lack information about their own exposure to certain risks, and we are assuming them to be prudent. But it is the risk of using the Dworkinian hypothetical insurance device to design a system of just compensation that the choices that *actual* people would make behind a thin veil of ignorance might fall short of what we would otherwise deem morally desirable.

This brings us to another important feature of the argument from insurance that would need to be unpacked. What exactly is folded into the "opportunity to parent adequately" that individuals would want to protect is rather vague. Bou-Habib writes that people would want to make sure that they will not be "forced by their economic difficulties to miss out on that experience, or that they do not face severe economic difficulties during that experience," and further adds that subsidies would be given to

people only “so long as parents need them to enjoy a decent standard of life.”<sup>57</sup> This suggests that he is not only thinking of those who would earn at the very lowest levels of income such that they would not be able to provide even a *minimally* decent life for a child (and would, therefore, have to give up on having a child altogether). This is what I have been assuming so far is the risk they want to avoid. Bou-habib is also thinking of those who, while being able to give a child a minimally adequate upbringing (whatever that means), would face severe economic hardship. But how is this economic hardship to be understood? Not having any disposable income left after providing minimally adequate care for the child? Not having enough resources left to enjoy an adequate range of options for flourishing besides parenting? Once again, where exactly we set the standard here will influence the insurance decisions that would be made because it would affect (a) what proportion of society actually faces (and would be worried about) the risk of not earning enough to meet it; (b) how distressing it would be if that risk materialized.

All of this is just to flag that, in trying to unpack important empirical and normative issues that the argument from insurance relies on, such as what range of childrearing costs are at stake behind the veil, and what the opportunity to parent at least one child adequately would involve, there are complexities that, depending on how they are resolved, might already cast doubt on the argument’s conclusions.

In the rest of this chapter I will choose an interpretation of these two elements that I find most plausible, though I cannot hope to fully clarify them. I assume that what is at stake behind the veil are all the costs of childrearing apart from health care and education, and that individuals want to secure the opportunity to adequately raise at least one child (where the adequacy standard is higher than merely non-abuse and non-neglect) if they ever decide to become parents, while still enjoying a decent standard of living themselves (whatever *this* standard is in their particular society). That is, I assume that people would not only be worried about being so poor, through

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<sup>57</sup> *Idem*, p. 201.

no fault of their own, that they could not adequately raise even one child, but also about not being well-off enough to avoid living in poverty themselves as a result of being the untalented parents of even just one child. This is what, from now on, I will refer to as the *parental ambition* that individuals might want to secure behind the veil.

The question I want to raise in the next section is why it is that such parental concerns would not already be captured by Dworkin's generic level of underemployment insurance.

#### **2.4. Underemployment insurance would be rather modest: so what?**

Bou-Habib suggests that, in deciding what level of insurance people would purchase if they all faced the same risk of lacking marketable talent and had equal opportunity to insure, the prospect of not being able to pursue the parental ambition would play a central role in their insurance decisions.

Individuals face the risk of low income due to bad brute luck and need to decide the kind of insurance they want to purchase against that risk. One type of insurance cover they will wish to purchase for themselves is a *cash income supplement* paid out in case their income level should fall below a stipulated threshold. (...) The question we need to address is whether *on top of* this cash income supplement, individuals would purchase insurance cover that is tied to childrearing expenditure (a parental subsidy guarantee).<sup>58</sup>

This suggests that we are assuming that the cash income supplement that everyone below a certain threshold of income would receive (what Dworkin calls underemployment insurance) would not be generous enough to cover childrearing expenditures and allow parents to lead a decent life themselves. This may well be

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<sup>58</sup> Idem, p. 207, emphasis in original.

true. Dworkin argues that the level of insurance most people would choose in a hypothetical scenario would be higher than what is currently offered in countries like the United States or Britain by way of transfers for minimum wage or unemployment.<sup>59</sup> But he also shows why it would not be sensible to insure for the maximum level of income possible. This would involve, as Dworkin puts it, “a very high chance of gaining very little.”<sup>60</sup> This is because most people will end up needing to cash in on their insurance (most people will not have the talent to earn at the maximum level on their own). As a result, the premium that people would have to pay in order to support this scheme would be so high that, over time, it will approach the expected gain. The expected return, when compared to the cost of purchasing the insurance, will not be worth the gamble. This is why, Dworkin says, “the lower the income level chosen as the covered risk, the better the argument becomes that most people given the chance to buy insurance on equal terms would in fact buy at that level”.<sup>61</sup>

This is presumably why Bou-Habib thinks that, given just how expensive adequate childrearing is (even with health care and education already secured),<sup>62</sup> the underemployment benefits recommended by Dworkin would not suffice to allow individuals to adequately parent *and* offer them the opportunity to enjoy a decent standard of living while doing so.

However, the underemployment insurance that Dworkin argues people would buy may already be taking all relevant factors about people’s ambitions into account. If so, then even though the insurance level agreed upon will not be very generous, it is the optimal level given the attached costs. For there is no reason to assume that

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<sup>59</sup> *Idem*, p. 97.

<sup>60</sup> *Idem*, p. 96.

<sup>61</sup> *Idem*, p. 97.

<sup>62</sup> See the costs cited in Section 1 of the Introduction. Most pertinently, according to figures from the Child Poverty Action Group, the costs of raising a child in 2017 from birth to 18 years old in the UK, excluding the costs of housing, health care, and council tax, is £75,436 for a two-person household, and £102,627 for a one-parent family (Hirsch 2017).

people's potential parenting ambitions are completely overlooked by Dworkin when he recommends a relatively low level of underemployment benefit. Parenting ambitions, as well as any other potential life plans people might be worried about behind the veil, are presumably already captured by the process of deliberating about underemployment insurance.

So it may well be that the income guaranteed in the face of bad brute luck is not very generous when compared to the costs of parenting adequately in our society. But why should *this* suggest that we need to look for additional, discrete insurance solutions as a response *to the same piece of brute bad luck* (lack of marketable talent) that the generic underemployment insurance claims to take care of?

To my mind, what this more readily suggests is another potential limitation of appealing to the hypothetical insurance device as a basis for parental justice claims: once again the substantive results yielded by the hypothetical insurance device seem to fall short of what many would intuitively think is morally required.

Bou-Habib could reply that what his argument assumes is not necessarily that parental ambitions are being completely overlooked, but that the singular nature of the parenting ambition, and its bearing on people's hypothetical insurance decisions, has not been adequately taken into account. Theorists like Dworkin may have underestimated the pervasiveness and force of parental ambitions, which may explain why they did not argue for a level of underemployment benefits that could cover the costs of raising at least one child, or why they did not consider other insurance possibilities like the partial means tested parental subsidies. If this is true, their conclusions about what the hypothetical insurance would or would not cover need to be revised accordingly.

Assuming Bou-Habib is right about that, we might wonder why taking the parental ambition seriously would not lead us to the conclusion that people would insure a

higher level of income in the first place (at least compared to what Dworkin suggests they would). If people care so much about the parental ambition as Bou-Habib suggests they do, would they not find it worthwhile to pay the higher premiums associated with securing a level of underemployment benefit high enough to cover the costs of the parental ambition? Call this the *Increased Underemployment* solution.

I believe this is an important question, and a case could be made that people really might insure a higher level of underemployment benefits, depending on a number of empirical factors to do with the details of how much higher that level of benefit would have to be and so on. But Bou-Habib might reply that this would be taking his suggestion too far. We may have underestimated the importance of the parental ambition, but even if we corrected for that, it would not lead to the conclusion that people would be willing to pay substantially higher premiums to protect it. The premiums would be substantially higher because not only would the guaranteed income be higher, but also, more people would be eligible to cash in on their insurance. As more people would fail to earn at that higher level of income through their own income-earning talents, they would be eligible to cash in to make up for the difference between that guaranteed income level and what they actually earn.

Faced with this problem, we could go in at least two directions. Perhaps, after all is said and done, we would end up with a guaranteed level of income that would only be slightly higher than what Dworkin suggested it would be (call this the *Slightly Increased Underemployment* solution). For even if we revise people's hypothetical insurance choices in a way that reflects the importance that the parental ambition has for most individuals, in the end people would be deterred from raising the guaranteed income level *too* much, given the high premiums they would have to bear to sustain that scheme. I, for one, think the Slightly Increased Underemployment solution would also be a perfectly plausible contender as to what insurance option individuals would choose behind the veil.

Alternatively, we could go in Bou-Habib's direction, which purportedly allows us to revise our hypothetical insurance scheme in a way that reflects the importance of parenting ambitions, and *to do so in a way that is more cost-effective*, and hence more likely to be chosen from behind a veil of ignorance.

Let us take stock. I am granting that the importance of the parental ambition on individuals' hypothetical insurance decisions may have been underestimated by theorists like Dworkin. Now the question is, what is the most plausible way to revise our conclusions about hypothetical insurance in light of this? This is what I take up in the next section. In particular, I raise some questions about whether Bou-Habib's proposal is indeed significantly more cost-effective than the alternatives.

## **2.5. Are parental subsidies the more cost-effective form of insurance?**

The purported advantage of choosing means tested parental subsidies over both the Increased Underemployment and the Slightly Increased Underemployment solutions is that it is more cost-effective. It produces better results than the Slightly Increased Underemployment because, I assume, it would be more generous, so it would cover more childrearing expenses. On the other hand, it is meant to be significantly cheaper than the Increased Underemployment because, while both would be able to cover the same, more extended, range of childrearing costs, *fewer people* would be eligible to cash in the childrearing subsidies, namely those who fail to earn at the stipulated level *and* are parents. So, presumably, prudent people in the hypothetical choice situation would choose the means tested parental subsidies over those other two options.

Another reason why parental subsidies would allegedly be chosen over simply raising the generic underemployment benefits is presumably due to the unique character of the parental ambition. Bou-Habib argues that the parental ambition displays some

characteristics that other expensive life plans do not share (which I will turn to in some detail later), and this explains why individuals may be content with finding a reasonably affordable way to insure the parental ambition rather than taking on the costs of insuring in a way that could cover for other expensive ambitions as well.

It is helpful to see the argument from insurance as a proposal to institute a two-tier underemployment compensation scheme in response to the risk of lack of marketable talent. The first threshold is set by the generic underemployment benefits that people are entitled to merely in virtue of being unable to earn at that income level through their own talents. The *form* this compensation takes is a cash supplement to make up for the difference between what one earns and the income level that Dworkin's underemployment insurance guarantees. A second threshold is set at the higher income level required to afford an expensive pursuit like the parental ambition. Call this the *Parental Ambition Threshold*. To claim the benefits offered at this higher level of income one must be both unlucky enough not to be able to earn that sort of income on one's own, and, of course, one must also be a parent. The difference between what one earns and the income guaranteed at *this* threshold is made up of subsidies earmarked for childrearing expenses. The argument for both *forms* of compensation is that, in each case, they would have been part of the content of the insurance package chosen by prudent individuals behind a veil of ignorance.

I want to suggest that, despite what may first appear, it is not clear that this two-tier scheme is the more cost-effective insurance option compared to the Increased Underemployment solution. The latter would involve simply raising Dworkin's generic underemployment threshold to the level of the Parental Ambition Threshold and giving everyone who falls below it a cash supplement. This cash supplement would not be conditional upon one's being a parent. Anyone would be eligible merely in virtue of earning below the Increased Underemployment threshold.



Instead, I argue, the parenting ambition is not as unique as Bou-Habib argues it is, and people would be worried about the effects of bad luck on their ability to pursue at least two other ambitions. As a result, they would be moved to insure by reasons that are not unique to parenting, and they would find it more prudent to insure in a way that does not restrict eligibility to parents. My conclusion is that, at best, the argument from insurance only gives us reasons to raise the level of generic underemployment benefits from what has been previously thought, but does not give us reasons to fund parenting specifically through targeted subsidies. If true, this conclusion would undercut the argument from insurance as an argument *for parental justice*. For, as I explained in the Introduction, a good argument for parental justice must provide reasons of basic justice to share the costs of children that refer to the features of parenting specifically, or to its effects. I argue that the argument from insurance fails to provide such reasons.

To begin with, recall that the two-tier scheme would purportedly be cheaper than Increased Underemployment because the category of people eligible to cash in on the former is more restricted: the “extra” funds can only be awarded to those who actually end up parenting *and* fall below the guaranteed income level for parents. On Increased Underemployment non-parents would be eligible too, provided only that they fall below the stipulated threshold.

It is clear that the two-tier scheme will necessarily be *somewhat* cheaper than the Increased Underemployment scheme. Any society has both parents and non-parents, and a policy where only parents can cash in will be cheaper to sustain than one where everyone can. But if it turns out that an overwhelming majority of adults do end up parenting, it is not so obvious that the premiums will be *significantly* lower than on Increased Underemployment. We know that parents tend to make up the majority of adults in just about any society. Moreover, any policies that provide parental subsidies, like the one Bou-Habib favors, have the potential to act as an incentive for

people to become parents, who may otherwise not have been.<sup>63</sup> So it is essential to see how many people, out of all the people who are not talented enough to earn at the Parental Ambition Threshold, would remain non-parents, thereby allegedly loosening the strain on the scheme enough to make it a considerably cheaper option than Increased Underemployment. It is hard to find a clear answer to this empirical question, but it is worth highlighting its importance.

It is worth highlighting its importance because the Increased Underemployment solution has its own advantages: it secures the opportunity to pursue other expensive preferences that are similarly widespread and central to people's conception of the good as childrearing is.

Bou-Habib argues that people would be willing to secure the opportunity to pursue the parental ambition in a way that they would not be willing to when it came to other potential expensive life plans such as, for example, mountain-climbing.<sup>64</sup> The former ambition, he maintains, is complex in that it depends on inclinations and circumstances that may change with time, in a way that a preference for becoming a mountain-climber does not. Thus, a person behind the veil of ignorance who was unsure she wanted children could still be aware that this may well change and that she would want to parent one day. Furthermore, the parenting ambition, Bou-Habib claims, is potentially of central importance to our lives in a way that ambitions like mountain-climbing are not. The prospect of not having enough resources to parent adequately, should we ever decide we wanted to, would be so distressing that most individuals would want to insure against this possibility even if they were "moderates" about it, that is, even if they were unsure, at the time of buying insurance, that they would want to pursue it at some point in the future. By contrast, writes Bou-Habib:

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<sup>63</sup> Hoem 1990, 2005.

<sup>64</sup> Idem, pp. 209-210.

Unlike having children, mountain-climbing is a hobby that we can form fairly unchangeable preferences about – those of who are disinclined to pursue it are likely to remain so in the future. Furthermore, in the unlikely event that those currently uninterested in that hobby should want to pursue it one day, their lives would not be shattered should they have to forgo pursuing it for lack of funds.<sup>65</sup>

So, Bou-Habib concludes, most people, both those who are certain they will want to parent and those who are unsure about it, would be willing to insure the parental ambition but not other ambitions. This is why they would be inclined to choose parental subsidies over generic underemployment benefits, since it is the parental ambition that most would be worried about, and, given this, it would be the most cost-effective option since only parents would be eligible for them. For people to be willing to take on the higher premiums that would accompany an all-purpose cash subsidy that both parents and non-parents would be eligible for, and which could be used for purposes other than childrearing, it must be the case, Bou-Habib writes, that “(1) apart from childrearing, there existed a wide range of other expensive first-order choices we might wish to pursue in the future and (2) our inability to pursue any of those other choices, were we eventually to settle on one, would cause us great distress.” He continues, “[i]t is doubtful, however, that both of these conditions are satisfied.”<sup>66</sup>

In response, however, it is unclear, first, why Bou-Habib believes we need a *wide* range of other preferences for it to be sensible for us to opt for the generic cash supplement (which is the same as saying that they would opt for the Increased Underemployment solution). Second, we can think of at least two other preferences that are similar to the parenting ambition in the relevant respects: the opportunity to change one’s profession, and the opportunity to enjoy a minimally adequate amount of free time. Following Julie Rose, we can understand free time here to mean time that is not committed to meeting one’s own basic needs or the basic needs of a

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<sup>65</sup> *Idem*, p. 210.

<sup>66</sup> *Idem*, p. 211.

dependent.<sup>67</sup> These preferences share with the preference for parenting the relevant characteristics that Bou-Habib believes justify the conjecture that people would want to insure the opportunity to pursue them if they so wished at some point in the future. To see this, let us first isolate the relevant characteristics of the parental ambition.

Arguably, the parental ambition is:

- (i) Shared by most individuals in our society: most people would either know for certain that they want to become parents one day, or are at least “moderates” about it, namely, they are open to the possibility that if various circumstances obtain (for instance, if they find the right partner), they, too, might choose to become parents despite not being settled on this preference at the time of the insurance-making decision.
- (ii) Likely to be affected by someone’s unlucky circumstances, namely by lack of income-earning talent.
- (iii) Would cause great distress if the risk of being prevented from parenting due to one’s unlucky circumstances were actualized.

Given these three features, Bou-Habib concludes that most people behind the veil would want to take out *some* insurance to protect themselves against not affording their parental ambition if they turned out to have brute bad luck. And then, of course, the question is, what kind of insurance would be taken out, where Bou-Habib, as we have seen, argues that an affordable package would involve partial means-tested parental subsidies.

Consider, now, the preference for securing the opportunity of changing one’s profession and the opportunity to enjoy a minimally adequate amount of free time.

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<sup>67</sup> Rose 2016, pp. 48-49.

- (i) It seems plausible to say that most individuals in our society would share these preferences. Consider changing one's career first. Certainly, not many people would know at the moment of insurance decision-making that they will want to change professions someday. But this preference, like Bou-Habib says about the preference for having children, is complex. In light of the changes that their life circumstances might undergo, they might well find themselves in the position of wanting to, or being forced to, change careers, or change jobs. In the case of the preference for an adequate amount of free time, perhaps some people behind the veil would know for certain that they will always prefer to work long hours and enjoy more resources than enjoy free time. But they will likely be a minority. Most individuals want to ensure they have an opportunity to enjoy at least a minimal amount of free time throughout their working lives.
- (ii) Both of these preferences are likely to be affected by the brute bad luck of lacking income-earning talent. Changing professions would involve a substantial investment in terms of time and resources into acquiring new skills. The time invested into re-skilling would be time taken away from working productively, which is something that only those who would have acquired enough resources up to that point could afford. Acquiring new skills would also involve paying for education and training appropriate to one's alternative professional path. Among all those who share the preference of changing their professions, some will encounter more obstacles than others in doing so, due to lack of resources. Insofar as their lack of resources would be a result of the bad luck of not enjoying enough income-earning talent, they would be entitled to compensation to the extent that they would have insured against this risk. For similar reasons, some of those who would prefer to have an adequate amount of free time will enjoy different prospects for fulfilling that preference. The unlucky might earn so little that they would be precluded, or severely hindered,

from affording either to change their profession, or to enjoy adequate amounts of free time.

- (iii) Lacking the resources to afford adequate free time or to change one's profession seems distressing enough that most individuals would be willing to take out *some* form of insurance to protect themselves against that. Given how much of people's time is spent working, being stuck in a job or in a profession that is not conducive to one's flourishing seems a bad enough prospect that people would insure themselves against that, provided that the premiums they would have to pay would be affordable. They would also be anxious to insure themselves, especially, if it was true, in their society, that technology was rapidly developing in a way that would make many jobs obsolete – in that case, once again, most would want to make sure they could acquire new skills for desirable and lucrative jobs. Some of these new skills will involve becoming proficient in using new technologies oneself. Such skills might be very time- and resource-consuming to acquire. And as far as free time is concerned, contemplating the risk of a working lifetime by and large deprived of an adequate amount of free time seems, on its face, worrisome enough to prompt most individuals to take some precautions against that possibility materializing.

In a footnote, Bou-Habib himself acknowledges that the opportunity to change one's career is a preference similar to keeping one's parental option open, but he suggests that "the prudent way to cover this option would be through an in-kind insurance scheme, rather than through an indiscriminate cash equivalent of a parental subsidy."<sup>68</sup> So he believes that the existence of this preference would, if people were prudent, merely warrant the choice of signing up for an in-kind benefit scheme such as, perhaps, vouchers for re-skilling courses on top of their generic underemployment insurance and the parental subsidies.

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<sup>68</sup> *Idem*, p. 215, fn. 13.

But if, as I argued above, to these two we can also add the widespread preference for a minimally adequate amount of free time, it is not so clear anymore that Bou-Habib's proposal is the prudent one. It may well be that a cash subsidy that can be used for either one of these three pursuits would be the prudent option indeed.

This conclusion would be even more plausible if we can identify even further similar preferences that most would share behind the veil. Think, for example, of the preference of living in a place one considers conducive to one's flourishing. No one would want to be stuck living in a place that they despise, and their income-earning talent might impede their ability to freely choose a place to live in a way that a talented person can afford. Perhaps individuals would want to secure the opportunity to have access to living in a big city, or, conversely, close to nature, or to live in a place where one's spouse would have better career prospects, or where one's children could have better opportunities.

The more preferences similar to parenting we can identify, the more prudent an all-purpose subsidy that can be directed to any of these pursuits seems. That is, the more prudent the Increased Underemployment solution seems. This conclusion is bolstered by my earlier doubt regarding the number of people eligible to cash in the parental subsidies. If the number of people eligible on Bou-Habib's two-tier scheme is not *considerably* lower than on Increased Underemployment, and given that there are at least two other first-order preferences, if not more, that most people would be anxious to secure when faced with brute bad luck, going for the Improved Underemployment solution starts to look the more prudent option. This is because most people can be fairly certain that, should they end up poor, even if they do not end up being parents they would very likely still want to pursue one or more of these other preferences: having enough free time, changing one's profession or relocating to a better place to live in. So it would be imprudent to restrict eligibility only to those who do end up as parents.

All of this was on the assumption that perhaps Dworkin failed to register the importance of the ambitions that most people would want to insure in case bad luck struck. This assumption had some plausibility when parenting was the only preference we thought Dworkin failed to account for. But, it must be said, once we start to recognize that there may be a number of preferences that people would be willing to have secured, the question I raised in Section 2.4 above returns even more forcefully. Would Dworkin's recommended underemployment threshold not have registered already the relevance of *all* of these preferences? This seems unlikely.

But let us say that, somehow, that is the case. Recall, also, that the Slightly Increased Underemployment solution remains a sort of middle-ground contender too. Assuming that Dworkin failed to register all of these preferences adequately, and assuming that one is not convinced by the advantages of adopting Increased Underemployment, one could find Slightly Increased Underemployment preferable to the solution proposed by Bou-Habib. Slightly Increased Underemployment would allow us to revise the underemployment benefits in a way that recognized that there are more preferences apart from parenting that people would greatly care about, even as moderates, behind the veil. At the same time, it would recognize that perhaps individuals would not be prepared to take on the high premium costs of Increased Underemployment.

## **2.6. Conclusion**

I hope to have shown that there are good reasons to be wary of the argument from insurance for the purposes of the parental justice debate. For one thing, many in the pro-sharing camp may not be satisfied with the substantive results yielded by any argument that settles people's entitlements by reference to what actual people would have chosen in a hypothetical insurance exercise. Secondly, to even get off the ground, the argument relies on the assumption that the generic underemployment insurance



does not adequately take into account the importance of the parental ambition, which is itself a questionable assumption. Thirdly, even if that assumption were correct and we sought to revise our views about what sort of insurance would be chosen, it is doubtful that the partial means tested parental subsidies would be chosen behind the veil. For we can identify several other preferences that bear similar characteristics to the parental ambition and which people might also worry about protecting. In that case, Slightly Increased Underemployment and Increased Underemployment look like very good contenders for the type of insurance that might be chosen behind the veil. These two options would have to be rejected before considering the more restricted parental subsidies option.

If it is true, as I have argued, that Slightly Increased Underemployment or Increased Underemployment would be preferred behind the veil of ignorance, then an argument from hypothetical insurance would not be of much relevance to the *parental* justice debate as such. If the *best* conclusion we can get is that the poor, be they parents or not, are entitled to somewhat more generous underemployment benefits than was previously thought, there is nothing by way of distinctive parental claims here. For anyone who earned below the stipulated threshold would be eligible to cash in and to spend that income however they wanted, all merely in virtue of the fact that they were unlucky on the job market.

True, in a limited sense society would end up subsidizing (poor) parents, insofar as people earning less than the guaranteed amount would receive universally-funded benefits which, if they also happened to be parents, they could use for childrearing. But this is no more a distinctive argument for parental justice than it is an argument for, say, justice between those who can afford a lot of free time and those who cannot. Poor people receiving underemployment benefits might use that money to buy themselves some free time, but this does not mean we could pass the insurance argument as a distinctive argument for fair shares of free time.

Finally, if all it took for an argument to be a parental justice were to show that there are reasons of basic justice to *in effect* universally subsidize parents, any argument supporting transfers of wealth from people who happen to be non-parents to people who happen to be parents would qualify, regardless of its aim and underlying justification. But this is not the case. To qualify as an argument about parental justice, a pro-sharing argument must justify transfers by reference to some normatively salient feature of parenting itself or its effects, which calls for redistribution. In the next chapter I discuss an argument that does just that, namely the argument according to which parents have claims to universal support in virtue of the fact that bearing all the costs of parenthood would undermine their autonomy.

## Chapter 3

### The Argument from Autonomy

Within moral and political theory a lot of attention has been paid to how the family in general, and particular styles of parenting more specifically, would foster the development of children's autonomy. What parents may or may not do when raising their children is to a very large degree determined by what would foster or prevent children's growing up to be autonomous adults,<sup>69</sup> or indeed by what would promote or compromise children's autonomy *qua* children.<sup>70</sup> Considerably less attention has been paid to whether having and raising children (or raising them in particular ways) might undermine the *parents'* autonomy. A notable exception to this gap in the literature is provided by Anne Alstott's book-length treatment of the purportedly autonomy-undermining burdens of childrearing and the obligation that society owes to parents to alleviate them.<sup>71</sup>

This chapter explores the prospects for an autonomy-based pro-sharing argument for parental justice, taking Alstott's work as its starting point. The general idea she puts forth is that, unless it socialized the costs of children, a liberal egalitarian state would be failing in its commitment to secure the conditions of autonomy for parents, as it must do for all its citizens. In this chapter I investigate the most plausible ways of filling in the details of this general argument compatibly with respecting the liberal egalitarian commitments to holding people responsible for their choices and to a principle of political neutrality.

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<sup>69</sup> See, for instance, Brighouse and Swift 2014.

<sup>70</sup> Clayton 2006.

<sup>71</sup> Alstott 2004.

I argue that, in order to establish an autonomy-based complaint on the part of parents, we need what I will call a *principle of autonomy stakes*. That is, we need to know which actual or potential burdens resulting from individuals' autonomous choices should count as autonomy-undermining, which are neutral from the point of view of autonomy, and which are autonomy-promoting. In what follows, I first introduce the intuitive case for parents' autonomy-based complaints proposed by Alstott, as well as some important conceptual clarifications regarding the notion of autonomy at stake in this debate. In section 3.2 I describe the three kinds of costs that could be thought, *prima facie*, to impinge on parents' autonomy. Section 3.3 will describe the challenge to any autonomy-based case, namely the challenge of identifying autonomy stakes. Sections 3.4 through 3.7 explore how the main accounts of autonomy that the literature offers could deal with this challenge. I conclude that some accounts of autonomy are indeterminate with respect to the burdens that ought to count as autonomy-infringing, while others offer unappealing answers. The account that does best is Joseph Raz's self-authorship view,<sup>72</sup> yet the range of burdens that it can condemn as autonomy-undermining (compatibly with political neutrality) are very limited, and even there it is not clear exactly what the state is committed to by way of protecting people from suffering those autonomy deficits. In Section 3.8 I scrutinize one kind of view of what equal claims to autonomy might entail and offer some reasons to think we should not accept it. As a result, the autonomy-based case for parental justice question remains open and depends, first, on defending a plausible principle of autonomy stakes, and second, on developing a view of how the state should balance the claims to autonomy that citizens have.

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<sup>72</sup> Raz 1986.

### 3.1. Alstott's autonomy-based challenge to parental justice

Anne Alstott has put forth the best-developed autonomy-based case for sharing the costs of children. She has argued that leaving parents to bear all the costs of what she calls “continuity of care” for their children is a threat to their autonomy that no liberal egalitarian state should tolerate. On pain of losing their parental rights altogether, parents are required by the state to provide continuity of care for their children, which is to say, they are required to ensure minimal material and emotional stability for the first 18 years of their children’s life. The flipside of this is what Alstott calls the No Exit requirement. Parents who “exit” their care-giving role, that is, who interrupt care for too long a period, may see their parental rights stripped away. Alstott argues that providing continuity of care for children involves serious autonomy-undermining costs for parents as they are required to put their ambitions and needs on hold, or to forgo them entirely, whenever they would conflict with their ability to provide continuity of care. If so, a liberal egalitarian society that was committed to protecting citizens’ autonomy should arguably share some of the costs of providing continuity of care for children so as not to compromise parents’ personal autonomy.<sup>73</sup> This is, in a nutshell, the challenge that Alstott brings to those liberal egalitarians who would argue that parents should bear the costs of their ambition to have children.<sup>74</sup>

The notion of autonomy invoked by Alstott is that of personal, or individual, autonomy. This is a highly contested concept in moral and political philosophy, the unifying core of which seems to be the idea of self-government.<sup>75</sup> That is, to be autonomous is to live a life that is in some relevant sense one’s own. This notion is distinct from that of basic autonomy, which refers to the minimal capacities needed for someone to count as responsible for their own actions.<sup>76</sup> Basic autonomy is a

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<sup>73</sup> Alstott 2004, pp. 58-61.

<sup>74</sup> As we have seen in the previous chapter, authors who subscribe to this view include Burley 2000, p. 138; Casal 1999; Casal and Williams 1995, pp. 97-98; Clayton 2006, p. 169; Rakowski 1991, p. 153.

<sup>75</sup> According to Christman 1988, p. 109.

<sup>76</sup> See e.g. Dworkin 1988 for this distinction.

moral status-conferring capacity that most adults share unless they suffer from impairments or find themselves in coercive or restricting situations that would absolve them of moral responsibility for their actions.

Personal autonomy has been treated, at times, as a local property that applies to preferences or desires, at other times as a property of whole lives or persons, and yet at other times as a “programmatically”<sup>77</sup> notion applying to particular domains of someone’s life, for example their professional life. Given my interests in this chapter I will take autonomy to be a “global” property of a person’s life, as Gerald Dworkin puts it.<sup>78</sup> However, whether someone lives an autonomous life will undoubtedly partly depend on whether, and to what extent, their particular desires and choices are autonomous.

The main question that motivates this chapter can be put as follows. Assuming that someone autonomously decides to raise children (i.e. assuming they meet the local autonomy conditions for *that* decision), which of the costs that are, or could be, associated with that decision should be considered a matter of respecting their autonomy in deciding the course of their lives, and hence left for them to bear? And which of the actual or potential costs that follow from that decision should be considered, by contrast, autonomy-infringing if left for the parents to bear? I take it that a natural way of understanding this question is that it asks how the costs of a particular autonomous choice should be set in such a way as to be compatible with the agent’s capacity to lead an autonomous life subsequent to making that choice, hence my focus on autonomy as a global property.

In the case of parents, we are interested in identifying those costs of childrearing that are incompatible with the parents’ ability to lead autonomous lives especially for the duration of their offspring’s childhood, when the demands of parenthood are usually

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<sup>77</sup> For this distinction see esp. Meyers 1989.

<sup>78</sup> Dworkin 1988, pp. 13-15.

at their most burdensome. To this end, in the next section I tease out different aspects of the costs of childrearing that have the potential, *prima facie*, to be so burdensome that they would threaten parents' autonomy unless the state intervened. After this, I embark on a systematic attempt to establish which, if any, of the main accounts of personal autonomy in the literature have the resources to condemn these various costs of childrearing (or, rather, their various burdensome aspects) as autonomy-undermining.

### **3.2. The burdens of childrearing**

We can identify at least three kinds of burdens that those who raise children typically bear, and which could be thought to infringe on parents' autonomy. The categories I propose here should not be read as identifying entirely distinct sets of costs but rather as organizing and re-framing those costs along different dimensions of burdensomeness. Grouping the costs of childrearing in this way anticipates the fact that different accounts of personal autonomy, as we shall see later, condemn different sorts of burdens as autonomy-infringing. It is therefore worth drawing out the burdensome aspects of childrearing along lines that will become salient later in the chapter, when we review the conditions in which parents might fail to count as autonomous on different views of what an autonomous life is.

First, there are what Alstott terms the *costs of No Exit*.<sup>79</sup> These are the costs of providing what she calls continuity of care, a requirement that is state-enforced. Parents must provide minimal emotional and financial stability for children, typically for the first 18 years of their life, on pain of losing their parental rights. Second, there are what I will call the *costs of a good upbringing*. This refers to all the costs of giving children the kind of upbringing they are owed by justice, where I assume this includes

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<sup>79</sup> Alstott 2004, pp. 52-54.

continuity of care, and so much more beyond that. Depending on the details of our favored account of what children are owed, this might include adequate health care, good education, clothing, toys, intensive emotional guidance and so on. Third, there are what I will call the *costs of being on call*. These are the costs that are borne by the full-time carers of children when they are particularly needy and entirely dependent on someone's care, typically in infancy and early childhood. I will now say a bit more about each type of cost.

### 3.2.1. No Exit

According to Alstott, the autonomy-undermining burdens of parenting stem from having to provide continuity of care. Parents are expected to stay by their children's side and to provide a minimally financially and emotionally stable environment for the first 18 years of their life. In effect, society imposes a No Exit rule on parents. Those who "exit" their care-giving role, that is, who interrupt care for too long a period, may see their parental rights stripped away. Alstott argues that this involves serious autonomy costs for parents as they are required to sacrifice any ambition or opportunity that might jeopardize their ability to provide continuity of care to their children.

Her argument, then, is focused on the costs of No Exit and the role the state plays in enforcing them. As Paul Bou-Habib and Serena Olsaretti later point out, the costs of No Exit could be understood in two ways. First, there are what Bou-Habib and Olsaretti have referred to as *the cost of failing the No Exit obligation*.<sup>80</sup> It might be thought that individuals' autonomy is infringed by the very fact that society imposes a strict No Exit obligation on parents. Liberal societies are normally committed to leave people (at least the negative) freedom to fashion and pursue, as well as change, their life plans as they see fit. However, we deny parents the freedom to parent in any way they see fit.

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<sup>80</sup> Bou-Habib and Olsaretti 2013, p. 427.



In particular, only those who parent in a way that secures continuity of care for the child are legally permitted to parent. Parents are free to exit the parental role entirely (by leaving their child in the custody of the other parent or by giving their children up for adoption), but they are not legally free to parent in a way that involves discontinuity of care.

The second type of costs is what Bou-Habib and Olsaretti have called the *costs of complying with the No Exit obligation*.<sup>81</sup> Broadly speaking, these are the costs of having to forgo valuable goods and opportunities that would conflict with providing continuity of care. Even if a parent fully embraces the No Exit requirement as part of their own conception of how to parent well, providing such continuity of care will inevitably be incompatible with some other valuable pursuits that parents may value, and which they will be expected to sacrifice. For instance, one cannot afford to take up a lucrative and fulfilling job on a different continent that would take them away from their children for an unacceptably long period of time. Whenever the pursuit of any valuable projects or relationships would hamper parents' ability to ensure a financially and emotionally stable environment for their offspring, society expects that parents will prioritize their children's need for continuity, on pain of losing custody rights should they fail to do so.

Alstott seems concerned with both of these kinds of No Exit costs. At times, she stresses that society "so heavily regulates just one social role"<sup>82</sup> through the very unique, in her view, imposition of a No Exit rule as such. She suggests that liberal societies typically balk at imposing No Exit requirements on any pursuit, since this amounts to "forcing people to persist in a particular way of life," just like banning abortion could be understood to do.<sup>83</sup>

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<sup>81</sup> Bou-Habib and Olsaretti 2013, p. 428.

<sup>82</sup> Alstott 2004, p. 63.

<sup>83</sup> Alstott 2004, p. 55.

However, as Bou-Habib and Olsaretti argue, parents could have a complaint only if this restriction was morally contingent.<sup>84</sup> As Alstott herself acknowledges, this is not in fact the case. As she points out, just like the state is morally justified in forcing those who own dogs to keep them on a leash out of concern for others' safety, the state is also justified in imposing the cost of this particular style of parenting out of concern for protecting children's fundamental interest in continuity of care.<sup>85</sup>

So it is doubtful that understanding the costs of No Exit this way would prove to be worrisome from the point of view of parents' autonomy. The second understanding of No Exit costs seems more promising. Alstott reminds us that parents are expected to forgo any opportunities, no matter how valuable, whenever pursuing them would conflict with parents' ability to provide continuity of care. Travelling the world, starting a new relationship, moving to a different country, engaging in fulfilling but very time-consuming work – any of these could potentially affect the parent's ability to provide a financially and emotionally stable environment for the child, and, as such, should be forgone. This state of affairs would go on for no less than 18 years, until the child reaches adulthood.

Alstott does not claim that the parents' freedom to pursue such opportunities should take precedence at the expense of children's need for continuity of care. What she does claim is that it is implausible that a liberal state committed to the value of autonomy should let parents alone bear these costs.

I will return to Alstott's argument later in the chapter, but for now it is important to note that her main concern with the costs of complying with No Exit seems to be that it stunts parents' capacity for setting and revising their priorities among competing values and projects over time in a way she thinks they should be able to do. From now on when I speak of the costs of No Exit (or the costs of providing continuity of care) I

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<sup>84</sup> Bou-Habib and Olsaretti 2013, p. 427.

<sup>85</sup> Alstott 2004, p. 57.

will be referring to this latter sense distinguished by Bou-Habib and Olsaretti, namely the costs of complying with No Exit.

Importantly, I will understand the costs of No Exit as involving only those losses of goods and opportunities that are necessary for parents *to remain by their children, as their main carers, for the first 18 years of their lives*. The burdens of No Exit can vary from one context to another, but they include complying with a prohibition against being physically separated from the child for too long a time (for whatever reason, no matter how important), and with the requirement to provide minimal financial and emotional stability. I understand the costs of No Exit, then, to coincide roughly with those required in order to comply with the standard of non-abuse and non-neglect enforced by the law.

### 3.2.2. Giving children a good upbringing

This class of costs refers to the sacrifices that parents must make in order to give children a good upbringing, which I assume involves more than merely providing continuity of care. Continuity of care, as I understand it, is only part of what a good upbringing involves. Arguably, children are also owed a good education, adequate clothing and nourishment, adequate health care and so on. Furthermore, they also require a good deal of close parental guidance and support, and any other efforts that are necessary for raising children to be, on the one hand, autonomous citizens with a sense of justice and, on the other hand, able to be productive, competitive citizens in their respective societies. Just what they require, and how expensive it is to provide it to them, depends on the standard of a good upbringing we believe is the right one. But note that the costs to parents of providing all of this on their own, whichever standard is correct, are considerably higher than the costs to them of merely insuring continuity of care. Though of course just how much higher depends on which costs are already shared by a particular society, for instance in many Western societies the

costs of education (at least primary and secondary education) and some minimal level of health care are publicly funded. This is arguably done for reasons other than to protect the autonomy of parents qua parents. Rather, the reasons are to do with ensuring equality of opportunity for the children, or in order to incentivize population growth, or as a way of promoting gender justice.

### 3.2.3. Being on call

Taking inspiration from the literature on the ethics of care, it is worth teasing out what seems to be a particularly burdensome subset of the costs of childrearing, a subset of arguably both the costs of No Exit and the costs of a good upbringing. Following Diemut Bubeck, we might term these the costs of being “on call.”<sup>86</sup> They refer to the costs of having to meet the day to day needs of an entirely dependent child, so they are most obviously tied to caring for infants and young children.<sup>87</sup> Babies and young children depend for their survival on others’ continuous care, so someone must be available at all times to respond to their needs. They have a need for a fixed eating and sleeping schedule, as well as a range of other needs that must be met regardless of whether the carer feels like it or not, and regardless of whether they conflict with the carer’s own needs at that particular time. For instance, a toddler also needs an adequate amount of fresh air and physical exercise which the carer must provide even if she, the carer, feels exhausted on that day. Beyond the cost of having to organize one’s life around the predictable and fixed needs of the child, there is the added cost of having to be receptive and responsive to any further need the child has, as Diemut Bubeck puts it. If a child cries, the carer must try to understand what the need is and to respond promptly and appropriately to it. Bubeck writes: “women often describe their lives as full-time mothers of small babies as ‘dictated’ by the needs of

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<sup>86</sup> Bubeck 1995, pp. 143-144.

<sup>87</sup> Though, it bears mentioning, one can also experience such costs when caring for children with severe disabilities potentially for their entire life, as well as when caring for one’s aged parents.

their babies, by their sleeping and waking periods. Being ‘on call’ as a doctor or nurse in a hospital is an example of such availability in a more formal setting: it institutionalizes receptivity and responsiveness and thus makes doctors and nurses available to patients.”<sup>88</sup>

We can look to an anecdotal but very vivid description of just how burdensome having to meet these needs can be from the letter of a mother of two young children who, despite loving her kids, feels overwhelmed. The woman signs her letter ‘The Bad Mom’.

My body is always being stepped on, squished, pulled, yanked, carrying something, being pummelled. I can’t sit down for one second without both kids fighting over me, climbing on me, inadvertently punching me in the eye, the breast, the gut. There are moments where I have to pull them off me like leeches and run to the other room for a hair’s breadth of freedom. [...] Someone is always going through a phase, someone is always having a developmental leap, someone is always tired, someone is always hungry, someone is always not getting enough books read to them, someone is always not getting enough craft projects.<sup>89</sup>

### **3.3. Autonomy costs, responsibility costs, and the issue of stakes**

Alstott’s work, feminists’ work,<sup>90</sup> and anecdotal accounts like The Bad Mom’s, make it abundantly clear just how burdensome raising children can be. Many of these are accounts meant to capture the state of affairs in the real world. No doubt that various forms of injustice like economic inequality, enduring patriarchal structures and structural racial injustice make it the case that raising children is a particularly burdensome undertaking (in terms of autonomy and not only) for those at the bottom

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<sup>88</sup> Bubeck 1995, p. 143.

<sup>89</sup> From a letter by a listener read on Dear Sugar podcast, episode 36: *Mothers who hate motherhood*.

<sup>90</sup> Okin 1989; Bubeck 1995; Gornick and Meyers 2004; Esping-Andersen 2009.

of the economic ladder in our society, poor women, and most of all, those women who are poor and who are members of a salient minority such as black women in the US.<sup>91</sup>

But the question that concerns us here is whether the burdens of childrearing can give parents an autonomy complaint as a matter of ideal theory. For an ideal theory argument to successfully ground an autonomy-based complaint it must establish two things: (a) that unless conditions C are met, an individual suffers an autonomy *deficit*, either relative or absolute; (b) that the autonomy deficit would be *unjust* to those who suffer it. The autonomy deficit might not be unjust, for example, because it may be unfair *to others* to enjoin them to give up some of their resources to make up for this autonomy deficit (it might be an infringement of *their* autonomy).

To make a case for socializing the costs of children, then, one would need to settle both of these aspects. I will argue that, as things stand, we there is only limited success to be had with settling even the first issue, namely the question as to which burdens of parenthood should count as an autonomy deficit. For an autonomously led life surely involves forgoing certain opportunities and bearing some burdens, even large burdens, in the process of carving out a life that is truly one's own. And, as I will show below, the main theories of autonomy on offer in the literature either do not have the resources (plausibly) to tell us which burdens are incompatible with leading an autonomous life, or, when they do, they rely on substantive views about what leading an autonomous life looks like, views that are incompatible with a principle of political neutrality.

Before I do that, let me set up the problem a bit more. I said that the first step in a successful autonomy-based pro-sharing argument is to (a) establish the conditions C that must obtain such that an agent, despite bearing burdens, does not endure an autonomy deficit. Conditions C are of two types, and include: (i) the conditions under which the choices, desires, preferences, commitments or values that guide one's life

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<sup>91</sup> Shelby 2018.

can properly be attributed to the agent's authentic self. This has been the focus of much of the literature on individual autonomy: establishing the conditions under which we can say that someone's values, desires and preferences etc. are truly their own. But crucially, we also need to know (ii) which of the costs and benefits that might spring from those autonomous commitments, preferences, desires etc. should or may be left for the agent to bear or enjoy respectively, as a matter of respect for their ability to decide the shape of their lives, and which of them should not. Given the parental justice interest in answering the question of who should pay for the costs of children, I will focus my attention on the burdens and leave the question about benefits to one side.

The issue raised by (ii), namely which of the burdens that might follow from autonomous commitments should or may be left for the agent to bear as a matter of respect for their autonomy (rather than be understood as a threat to it) bears structural similarity with a familiar question from the literature on responsibility-sensitive theories of justice. This is what has been called the question of responsibility stakes.<sup>92</sup> It is the question of which disadvantages are a matter of individuals' substantive responsibility for their choices and which disadvantages are a matter of injustice that calls for some form of redress. It is worth taking a bit of time here to explain the issue of responsibility stakes so as to better understand what I argue is a parallel issue plaguing the autonomy debate.

### 3.3.1. The question of responsibility stakes

Recall that responsibility-sensitive theories of justice seek to redress the disadvantages that come about through no choice or fault of the agent, that is, through

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<sup>92</sup> Olsaretti 2009.

bad brute luck, while maintaining that the disadvantages that are the result of the agents' choices should be left for them to bear.

Several authors, however, have pointed out that it is not clear, on these views, what holding people responsible for their actions actually amounts to.<sup>93</sup> To see this, the first step we need to make is to distinguish between what Thomas Scanlon has called moral responsibility from the notion of substantive responsibility.<sup>94</sup> Moral responsibility refers to the appropriateness of attributing an action to someone as a basis for moral appraisal. Substantive responsibility refers to a person's liability for being treated in certain ways as a result of their action, including denying them certain rights, exacting compensation from them or letting them bear the material disadvantages that might follow, as well as, say, letting them keep the fruits of their effort.

As Olsaretti points out, substantive responsibility is attributed to people in virtue of some feature of theirs that is considered to provide the appropriate grounds for that. Theorists disagree over which those features should be. For instance, Dworkin and G. A. Cohen famously disagreed over whether someone's finding themselves with an expensive taste for caviar should be considered appropriate grounds for holding them liable for the consequences of that taste.<sup>95</sup> As Olsaretti emphasizes, these theorists seem to assume that once we settle the appropriate features that should ground people's liability, it is self-evident *which* are the costs that they are to justifiably be held liable *for*.<sup>96</sup>

However, settling the appropriate grounds for substantive responsibility is not enough to know which burdens or benefits a particular action should attract. For illustration, Olsaretti asks us to consider Marc Fleurbaey's case of the motorcyclist

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<sup>93</sup> Coleman and Ripstein 1995; Olsaretti 2009; Stemplowska 2009.

<sup>94</sup> Scanlon 1998, ch. 6.

<sup>95</sup> Dworkin 1981, Cohen 1989.

<sup>96</sup> Olsaretti 2009, p. 169.



named Bert, who knowingly and deliberately takes on the risks of driving his motorcycle at high speed without a helmet and ends up having an accident.<sup>97</sup> By any account, responsibility-sensitive views would have Bert bear the consequences of his imprudent choice. But what exactly should Bert be liable for? Is he liable for being left at the side of the road, or for having his motorcycle confiscated? Is he liable for paying the bill of his emergency treatment, and at what price? Should he be charged more compared to someone who suffered an accident through no fault of their own? Is he liable to pay for any health conditions that he may suffer later on as a result of his injuries? Should he need an organ transplant, is he liable for being sent to the back of the queue, given that his need was caused by his own imprudent choice? And the list could go on. This indeterminacy regarding which costs someone like Bert should bear himself calls for what Olsaretti has termed a principle of stakes,<sup>98</sup> or what Zofia Stemplowska has called the structure of pay-offs.<sup>99</sup> Without a principle of responsibility stakes, or an established structure of pay-offs, we cannot say which of the consequences that Bert's choice brought about he should be justly held to, which are ones he may be held to, and which he can justly complain about having to bear. We cannot say, then, what holding someone substantively responsible for their choices actually involves.

### 3.3.2. The question of autonomy stakes

Using the same kind of reasoning, I propose that we need what I will call *a principle of autonomy stakes* for determining what exactly respect for individual autonomy requires. In the responsibility debate, it is not enough to settle the conditions of attribution of responsibility in order to know which disadvantages should be borne by the agent alone as a matter of justice. Analogously, it is not enough to settle the

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<sup>97</sup> Fleurbaey 1995 cited in Olsaretti 2009, p. 172.

<sup>98</sup> Olsaretti 2009, p. 167.

<sup>99</sup> Stemplowska 2009, p. 246.

conditions under which someone's values, commitments, desires etc. should be considered one's own in order to know which of the burdens that might follow ought to be borne by the agent as a matter of respect for their autonomy.

As Ben Colburn puts it, actively leading an autonomous life requires that "the reason that my life goes that way must be that I made it so, and also I must bear the consequences of the way I choose to live it."<sup>100</sup> So, forging and pursuing a personal life plan *necessarily* involves taking on some costs, at least some opportunity costs, and these costs seem to be autonomy-enhancing, rather than undermining. If I choose to become an emergency surgeon this will mean I cannot, at the same time, enjoy a globetrotting lifestyle. It seems right to consider this loss of opportunity for travel and perhaps for relocation as an expression of my autonomy, or an integral part of it, rather than autonomy-hindering.

On the other hand, some burdens that might accompany one's autonomous choices *do* seem to be autonomy-violating. The enormous time commitment and the unpredictable schedule of the emergency surgeon might cause her to have difficulties in forming and maintaining personal relationships and they might even undermine her ability to have a minimally satisfying family life. Intuitively, this sort of burden undermines the agent's autonomy instead of fostering it. Finally, some burdens may be altogether neutral to the agent's ability to lead a life of their own. Surgeons often have to wear blue or green-colored uniforms to work, for example, instead of white ones, or any other color. This rather trivial loss of control over what color uniform to wear seems to make no difference to her capacity to live autonomously.

So, the question is how we ought to decide which instances of loss of control and loss of opportunities are a matter of defining the scope of autonomy once an autonomous choice has been made. Recall the motorcyclist Bert, who acts recklessly and ends up having an accident. Just like we need a principle of responsibility stakes to be able to

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<sup>100</sup> Colburn 2010, p. 32.

tell, out of all the negative consequences that Bert exposes himself to, which ones he should be held substantively responsible for, which ones are indifferent to substantive responsibility, and which ones he should *not* be held responsible for, so, too, we need a principle of autonomy stakes to discern which of the restrictions that the emergency surgeon faces are for her to bear as a matter of respect for her autonomy, which ones are neutral from the point of view of autonomy, and which ones constitute an autonomy deficit. The same goes for parents: there are clearly many losses of control and of opportunities currently attached to parenting, but we need to know which ones are autonomy-promoting, which ones are neutral, and which ones actually constitute autonomy deficits.

It is worth emphasizing at this point that none of this is to deny that, if we have an autonomy-based view of justice, we could not also allow or require autonomous people to bear costs for reasons other than those given by concern for their own autonomy, i.e. reasons other than those given by a principle of autonomy stakes. Other factors could, of course, inform the costs that society could or should impose on agents, such as considerations about what burdens it is just *to others* to ask agents to bear. The latter, I assume, are part of the considerations that would be picked out by a properly circumscribed principle of responsibility stakes.

Over the following three sections I investigate whether the main accounts of personal autonomy in the literature have the resources to provide a plausible principle of autonomy stakes, and to do so in a way that is compatible with political neutrality. Of course, these views never took themselves to be providing this explicitly, but we can attempt to “extract” some principles that seem to be implied in these views, or that at least are compatible with them. As I have mentioned, a full principle of autonomy stakes would tell us which burdens count as autonomy-promoting, which ones are neutral from the point of view of autonomy, and which ones count as autonomy-undermining. However, to make some headway in the parental justice debate it would be sufficient to be able to identify at least those kinds of costs that are autonomy-

*undermining* on these views. For what we are ultimately interested in is establishing whether parents have grounds for complaint for having to bear autonomy-undermining burdens.

The accounts of autonomy I will consider are representative of the major strands present in the literature, though my list will not be exhaustive. Most notably, I leave aside the Kantian view of autonomy, which is strictly concerned with agents' rationality and their capacity to create the moral law for themselves, and to act in accordance with it.<sup>101</sup> The accounts I will address can be classified into three broad categories. These are: the mainstream procedural, content-neutral views, in which I include the hierarchical accounts of autonomy; substantive accounts, which place substantive conditions either on the content of agents' *choices* for them to count as autonomous in the first place or on the particular life situation that individuals find themselves in as a result of their autonomous choices; and finally, relational views, which can be either content-neutral or substantive, but whose distinctiveness concerns the importance they place on the role of social and institutional conditions for individual autonomy.

### **3.4. Hierarchical accounts of autonomy**

An influential strand of theories proposes that the necessary and sufficient conditions for autonomy have to do with the quality of agents' motivational structure. These mainstream views have sprung from the seminal work of theorists like Harry Frankfurt, Gerald Dworkin, and John Christman. All three focus on the fact that people's motivations seem to sit in a sort of hierarchical structure that one can reflect on and make changes to.

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<sup>101</sup> For an instructive and concise discussion see Colburn 2010, pp. 5-8.

Consider Harry Frankfurt's account. Frankfurt argues that first-order desires are autonomous when they are endorsed by second-order desires. Two people might be acting on the same first-order desires, for instance they might be acting upon the desire to drink alcohol, but one of them could be considered autonomous and the other not. One person might regret having a desire for alcohol. They would not identify with, or endorse, their first-order desire, and so their drinking would not be an act of their own will in the relevant sense. By contrast, the other person might endorse their first-level desire for drinking, in which case they would be considered autonomous.<sup>102</sup> In a similar vein, Gerald Dworkin conceives of autonomy as a second-order capacity "to reflect critically upon their first-order preferences, desires, wishes, and so forth and the capacity to accept or attempt to change these in light of higher-order preferences and values."<sup>103</sup>

The historical twist added by John Christman preserves the importance of the hierarchical structure of one's motivations, but makes one important change. He argues that it is the history of how one came to acquire a value, desire, or preference that is crucial for autonomy. On this view, an agent is autonomous with respect to a desire only if, having all the relevant information, one did not resist its development or would not have resisted had they attended to its formation process.<sup>104</sup>

I do not take a stance on which account of autonomy we should subscribe to, and so I will not invest time in rehearsing the merits and criticisms to these views. What is important to note for our purposes is that these views seem ill equipped to answer the question of autonomy stakes, as they focus entirely on value-neutral internal processes for attributing someone's values, commitments, desires, preferences to their authentic self. So long as one's values, desires, preferences have been arrived to, and/or are maintained, through the right internal processes, their content, whatever it is, can be considered to belong to one's authentic self.

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<sup>102</sup> Frankfurt 1971.

<sup>103</sup> Dworkin 1988, p. 18.

<sup>104</sup> Christman 1988.

We can see the limits of this approach for my purposes here, which consist in finding the bases for an account of autonomy stakes, by looking directly at how they might help us make judgments about parents' autonomy. In the sort of ideal scenario I am interested in I take it that we can assume that the conditions that are necessary and sufficient for autonomy on hierarchical views are met. I assume that something like Christman's historical criterion obtains: parents (including women) did not develop their preference for raising children through some form of manipulation or coercion by others, and so either did sanction the formation of this preference or would have sanctioned it had they attended to its formation process. Furthermore, I do not have in mind parents who regret their desire to parent. I assume, as a matter of ideal theory, that parents have the capacity to reflect on and endorse their preference for raising children (thus meeting Dworkin's conditions), and that they do in fact endorse it (as per Frankfurt's requirements).

With all of this in place, the question of autonomy stakes remains untouched. What should follow from the fact that we can ascribe parental commitments and preferences to individuals' authentic self? Should it follow that, however costly and restrictive for their self-regarding pursuits this preference turns out to be, they should not be relieved of these burdens out of respect for their autonomous preference for parenting? Since these hierarchical views are content-neutral, they lack the resources to non-arbitrarily place a limit on just how restrictive or burdensome someone's autonomous choice might turn out to be for them. Hierarchical views themselves, then, are silent on the question of autonomy stakes. This is unsurprising since they focus only on the first part of the two-part question of autonomy that I identified above. As mentioned at the beginning of Section 3.3 above, in order to know what leading a life that is truly one's own looks like we need to know (i) whether the choices, commitments, values etc. that guide one's life can properly be attributed to the agent's authentic self, and (ii) which of the costs and benefits that might spring from autonomous choices, commitments, values etc. should, may, or may not be left for the agent to bear or enjoy respectively, as a matter of respect for their ability to

decide the shape of their lives. Hierarchical views are geared exclusively towards settling that first issue, and stay silent as to whether the sorts of burdens that parents face should concern us.

To be clear, justice might require, for example, that everyone (not just parents) bear the costs of children's education, for reasons other than concern for parents' autonomy, such as a collective commitment for insuring equality of opportunity for children. But it is still important to establish where there could nevertheless be an *autonomy-based* complaint on the part of parents. This can be relevant, first, with respect to the same class of costs for which there are also other justice-based reasons to socialize. Parental autonomy concerns could bolster the case for socializing the costs of children and it could impact the form that sharing those costs might take. Policies justified only by ensuring equality of opportunity for children might look different from those directed (also) at preserving or boosting parents' autonomy. Second, it is important to know whether autonomy concerns can provide a reason to share some kinds of costs the socializing of which is not supported by other reasons.

Drawing on the literature on the stakes of responsibility,<sup>105</sup> we could try to identify some principles of stakes that would be compatible with content-neutral hierarchical views of autonomy. One such principle could be the following.

*The causalist approach to stakes: It is compatible with respect for an agent's autonomy that any and all causal upshots of one's autonomous choices<sup>106</sup> be considered the agent's to bear.*

This principle is compatible with the hierarchical accounts of autonomy because, as I mentioned, they only establish conditions for the attribution of a person's commitments, choices, and the rest to their authentic self, but stay silent on whether

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<sup>105</sup> Olsaretti 2009, pp. 173-182.

<sup>106</sup> For ease of exposition, in formulating these principles I will speak of the consequences of one's autonomously made *choices* but I will mean for this to include the consequences of autonomous choices, desires, preferences, commitments or values.

there are any external conditions that must be met for an autonomous life. So, in principle, any consequence caused by an autonomous commitment may be left for the agent to bear as a matter of autonomy stakes.

This way of defining autonomy stakes looks highly implausible, and it does not seem like it would do much to help parents' case. One respect in which it is unattractive is that it seeks to tie autonomy stakes to the causal upshots of one's autonomous commitments. Yet causation is a notoriously hard thing to pin down. For instance, if we understand the notion of causation as but-for causation, the list of things parents could be thought to have caused through their autonomous decision to have children is seemingly interminable. Any misfortune that might afflict the offspring both in childhood as well as in adulthood could be thought to have been caused by parents. But for parents' having created this child, she would not have been mugged, or she would not have contracted this disease, or she would not have suffered a heartbreak and so on, because she would not have existed. The state could force parents to bear the costs for none, for all, or for a seemingly arbitrary subset of these misfortunes that they purportedly caused by bringing children into existence. So one respect in which this solution would be implausible, then, is that it would allow the state to arbitrarily pick any consequences in the long (and perhaps open-ended) chain of consequences that any action could be taken to have and force the agent to bear the costs for them as a matter of autonomy stakes.

It should be clear that limiting the principle to those causal upshots that are reasonably foreseeable or intended by the agents (here, the parents) would provide only a minor improvement, but would not render the principle plausible overall. The improvement is that it could help condemn leaving parents to bear all the costs associated with unintended causal upshots of procreation such as, for instance, having a child who suffers from a rare illness that could not have been foreseen. But we would still be left with a great many cases in which the state could leave people to bear consequences that we would think, intuitively, would undermine their autonomy



and should be condemned by a principle of stakes. Furthermore, there would be a question of the *justifiability* of deeming only the intended costs of one's autonomous commitments to be the agent's to bear. And indeed, the justifiability of such an account of autonomy stakes would be questionable. Non-parents could still complain, for example, of having to pay for the *unintended* consequences of other people's wanting to have children, since it is still the case that even the unintended consequences seem to belong more to the parents, if anyone, than to the nonparents.

Perhaps a more plausible contender for a principle of autonomy stakes that would be compatible with mainstream hierarchical accounts of autonomy would be something like what Olsaretti has called *the contextualist approach* to stakes.<sup>107</sup> It would go like this.

*The contextualist approach: It is compatible with respect for an agent's autonomy that the agent bear those consequences of their autonomously made choices which are publicly known in advance to accompany those particular choices in a particular community.*

In a society in which it is publicly known that, say, having children involves bearing the costs of being on call, the costs of No Exit, and the costs of a good upbringing oneself, then those who choose to parent willingly and knowingly in such conditions cannot complain that their autonomy is hampered by having to bear these costs.

This certainly seems like a better contender for a principle of autonomy stakes compared to the first one. For example, this principle is not vulnerable to the following sort of complaint that causalist approach would face. If I hold the right motivational structure with respect to a particular ambition but I have no possible way of telling what consequences pursuing that life plan could bring (because I have no way of foreseeing all the causal upshots of my ambition for which I will then be

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<sup>107</sup> Olsaretti 2009, p. 176.

liable), then I could plausibly complain that I had no way of knowing what shape my life would take when I decided to pursue that ambition, or *any* ambition for that matter. This could cast doubt on whether my decision could be considered autonomous in the first place. A contextualist principle of autonomy stakes would be more autonomy-preserving in this respect. The consequences for which the agent will be held liable in a particular society will be clear from the outset. Parents could not complain that they did not know what burdens the choice to raise children would bring. But as Olsaretti points out in the context of responsibility stakes, that a particular structure of pay-offs is already in place (e.g. parents bearing all the costs of children) rather a different one (e.g. costs of children being shared) does not mean that the first one is more justified than the latter. Indeed, this is precisely what is in question.

### **3.5. Substantive views of autonomy**

It looks like autonomy views that focus exclusively on the motivational structure of the agent do not seem of much help in fixing autonomy stakes. So we might want to look at accounts that pose some external constraints on autonomy. I review two such views, one that places constraints on what may count as an autonomous choice or preference in the first place, namely Jean Hampton's self-respect view. The second account I review in this section is Raz's account of autonomy as self-authorship, which allows us to identify at least some minimal external conditions that should characterize individuals' life situations if they are to count as minimally autonomous.

### 3.5.1. The constraints of self-respect

Substantive accounts place constraints on the content of individuals' desires, choices and commitments if these are to count as autonomous. One example of such an account is that developed by Jean Hampton. She argues, very roughly, that choices which hamper one's ability to satisfy their basic needs as human beings as well as their needs to flourish as unique individuals cannot be considered truly autonomous. Such choices, are, rather, self-denying and violate a duty of self-respect.<sup>108</sup> She gives the example of Terry, a mother who dedicates herself exclusively to caring for her family and, as such, lacks any self-regarding goals or projects and even jeopardizes her health. Terry is in the same situation as The Bad Mom, but she does not seem to mind. Hampton argues that rather than praising Terry's behaviour as selfless and virtuous we should condemn it as self-exploitative and disrespectful to herself. On Hampton's view, self-exploitative and self-harming commitments like Terry's cannot be truly autonomous. Thomas Hill is another autonomy theorist that criticizes this sort of choice. Hill argues that the choice of a "deferential wife" to be subservient to her husband betrays a lack of self-respect.<sup>109</sup>

Hampton's view has been thought implausible insofar as it amounts to something like "compulsory moral egoism," as Richard Arneson put it.<sup>110</sup> He has pointed out that Hampton's view amounts to saying that whenever our basic needs or our needs for flourishing clash with the needs of others, morality requires that we prioritize ourselves. This strikes Arneson as unmotivated (if we are all moral equals why should we be *morally required* to prioritize ourselves?<sup>111</sup>), as well as overly stringent.

In fact, substantive accounts of autonomy more generally have been criticized for being too stringent as to what may count as an autonomous choice or life.<sup>112</sup> We

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<sup>108</sup> Hampton 1993.

<sup>109</sup> Hill 1991, p. 5.

<sup>110</sup> Arneson 2004, p. 40.

<sup>111</sup> Arneson 2004, p. 43.

<sup>112</sup> See e.g. Dworkin 1988; Mackenzie and Stoljar 2000.

would be right to share Hampton's worries about people like Terry out in the non-ideal world, that is, women who may have internalized gender norms which cause them to lead self-denying lives in many ways. However, as a matter of principle it seems implausible that choices, commitments, and desires that frustrate one's basic needs, for example, can never be considered truly autonomous. Someone who lives a severely constrained life as a hermit, or someone who freely and voluntarily undergoes gruelling, extreme military training programs, would have to be seen as non-autonomous out of principle.

For the same reasons we might also worry that the principles of autonomy stakes that we can extract from such views are implausible. Here is one possibility.

*The substantive self-respect approach: It is compatible with respect for an agent's autonomy that the agent bear the consequences (either causal or contextual) of their autonomously made choices unless doing so is inconsistent with the substantive requirements of self-respect.*

One problem of this principle for our purposes here – which, recall, are that of identifying a way of singling out which burdens of parenting are incompatible with parents' being or remaining autonomous, thus being the potential bases for an argument for sharing these costs – is that it leaves us particularly open to the possibility that the right way to ensure that people's self-respect is not threatened would be by preventing them from making some of these self-denying choices, rather than helping them bear the burdens. This is the response that many self-harming pursuits usually elicit. Furthermore, this principle would call for either preventing, or sharing the costs of, virtuous instances of sacrificing one's own important interests for the sake of others, thereby undermining their value. It could also call for deflecting some of the costs of the restricted life of the hermit, or would otherwise recommend banning that way of life entirely. The judgments yielded by the *substantive self-respect approach*, then, do not seem appealing.

### 3.5.2. The self-authorship account

A now-widely endorsed view of personal autonomy is Joseph Raz's self-authorship account. According to Raz, an autonomous life is a life that is self-created and freely chosen. There are three sorts of capacities, or conditions, that must be in place to enable someone to author their own lives. These are, first, that the agent must have the appropriate mental capacities necessary to form and pursue a life plan, for example the minimal rationality required to choose effective means for one's ends. Second, the agent must be free from manipulation or coercion by others. And third, the agent must have a range of suitable options available to choose from.<sup>113</sup>

The third condition is particularly important for our purposes here. Raz argues that someone's choices cannot be considered autonomous if the agent did not have a meaningful, adequate range of options to choose from in the first place. His famous examples of *The Man in the Pit* and *The Hounded Woman* are meant to show that having meaningful and adequate options is also required in order to fashion a life of one's own.

The *Man in the Pit* has only a few trivial options available to him, such as when to eat or when to sleep, but since he is stuck in a pit he lacks any control over anything of significance in his life. The *Hounded Woman* finds herself in the opposite predicament as she is stranded on a deserted island with a carnivorous animal hunting her down. She has options available to her that are of great consequence for her life, indeed, they are life or death choices, like when to run and where to hide. Yet she also lacks control over her life since all of her efforts and powers must be devoted to this one goal that was imposed on her by her situation: staying alive. Such examples support the view that there are external conditions that must obtain if one's choices are to count as

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<sup>113</sup>Raz 1986, pp. 373-374.

autonomous. It is necessary, according to Raz, that one have an adequate range of options to choose from, a spectrum ranging from trivial day to day options to major commitments and decisions about the direction of one's life.<sup>114</sup> Otherwise, just like the Hounded Woman and the Man in the Pit, one's life would not be truly autonomous despite having control over some part of one's life or another.

Moreover, Raz stresses that self-authorship is a dynamic, life-long process: it is "the vision of people controlling, to some degree, their own destiny, fashioning it through successive decisions throughout their lives."<sup>115</sup> This is to say, the autonomous person is not the one who decides upon a life plan early on in life and then sticks to it no matter what. The autonomous person is someone who has the effective capacity to change their values and plans as time goes on, and to put them into effect. This suggests that there needs to be some adequate range of options available for one to be able to revise one's commitments and plans even once they have already embarked on a particular kind of life.

This dynamic feature of the self-authorship, in particular, seems to be what Alstott picks up on when she worries that parents may suffer autonomy deficits for the duration of having to comply with the No Exit requirement. The worry is that parents may not have adequate opportunities to change the course of their lives or to reshuffle their priorities when it comes to self-regarding projects. "The No Exit obligation," Alstott writes, "curtails the exercise of two capabilities that citizens of a free society ordinarily take for granted: the capacity to set one's own priorities among competing projects or values, and the capacity to revise one's priorities and projects over time."<sup>116</sup> Recall, parents are free to revise their values and priorities to such an extent that they may voluntarily relinquish the parental role altogether. If, however, they wish to persist in their parental role, their ability to be the authors of their own lives is hampered by the fact that they have to consult their children's interests when setting

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<sup>114</sup> Raz 1986, p. 375.

<sup>115</sup> Raz 1986, p. 369.

<sup>116</sup> Alstott 2004, p. 54.

their life priorities, and they are indeed expected to sacrifice pursuing valuable goods and opportunities for the sake of their children's interest in continuity of care.

Alstott does not claim that the parents' freedom to pursue such valuable opportunities should take precedence at the expense of children's need for continuity of care. What she does claim is that it is implausible that a liberal state committed to protecting its citizens' should let parents alone bear these costs. She writes:

[I] am not arguing that the No Exit rule is inappropriate, that a fair society should reject it. (...) The subtler insight that I am advancing is this: *not every regulation with a legitimate purpose imposes a fair burden on those individuals who pursue the regulated activity*. The No Exit rule implements the state's legitimate interest in continuity of care for children but simultaneously imposes an extraordinary restriction on parental autonomy.<sup>117</sup>

So, is it true that leaving parents to bear all the costs of complying with the No Exit requirement imposes, like Alstott says, an extraordinary restriction on parental autonomy? I am assuming that parents autonomously decide to have and raise children (i.e. they meet the local autonomy conditions for *these* decisions). The question is whether someone who autonomously decides to have and raise children, and who is left to bear all the costs of complying with the No Exit rule, can still enjoy a minimally autonomous life for the duration of their compliance with No Exit. I am also assuming that it is not the case that complying with No Exit affects their *internal* capacities for making autonomous choices. If there is a dimension in which they lack autonomy once they enter parenthood and begin complying with No Exit, it must be related to the lack of external conditions for leading minimally autonomous lives.

The external conditions needed for a minimally autonomous life on Raz's view, as we have seen, involve having an adequate range of options for fashioning and revising one's life plans. One version of a principle of autonomy stakes that we might extract

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<sup>117</sup> Alstott 2004, p. 57, emphasis in original.

from his view and which would be relevant to these conditions for autonomy is the following.

*The self-authorship approach: It is compatible with respect for an agent's autonomy that the agent bear the consequences (either causal or contextual) of their autonomously made choices unless bearing them would leave one without an adequate range of options to choose from to revise and pursue their conception of the good.*

Relative to the principles that we considered in connection to the hierarchical approaches to autonomy, both of these versions have the advantage of providing some form of picking out a range of burdens that are considered autonomy-infringing. Out of the two, the latter option seems more plausible. It could be read as also providing the contextualist approach with a standard for justifiability. That is, whether the particular structure of autonomy stakes that is in place is justified is determined by whether it leaves individuals with an adequate range of valuable options to revise and pursue their life plan. I called this the *contextualist self-authorship approach*.

The contextualist self-authorship approach only partly answers the question of autonomy stakes. For it only gives us a justifiability standard for the costs that, were they not socialized, would curtail the adequate range of options that the agent must always be guaranteed. But we might wonder whether it should not be seen as autonomy-undermining that the agent may, compatibly with preserving her autonomy, be asked to bear any and all costs which do not jeopardize that protected array of options. For instance, arguably the option of keeping one's current job would not be on the list of protected options that everyone should be guaranteed no matter what else they choose to do. It could be made public that those who decide to stay at home to care for their infant children are guaranteed to lose their jobs for not showing up to work. Everyone would know in advance that caring full-time for one's newborn child comes with the cost of losing one's job. But surely this would seem like an arbitrary attack on parents' autonomy. No doubt there would be many reasons of



justice not to attach this cost to becoming a full-time carer, but crucially, it is a kind of cost that also seems to arbitrarily restrict parents' options for self-authorship in a way that, intuitively, *should also* be condemned by a principle of autonomy stakes.

This said, as I mentioned earlier, for the purpose of making headway on the parental justice question, it is enough that we have a way of discerning at least the negative answer to the question of autonomy stakes, namely, the range of burdens that, if left for the agent to bear, would count as an autonomy deficit. The contextualist self-authorship approach tells us that whenever someone's autonomously made choice lands them in a position in which they lack an adequate range of options to choose from to revise and pursue their conception of the good, they are suffering an autonomy deficit. Insofar as bearing the costs of children would leave parents in a restricted situation defined this way, then, they are suffering an autonomy deficit.

Since this is what Alstott had been arguing all along, it might seem that her argument is vindicated. But whether it really is vindicated, and to what extent, depends on facing head-on the question of what exactly constitutes an adequate range of valuable options. We need to know whether the opportunities that parents have to forgo in providing continuity of care are included in the range of options that should remain available to everyone, including to parents. Giving an answer to this question is a very difficult task in itself. More importantly, it would likely involve us making substantive commitments about what sorts of opportunities should always be secured for people. For example, it is not obvious that an option that should be included in the protected range should include the opportunity to pursue a project that would be *essential* to parents' individual flourishing, but which would take them away from their children for far too long. Whether or not this option should be protected will inevitably be a controversial issue.

Whatever that list of adequate options would contain (assuming *arguendo*, for the time being, that a list can be compiled despite the danger of offending against the

principle of political neutrality), it does not seem very likely that the costs of No Exit, which Alstott is concerned with, would be so burdensome as to jeopardize them to a worrisome degree. This is because the costs of No Exit themselves are not as restrictive as they first appear. For note that the standard of parenting imposed by the No Exit rule is a minimal one. The digressions that parents would have to commit in order to have their parental rights revoked on grounds of breaching No Exit would have to be fairly extreme. The parents would have to fail to provide even the minimum level of stability required for children not to count as abused and neglected in the eyes of the law. Providing the sort of care that meets this standard is arguably compatible with a whole range of self-regarding opportunities that parents might take advantage of. People do move to other cities, and even other countries, with their children, thus introducing some degree of instability into their lives. They also separate from their children for, perhaps, at least a few months at a time, without this providing legitimate grounds for stripping them of their parental rights. And they often sever and start new romantic relationships. It does not, then, seem plausible to say that complying with the No Exit requirement deprives them of an adequate range of opportunities for self-authorship even if they have to bear all the costs themselves.

It seems more likely that parents' adequate range of options for self-authorship would be frustrated if they had to bear all the costs of providing a good upbringing themselves, as well as all the costs of being on call. Most parents strive to give their children a good upbringing, which involves investing huge amounts of time and resources into raising their children to be healthy, happy, productive citizens that can be economically competitive in their own societies. As a result, no doubt that the average parent is left with relatively little time and few resources to invest in self-regarding pursuits, hence with less effective opportunity to revise their plans and reshuffle their priorities. On the other hand, we must also keep in mind that in most just societies some costs of a good upbringing, such as primary education costs and basic health care, will be shared by the rest of society for independent reasons.

So, having to bear the costs of a good upbringing does look like it would leave parents with fewer opportunities for self-authorship than having to bear the costs of No Exit would, but just how much more restrictive this is depends on what costs are already shared by society for other reasons. And, once again, it also depends on which of these (further) losses of opportunities should always be protected by the state, something that is difficult to establish without making some substantive commitments.

Consider, now, what I have called the costs of being on call. These are the costs of being a full-time carer for an infant or a young child. Think back to the woman who wrote a letter signed The Bad Mom. She seems to share a lot of similarities *both* with Raz's Hounded Woman as well as his Man in the Pit. She is like the Hounded Woman because it seems like all of her efforts, all her physical and mental resources are directed to meeting the children's fundamental needs. She finds she has no time for herself, she is not even in control of how much she gets to sleep or when she gets to eat. Worse still, she is not consumed, like the Hounded Woman, by the singular, urgent goal of keeping *herself* alive. She is fully absorbed by the singular goal of keeping *her children* alive and well. Her children are still so young that they are entirely reliant on her for survival, and they are at such a crucial moment in their development that virtually all of her decisions, even those that seem trivial, have potentially important consequences for the child's development. The relentless pressure of making high stakes decisions on behalf of her children ends up usurping her dominion over her own life to the extent that she feels unfree to decide even on trivial things for herself like when to sleep and when to eat.

Furthermore, it also seems unlikely that, at least for the time that she is "on call", she could have much opportunity to make choices of great significance for herself. In this respect she is like the Man in the Pit. If she barely has any control over trivial aspects of her day to day life, it must be the case that she also lacks the opportunity to make high impact self-regarding decisions such as whether to dedicate herself to other important causes, or, say, whether to change career paths. Indeed, full-time carers of

infants and young children do not even have the time to pursue their usual occupation, let alone explore other career options, hence the existence of policies of paid (or unpaid) parental leave in modern societies.

Perhaps not all parents have such a hard time as the self-described Bad Mom (who, by the way, seems like a *great* mom to her children, to her detriment). Some parents have a more casual style of parenting than others, and some have preferences that happen to fit nicely with the demands of parenthood, so the degree to which they have to sacrifice themselves may vary. But by and large, there can be no doubt that caring full-time for infants and young children can be very burdensome indeed.

So, at the very least, we can extract from Raz's self-authorship account this minimal constraint concerning which burdens of parenthood count as autonomy-undermining if parents were to bear them alone: it is those costs the bearing of which leave one with very little to no control over both trivial day to day options as well as over major commitments and decisions about the direction of one's life. And the costs of parenthood that fit the bill most obviously are the costs of being on call. This is in line with what feminists have been pointing out for decades now, namely that full-time carers face extraordinarily burdensome living conditions,<sup>118</sup> and these full-time carers are predominantly women.<sup>119</sup>

Moreover, and importantly, state-commitment to protecting people from living in such conditions would also be compatible with the principle of political neutrality. The range of options that we would be committed to protecting for them is so minimal, involving for example the opportunity to meet one's basic needs while in the

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<sup>118</sup> E.g. Okin 1989; Young 1990.

<sup>119</sup> Indeed, in addition to caring for children, women make up the majority of those in any kind of caregiving role, including caring for the sick, the elderly, and the disabled. See American Psychological Association 2009. The autonomy-based arguments applying to carers for the young should also apply to those who care for these other vulnerable categories. In the case of severely disabled persons, the burdens of being on call may last a lifetime.

caring role, that we need not make any controversial decisions about further opportunities and life plans that must always be kept open to them.

This provides a good first step in a pro-sharing argument for sharing the costs of children. But the conclusion is still far from secured. For, recall, a successful pro-sharing argument is one that establishes (a) that unless conditions C are met, an individual suffers an autonomy *deficit*, either relative or absolute; and (b) that the autonomy deficit would be *unjust*. So, while we have discovered at least a partial answer to (a), we still need to know what are the just autonomy-based claims of citizens against the state are more generally. Without a full theory of the just claims to sufficient, or perhaps equal, autonomy, we cannot have a conclusion to our pro-sharing argument.

To illustrate why, consider the fact that a full theory of individuals' just claims to autonomy might only involve the state commitment to securing equal opportunities for autonomy across a lifetime. Citizens may then have autonomy-based complaints only if their lifetime share of opportunities for autonomy is smaller than others' shares. Bearing all the costs of being on call, while involving some autonomy deficits, can still be compatible with the carers' enjoying equal *lifetime* shares of opportunities for autonomy. For in most cases people are "on call" for only a few years of their lives, typically when their children are very young.<sup>120</sup>

Other questions that this theory would have to settle include, for example, whether people can raise complaints against the state for the autonomy deficits they suffer if they had ample opportunity to avoid placing themselves in that situation. There is also a further question here concerning the means by which a state may or should ensure that people avoid autonomy deficits. It could seek to set the costs of each activity such that none is so burdensome as to leave people below a threshold for sufficient

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<sup>120</sup> With the notable exception of those who care for disabled children, something that might end up being a lifelong commitment. Parenting in general is a lifelong commitment, of course, but arguably the typical life of a parent is not always as restricted as when they care for young children.

autonomy for any stretch of their lives. This would translate into socializing the costs of those ambitions that otherwise would leave people below that threshold, and it could help secure a pro-sharing conclusion regarding the costs of being on call. But another means by which the state can prevent people from falling below the threshold is by banning the sorts of ambitions that would put them there, like the state does with the option of selling oneself into slavery.

To sum up this section, the self-authorship view of personal autonomy, though not offering a full principle of autonomy stakes, offers us a plausible way to discern which costs of parenting count as autonomy deficits if left for parents to bear. Most plausibly, and compatibly with the principle of political neutrality, these are the costs that full-time carers of infants and young children typically bear. Anne Alstott's proposed autonomy-based case for sharing the costs of children, then, has a lot of initial plausibility with respect to these costs, rather than the costs of complying with the No Exit rule that her own account focuses on.

Even so, the arguments provided here are only the first step in a successful autonomy-based argument for parental support, for in order to know whether these autonomy deficits ground a *complaint* on the part of parents, and what exactly they may claim, remains to be settled by a view of how the state ought to balance people's claims to autonomy, and what form the state's efforts should take in promoting those claims.

Perhaps surprisingly, the literature on the value of autonomy has made but very few attempts at drawing out the implications of the value of autonomy for how autonomy should be distributed in a just, liberal egalitarian society, and the few that exist are not of help to us in constructing the parental justice case.<sup>121</sup> Raz himself does not offer a view as to how autonomy as self-authorship should be promoted by the state.<sup>122</sup> Such a view could be developed, of course, but attempting to provide one myself would take

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<sup>121</sup> For instance because they are perfectionist views of justice, while we were looking for proposals that are compatible with political neutrality. See Hurka 1993, chs 11 and 12.

<sup>122</sup> Raz 1986, ch. 9.

us far beyond the scope of this project. I will consider, however, one account of how the claims to autonomy should be distributed that was developed specifically with a view to ultimately grounding parents' claims to societal support. This view has been proposed by Paul Bou-Habib and Serena Olsaretti, and it maintains that people have claims to equal autonomy, and the requirements of equal autonomy should be set by using Dworkin's hypothetical insurance exercise.<sup>123</sup>

Before considering that view, I want to discuss another type of account of the value of autonomy, namely the so-called relational views. It is worth doing so, first, for the sake of a more complete landscape of the autonomy views on offer and the potential principles of autonomy stakes that might be extracted from them. Secondly, if it is possible to extract from these views a principle of stakes that condemns a wider range of burdens as autonomy deficits as compared to the self-authorship view, this will bode well for parents' prospects. For, as I have noted, the self-authorship-based argument, even when supplemented by a view of the just distribution of autonomy claims, only condemns a rather narrow set of costs, i.e. those borne while being "on call". As such, it could only support policies aimed specifically at relieving the burdens of full-time carers, such as publicly funded childcare facilities, and would therefore have more limited public policy implications than Alstott had hoped.<sup>124</sup> It would be salutary for the pro-sharing cause, then, if we could provide the grounds for more far-reaching family support policies, and relational views may seem promising in this context, since they typically impose more demanding conditions for autonomy than do the views we have already reviewed. So let us take a look at one last family of autonomy views: the relational views.

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<sup>123</sup> Bou-Habib and Olsaretti 2013.

<sup>124</sup> Alstott 2004, part 3.

### 3.6. Relational autonomy

Relational autonomy accounts propose that individuals and their relevant capacities for autonomy should be conceived relationally. These views theorize individuals as dependent on others and vulnerable to some degree or another, and thus seek to make their account of an autonomous person compatible with notions of dependency and vulnerability. Furthermore, individuals' practical identities cannot be separated from their social, historical, and cultural context. As a result, relational accounts of autonomy emphasize the importance of the social conditions that must be in place for an individual to develop the necessary set of capacities for leading an autonomous life. For instance, socially caused deficits in self-esteem are considered to prevent someone from living autonomously. Someone whose environment (through its institutions and through the relationships in which the agent is engaged, for instance) is constantly undermining their sense of self-worth is likely to fail to relate to their own attitudes and choices in a way that seems necessary for autonomy, for instance they might not see their choices as authoritative.<sup>125</sup> As Catriona Mackenzie puts it, relational views aim to acknowledge the "extensive interpersonal, social, and institutional scaffolding necessary for the development and ongoing exercise of the complex cognitive, volitional, imaginative, and emotional skills"<sup>126</sup> involved in making autonomous decisions.

I hasten to note that relational autonomy is a notion developed on the assumption of non-ideal background conditions. Relational theorists are motivated by such concerns as theorizing the effects of oppressive socialization and oppressive institutions on individuals' capacities and opportunities to lead an autonomous life.<sup>127</sup> As such, their theoretical apparatus is geared towards making sense of autonomy in unjust circumstances. One might worry, then, about the relevance of non-ideal theorizing

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<sup>125</sup> See e.g. Benson 1994.

<sup>126</sup> Mackenzie 2014, p. 22.

<sup>127</sup> See e.g. Meyers 1989.



about autonomy for the purposes of an ideal project such as the one I am engaged in. Feminists do not work within ideal frameworks like luck egalitarians do, for instance, as they believe these frameworks to be too narrowly focused on institutional design rather than also on the social web of relationships as such, and to be concerned only with inequalities of resources rather than also inequalities in power, esteem, or social standing which may constitute forms of domination.

I am inclined to say that relational views are of interest to this chapter at the very least insofar as we can extract valuable lessons about the relevance of the “institutional scaffolding” needed for autonomy. Indeed, we might be convinced by the feminist view about the complex role that institutional factors play for the constitution of the self and for acquiring and exercising the requisite capacities for autonomy, and we might think it important to ask how these institutions should be organized in light of this. We need not assume conditions of oppression as such, or other forms of background injustice, in order to be interested in conceptions of autonomy that place importance on the institutional factors that might be relevant for autonomy. In fact, this sort of focus seems particularly suited for the question explored in this chapter.

One account that is particularly interesting for the question of autonomy stakes is Mackenzie’s. She offers a complex multidimensional view of autonomy that tries to bring together all the main categories of conditions that have been thought to be uniquely relevant for autonomy. She argues that autonomy is not the unitary concept that the literature so far has thought it to be. That is, it does not have just one set of necessary and sufficient conditions. We need not argue about whether it is only the motivational structure of the agent, or also external conditions, that are necessary and sufficient for autonomy. Instead, she argues, autonomy “involves three distinct but causally interdependent dimensions or axes: self-determination, self-governance, and

self-authorization.”<sup>128</sup> Self-determination involves having the freedom and opportunities to decide upon one’s values and to effectively act upon one’s values and preferences. This axis tracks the external conditions for autonomy, namely freedom and opportunity conditions respectively. The self-governance axis identifies the internal conditions for autonomy, namely the competence and authenticity conditions that mainstream procedural views have tended to focus on. The self-authorization dimension “involves regarding oneself as having the *normative authority* to be self-determining and self-governing.”<sup>129</sup> The conditions for autonomy picked out by this axis include self-evaluative attitudes, accountability for one’s reasons, and social recognition. She then goes on to develop relational conceptions of these three dimensions, that is, conceptions that are sensitive to facts about the embeddedness of the individual within her historical, social, and institutional environment. Mackenzie’s thought is that different dimensions of autonomy might be more salient in different contexts. In medical settings, for instance, she suggests that self-governance and self-authorization seem to be crucial, while self-determination seems more salient for democratic citizenship.<sup>130</sup>

For the question of stakes the self-determination axis is of particular relevance. Like Raz, Mackenzie believes that having an adequate range of significant opportunities to choose from when deciding how to lead one’s life are an important condition for autonomy. She argues, however, that what exactly these opportunities should be is a matter of social justice, and that it is best settled by appeal to a view like capabilities theory.<sup>131</sup> We need a list of valuable capabilities that anyone in our society should have equal access to. Unless people are making their choices about what to value and what to do against a background of guaranteed capabilities, their choices do not count as autonomous. This suggests the following principle of stakes:

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<sup>128</sup> Mackenzie 2014, p. 17.

<sup>129</sup> Mackenzie 2014, p. 18.

<sup>130</sup> Mackenzie 2014, p. 40.

<sup>131</sup> Sen 1992; Nussbaum and Sen 1993.

*The capabilities approach to stakes: It is compatible with respect for an agent's autonomy that the agent bear the consequences (either causal or contextual) of their autonomously made choices unless bearing them would jeopardize one's valuable capabilities.*

Compared to Raz's open-ended list of what constitutes an adequate range of options to choose from, the appeal to capabilities theory has the advantage of potentially giving us a substantive list of opportunities for well-being that should form the backdrop of one's decisions about how to shape one's life. This is the case if one is happy to go for a list of basic capabilities like Martha Nussbaum's, for instance, as Mackenzie recommends we do.<sup>132</sup>

However, we now face, once again, the challenge from political neutrality. For in assembling any list of basic capabilities that everyone must be guaranteed, one has to commit to some selection or other of the aspects of individual well-being that everyone should be able to attain should they choose to do so. Deeming certain aspects of well-being as protected to the exclusion of others seems to offend against the principle of political neutrality.

Perhaps even more importantly, the relational view seems unable to yield a distinctive principle of autonomy stakes. For it seems that we could by-pass the entire discussion about autonomy altogether and adopt a capabilities-based view of justice that would support parents' claims, as well as anyone else's claims, to having a certain range of opportunities protected, presumably throughout their lives.

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<sup>132</sup> Mackenzie 2014, pp. 29-30. See Nussbaum 2006.

### **3.7. The demands of equal autonomy from behind a veil of ignorance**

Paul Bou-Habib and Serena Olsaretti have recently offered what I take to be a value-neutral attempt to settle the demands of equal autonomy. As opposed to the accounts of the value of autonomy discussed above, which focus on the conditions under which someone's desires or choices are properly attributable to the agent, their proposal addresses the issue of how the claims to autonomy should be balanced by the state. This is the only proposal in the parental justice literature that attempts to establish a way of measuring autonomy deficits that give grounds to egalitarian claims. They do this by asking, which are the valuable pursuits that everyone should enjoy equal opportunity to pursue regardless of their circumstances? And how would the costs of those valuable pursuits be shared? They propose that we should answer both of these questions by using Dworkin's hypothetical insurance device.

The veil of ignorance they propose is Dworkinian with respect to the personal information it allows individuals to base their decisions on. People behind the veil would have information about their character and inclinations but would not know which life plans they will actually want to pursue. The project departs from Dworkin, however, in that the decisions behind the veil are not connected to brute bad luck. The question that individuals behind Dworkin's veil are called to answer is whether, and to what extent, they would be willing to invest in order to mitigate the effects of brute bad luck on their lot. By contrast, the question that individuals are asked behind the Bou-Habib - Olsaretti veil of ignorance is, 'Which plans of life would you be prepared to share the costs of thereby ensuring that you will have an equal chance to pursue them once you settle on one or more of them?' Of course, they argue that, when asked such a question, individuals behind the veil would include parenting on the list of life plans they wanted to secure for themselves, much like the argument from insurance that I have addressed in the previous chapter.

The resulting principle of stakes could take the following form:

*The veil of ignorance approach: It is compatible with respect for an agent's autonomy that the agent bear the consequences (either causal or contextual) of their autonomously made choices unless their choices are those which everyone should have equal opportunity to make, as determined by the hypothetical insurance decisions that the average individual would have made behind a veil of ignorance.*

The advantage of this approach is that it offers us a way to define the costs of various activities such as raising children by reference to a familiar independent standard, namely how people behind a veil of ignorance would choose to fix them. Moreover, the veil of ignorance approach already gives us an answer to the distinct question of what society's answer should be when faced with particular autonomy costs. Namely, the life plans that individuals would have insured in a hypothetical insurance market are to be collectively funded by the entire society.

In response, I want to point out that there seems to be something problematic with the application of the veil of ignorance-type of argument in this context. The veil is so thin, and the question so exclusively focused on establishing the preferences of the majority, that it hardly seems useful to use the veil of ignorance at all. The source of the theoretical problem with how Bou-Habib and Olsaretti use the device is that, for their purposes, there is no real need for obscuring any information about individuals' actual preferences and ambitions.

The veil of ignorance is typically conceived as a useful device for ensuring fairness. In Dworkin's case, the veil obscures individuals' level of exposure to various forms of brute bad luck. We do not want people's insurance decisions to depend on morally arbitrary factors such as how safe they are from the risk of developing a particular kind of disease compared to others who, through no fault of their own, carry such a risk. It seems only fair to pool together such morally arbitrary risks. Dworkin then

allows for information about people's tastes and inclinations to influence insurance decisions behind the veil because he thinks this is necessary if people are expected to make any meaningful insurance decisions. The point of this is to render the hypothetical insurance decisions, and the resulting tax system modelled after them, ambition-sensitive.<sup>133</sup>

The Bou-Habib – Olsaretti veil of ignorance device serves no fairness purpose. There is no brute bad luck that the individuals are asked to take responsibility for in making insurance decisions. And the veil is otherwise very thin, allowing people to know their tastes and inclinations, allowing them to know what sorts of life plans they are likely to want to pursue, given their particularities. No information that might be considered unfair to use in deliberation is obscured by the veil. So it is hard to see why we would need a veil at all, rather than just directly ask, "Which preferences and ways of life do we find people in our society tend to have, and how would they decide to set the costs of pursuing them?"

There does not seem to be much difference between using the veil, and directly appealing to a different interpretation of settling the demands of equal autonomy that Bou-Habib and Olsaretti consider, but reject.<sup>134</sup> This latter approach would simply consider the specific life plans that individuals happen to prefer (presumably by looking at the preferences of the average person, or the majority, in society) and then ask how they would set the costs of those life plans for themselves.

Bou-Habib and Olsaretti claim that the advantage of their approach is that it is more prudent compared to this more direct approach. Considering what plans "real people"

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<sup>133</sup> For comparison, consider also Rawls's use of the veil of ignorance in devising his principles of justice as fairness. Rawls's veil of ignorance is even thicker than Dworkin's as he believes it would be unfair for individuals to choose principles of justice based on their personal inclinations and interests, and perhaps end up with skewed principles that reflect a majority's idiosyncratic tastes and inclinations. So, here, too, the veil is meant to render the process of deliberation about justice principles fair in the face of morally arbitrary facts, which in this case include the personal interests that individuals in the deliberative community would happen to have and would want to push for at the expense of those who might not share them. See Rawls 1999, pp. 11, 16-17.

<sup>134</sup> Bou-Habib and Olsaretti 2013, p. 431.

are committed to will obscure the fact that most people do not have fixed plans and that they often change their preferences and plans. Behind a veil, people would not be mistakenly wedded to the plans they happen to have at that time. Instead, the claim goes, they would have to rely on information about their general inclinations and tastes and would likely end up securing a wider range of life plans than actual people in the real world would.

It is doubtful, however, that the veil of ignorance really presents a prudential advantage over the direct approach to fixing autonomy costs. I do not see any reason why, when asking real people how they would want to set the costs of various life pursuits, they could not also have information about their more general dispositions such that they, too, would know that more than one life plan was compatible with their character, even though they happened to settle on a particular one at that point in time. And more importantly, there is no reason why they could not also have information regarding the likelihood of changing their minds later on. As such, it strikes me as an even more prudent approach to simply ask actual people, "How would you fix the terms of various life plans, given your current preferences and commitments, as well as the potential life plans you might choose to pursue at some later point, given your character and dispositions?"

To sum up these points, it seems like using the veil of ignorance in this case is, at best, redundant. It serves no fairness purpose, and it does not seem to be especially prudentially advantageous. At worst, it is *less* prudent than just asking how actual people in our society would choose to set the costs of the various activities that they *know* for a fact they want to pursue, *plus* further activities that they might want to pursue at some later point.

There is a deeper worry with this approach to setting autonomy stakes. It is the familiar worry of using the hypothetical insurance device to determine substantive issues such as what is the proper scope of autonomy in pursuing particular life plans.

Whether behind or outside the veil, we would decide whether particular restrictions and burdens are worrisome by reference to what a majority of people would have chosen. This does not seem like an appealing solution.

Here is one way in which this solution seems to lack appeal. It implies that life plans with structurally similar burdens and restrictions in terms of autonomy could be treated differently simply because they happen to be popular. If, as it is the case in reality, a majority of people (behind or outside the veil) would be inclined to becoming parents, but would not be inclined to becoming emergency surgeons, then equal autonomy would require that the surgeon bear all the autonomy burdens herself, while the parent have them relieved. The emergency surgeon, like the parent, must be available to meet the urgent needs of their patients at any hour of the day. They also have to make enormous time investments into caring for their patients in a way that might undermine their ability to sustain an adequate number of other relationships. They cannot afford to start traveling the world, get involved in other meaningful projects, and so on. Compared to nonparents, parents enjoy considerably fewer discrete opportunities such as pursuing certain expensive and time-consuming projects. Analogously, compared to, say, freelance software developers, emergency surgeons enjoy fewer discrete opportunities like working from the comfort of their own home, or from any place in the world that has an Internet connection. The parent and the surgeon seem to face similar restrictions, both in terms of the sorts of time and care commitments they must make to their children or patients, and in the sense that they both have fewer discrete opportunities for self-authorship than those who chose more commitment-free lifestyles. Yet the veil of ignorance approach would treat them differently because parenting happens to be a more popular life plan than being a surgeon.

That similar autonomy burdens would be judged differently is not even the most problematic aspect of this solution from the point of view our purpose here, which is to establish what people's equal claims to autonomy are. It is, instead, the fact that the



veil of ignorance approach to autonomy stakes seems to take us too far away from the reason why we care about autonomy, and about its equal distribution, in the first place. The reason why we care about autonomy in the first place is that we value expressing our agency in making choices and determining the course of our lives. Yet, the burdens that should count as autonomy-undermining or autonomy-preserving under the veil of ignorance approach seem problematically tied to how popular or unpopular certain lifestyles are in a particular community, rather than to something that really belongs to individuals' agency.

Certainly, one's deciding on a life plan rather than another, and choosing to insure behind a veil of ignorance, is an expression of their agency. But whether the burdens associated with one's life plan count as an infringement of autonomy at the end of the day, or the rightful expression of it, depends crucially on how many people also happen to prefer the sort of life plan that brings about that particular burden. This might strike some of us as problematic. Coleman and Ripstein make a similar point in connection to the attribution of substantive responsibility to people:

If someone takes a risk that others in similar circumstances typically avoid – pursuing the life of an artist, or making a risky investment – the good or bad luck that accrues belongs to that person alone. In contrast, if someone does something that is normal for those in similar circumstances, the results might be thought of as brute luck. [...] Whether something counts as choice or circumstance will depend on the frequency with which others make similar choices. [...] If there is a wild frenzy of stock speculation, the losers will need to be indemnified. But if a neighbourhood is so dangerous that few people venture out at night, they will count as risk-takers and, so, not have their losses made good. [...] this approach ties responsibility to unusual activities. As a result, it severs the tie between agency and responsibility.<sup>135</sup>

The veil of ignorance approach, then, can be useful for many purposes, but not, it seems, for establishing the just stakes for substantive responsibility or for equal

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<sup>135</sup> Coleman and Ripstein, pp. 124-125.

autonomy. This is because responsibility and autonomy are supposed to be tied as closely as possible to individuals' agency in making choices and determining the course of their lives. It seems inappropriate that the stakes of responsibility or the stakes of autonomy would depend on contingent facts about the actual inclinations and preferences of those in a particular society. It also seems unfair that, because these contingents facts are allowed to play this crucial role, the emergency surgeon would lack an autonomy complaint despite facing the same sort of autonomy deficits as the parent, who would.

### **3.8. Conclusion**

In this chapter I have reviewed some facets of the burdens that parents bear that intuitively seem to provide grounds for concern about parents' being able to lead autonomous lives (at least for the duration of their offspring's childhood): the costs of No Exit, the costs of a good upbringing, and the costs of being on call. I have tried to show that a key ingredient for our ability to determine which of these costs do turn out to be autonomy-undermining for parents is largely missing from the literature on personal autonomy. This ingredient is what I have called a principle of autonomy stakes. Although the autonomy accounts I have considered by no means exhaust that literature, I hope I have offered enough reasons to suspect that at least some of the most prominent views of autonomy do indeed face this challenge. Content-neutral views of autonomy that focus on the psychological features of the agent seem to offer us no guidance as to which resulting burdens should be a matter of respecting one's agency in determining the course of their life. Autonomy accounts that place some external conditions on what counts as autonomous desires or choices do offer us some guidance. However, whether they are conditions on the choice situation (and, more broadly, on the institutional situation) that the agent finds herself in, or whether they are conditions on what kinds of desire or choice content can count as autonomous, the

principles of stakes they yield either are not very attractive (as in the case of Hampton's self-respect view), or do not yield distinctive autonomy stakes (as in the case of relational views), or they yield very limited results (as in the case of Raz's self-authorship view). This is so at least if we remain committed to a principle of political neutrality. As a consequence, the autonomy-based case for parental justice has only very limited implications for parents' claims of justice, namely that the burdens of full-time carers for infants and young children should be alleviated by the state, presumably through policies of paid parental leave, subsidized childcare facilities, and the like, which developed countries by and large already offer (the U.S. is a notable exception among liberal democracies for failing to provide paid parental leave). The autonomy-based case for parents' claims has the potential to ground a wider range of claims on the part of parents, but its chances for success depend crucially on the prospects for the difficult task of finding a plausible principle of autonomy stakes that would condemn a wider range of costs of parenthood.

In the next chapter I turn to a different kind of pro-sharing argument, the one that has undoubtedly enjoyed the most popularity. Its general structure is this: it may be true that parents are responsible for creating costs by having and raising children, but this is only half of the story. By having and raising children, they also create important public goods for society, goods that can be recognized as valuable by free and equal people despite their different conceptions of the good life. Centrally, these goods involve the economic contributions that children provide once they become adults and start participating to the various schemes of social cooperation. It would be unfair of non-parents to benefit from the work of parents by enjoying, in effect, the human capital they produce, without also sharing the costs for producing it.

## **Chapter 4**

### **The Argument from Fairness**

Several political theorists have developed arguments to the effect that non-parents (people who choose not to have children) have an obligation to support parents in virtue of the contribution that the latter make to society. These accounts rely on an empirical premise that describes the benefits parents produce for society by having and rearing children, and on a normative premise that establishes the conditions under which those who produce benefits have a claim of fairness that third parties who internalize them help meet the costs of production. These arguments, which we might call fairness-based, then conclude that parents who produce benefits by having and rearing children meet the conditions for having fairness claims against non-parents who enjoy the benefits of new generations.

After a brisk outline of the purported benefits that parents create, I focus on the principle providing these arguments with their normative basis: the so-called fairness principle (or Fair Play principle). The majority of this chapter will be dedicated to developing a new account of the fairness principle, which I call the Shared Preference View. In the next chapter I investigate whether parents meet the conditions for having fairness claims against non-parents on the Shared Preference View.

#### **4.1. The empirical premise of fairness-based arguments: parents' contribution to society**

One fairness-based pro-sharing argument holds that parents, by having and rearing children, produce public goods from which everyone benefits. According to these arguments, the central benefits are thought to be the children's future economic contributions to society. Children grow up to be a society's workforce. Their taxes help fund retirement, disability, and unemployment benefits, as well as various other social security schemes and public projects.<sup>136</sup> Note, further, that apart from these economic benefits, children can also be, or can also contribute to, other kinds of public goods, namely goods of a non-material nature. Children can ensure the continuation of our culture, ideas, and projects broadly speaking. The existence of new generations might even be a precondition of our capacity to enjoy our lives as we do and to value the things that we currently value, if Samuel Scheffler is to be believed.<sup>137</sup> But these benefits do not simply fall from the sky. They are the result of individuals' decisions to have children and raise them in certain ways. Having and rearing children is costly, and it seems only fair that everyone who enjoys these benefits, parents and non-parents alike, help pay for their production. This type of argument has come to be known in the literature as the 'children as public goods argument.'<sup>138</sup>

A variation on this argument has been proposed by Serena Olsaretti. Her "socialized goods argument" claims we should see the important economic benefits that parents produce as intentionally socialized goods rather than intrinsic public goods.<sup>139</sup> This shift invites us to acknowledge that welfare states intentionally extend the positive outcomes of parents' activities to non-parents when they ensure that the new generations' taxes pay for services and goods that reach both parents and nonparents

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<sup>136</sup> See e.g. Folbre 2002, p. 50 and George 1987, p. 31.

<sup>137</sup> Scheffler 2013.

<sup>138</sup> Supporters of this argument include: George 1987; Smilansky 1995; Folbre 2002; Arneson 2014; Gheaus 2015; Tomlin 2015.

<sup>139</sup> Olsaretti 2013.

indiscriminately. Our institutions *could* (and may permissibly) be designed differently, such that nonparents would only benefit from goods that they themselves fund (for example, they could be denied access to public pension schemes and forced to rely solely on private pension funds), as is not currently the case. Non-parents ought to recognize they benefit from such institutional designs that “enlist” parents’ efforts for the public good, and pay their share in supporting the latter’s procreative and parental activities.

A third version of the fairness-based, pro-sharing argument is available. Richard Arneson<sup>140</sup> and Anca Gheaus<sup>141</sup> independently argue that parents’ contribution to society consists in discharging an independent, collective duty, namely the duty to procreate. Thus, having children would not be merely an ambition (or an expensive taste), but is in fact a duty that we must all bear the costs of discharging. On this view non-parents would be acting unfairly if they did not share the burdens of ensuring the continuation of the species (at least up to a certain number of children). This is not to say that we are all under an obligation to have children ourselves or help with raising children hands-on, but that we may have an obligation to help parents meet the costs of children through redistributive taxation from non-parents to parents.

What exactly are the relevant beneficial activities that parents engage in, and what are the costs that nonparents are asked to help shoulder? Olsaretti plausibly argues that the beneficial activities include both procreating as well as rearing children to be productive, law-abiding citizens. In order to produce the above-mentioned benefits for society, it is necessary both to create new people (at least up to a certain number), as well as to raise them in such a way that they successfully contribute to the economic and cultural life of society. She also argues that the costs which non-parents are asked to share involve not only the unavoidable costs of raising autonomous, productive children (costs of care, as she calls them, which include the costs of

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<sup>140</sup> Arneson 2014, pp. 7-31.

<sup>141</sup> Gheaus 2015, pp. 87-106.

education, nutrition, and so on), but also the costs of added adult members to society, namely the costs involved in giving the new generation of adults what they are owed by justice.<sup>142</sup>

## **4.2. The normative premise of fairness-based arguments: Fair Play**

Regardless of how parents' contribution to society is construed, all of these arguments appeal to a principle of fairness to ground parents' entitlement to have the costs socialized. This principle was originally proposed by H.L.A. Hart. He writes:

...when a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefitted from their submission.<sup>143</sup>

What Hart calls “mutuality of restrictions,” Rawls calls the principle of fairness (or the principle of fair play, which I will call Fair Play for short), and formulates its main idea as follows.

...when a number of persons engage in a just, mutually advantageous, cooperative venture according to rules and thus restrain their liberty in ways necessary to yield advantages for all, those who have submitted to these restrictions have a right to similar acquiescence on the part of those who have benefitted from their submission.<sup>144</sup>

If plausible, this principle establishes a special obligation to pay one's share for benefits produced by others in certain conditions. That is, it claims it is wrong to free ride, at least under some circumstances. This principle would presumably supply the

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<sup>142</sup> For more details see Olsaretti, 2013, pp. 229-232.

<sup>143</sup> Hart 1955, p. 185.

<sup>144</sup> Rawls 1999, p. 96.

fairness-based arguments with the normative basis they need in order to show why nonparents ought to pay their share for the benefits that they enjoy as a result of parents' work.

Fairness-based arguments have had considerable appeal both for feminist thinkers as well as liberals interested in providing an anti-perfectionist case for subsidizing parents. If successful, a fairness-based case would show that a type of work which is still, in many cases, disproportionately done by women, namely raising children, is socially valuable work that warrants justice entitlements. These arguments are also attractive for liberals who favor anti-perfectionist views of political morality as they do not construe parenting as a valuable view of the good life to be promoted by political institutions through transfers from non-parents to parents. Instead, fairness-based accounts ground parents' claims by pointing to the social goods that parents produce and whose utility can be recognized regardless of one's conception of the good life.

Now, critics of the fairness-based arguments for parental justice have contested both the empirical premise, as well as the normative premise on which these arguments stand. Some have noted that parents can actually contribute to a public bad, rather than a public good, in a context of (global) overpopulation. Having children, in particular in developed countries, is the most environmentally impactful choice one can make. In a context in which (a) becoming a parent affects the environment adversely,<sup>145</sup> (b) particular economies could be sustained or grown by letting more immigrants in rather than incentivizing procreation,<sup>146</sup> and (c) there are so many children available for adoption, the claim that parents produce net public goods is considerably weakened.

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<sup>145</sup> See Casal 1999.

<sup>146</sup> See Meijers 2016.



The normative basis of fairness-based arguments has also been questioned. On the one hand, Fair Play itself has been contested as a plausible principle of special obligation, in particular within the literature on political obligation. On the other hand, even assuming Fair Play is a plausible principle in general, there has been considerable debate around how its conditions of application should best be understood. And some of its defenders have argued that the circumstances which make free riding unfair do not obtain in the case of parents and nonparents. For instance, Paula Casal and Andrew Williams have argued that Fair Play only applies to “non-excludable goods which are produce by *cooperative activity* in which individuals *bear some cost*, which they would not otherwise bear, *in order to produce the good*.”<sup>147</sup> Parents do not seem to meet these conditions when they have and raise children, and therefore seem to lack a fairness-based complaint against non-parents.

In effect, the parental justice debate has reopened the question of what, if anything, makes Fair Play a plausible principle. What exactly is the wrongness of free riding and how does this generate an obligation that the free rider pay her share, which correlates to a right that benefit-producers have in virtue of producing those benefits? In particular, the fairness-based arguments have put pressure on clarifying which features of producers’ beneficial activities give them rights against those who receive those benefits.

In what follows I put aside the empirical premise according to which parents make a net positive contribution to society is secured, and I focus on the normative premise instead. I take the parental justice debate as an opportunity to clarify the foundations of the Fair Play principle, and in the rest of this chapter I aim to defend Fair Play as a plausible principle of special obligation. This is worth doing for the purpose of shedding light on the question of parental justice, but also for its own sake, as the Fair Play principle is at the centre of several other important debates in political philosophy, including environmental justice and political obligation. In section 3.3 I

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<sup>147</sup> Casal and Williams 1995, p. 106. Emphasis in original.

offer a critical review of the main accounts of the fairness principle. I argue, first, that the literature on unfair free riding has, with one exception, failed to offer a systematic account of what makes free riding unfair when it is unfair. Second, I claim that the existing accounts render the Fair Play principle's scope of application either over-inclusive or under-inclusive. In section 3.4 I review the most systematic account of Fair Play that exists to date, namely Garrett Cullity's view of unfairness as a failure of appropriate impartiality. I argue that while Cullity's account is on the right track, it fails to provide a conclusive way of distinguishing between unfair free riding and unproblematic free riding. In sections 3.5 and 3.6 I develop my view of what characterizes unfair free riding. In sections 3.7 and 3.8 I further draw out the features of my account by identifying two types of conditions under which free riding does *not* count as unfair.

### **4.3. The Fair Play debate**

As we have seen, the Hart-Rawls principle of fairness claims that one has a moral obligation to do one's share in supporting the benefits-producing schemes that one benefits from. But according to Robert Nozick, foisting benefits on others in the absence of their prior consent can never generate obligations to pay the benefactors, for this would implausibly subject us to other people's will.<sup>148</sup> It is worth distinguishing this objection, which I call the voluntarist objection, from a closely related one that is often run together with the first. The second kind of worry is that, unless Fair Play's scope of application is properly restricted, it would generate implausibly numerous obligations. This concern is distinct from the voluntarist one because one may still worry that proliferation of obligations will render the principle implausible even if one is not moved by voluntarist concerns. Fair Play theorists have

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<sup>148</sup> Nozick 1974, pp. 90-95. Other critics of Fair Play include McDermott 2004; Normore 2010; Dworkin 2011, Zhu 2015.

been motivated by the aim of carving out a plausible scope of application for Fair Play mainly in response to the proliferation worry, and some have also been concerned with the voluntarist worry. In this section I offer a brisk, critical survey of the attempts that have been made at defining the principle's scope. When discussing these views I focus only on those scope-restricting conditions on the principle which I consider *prima facie* plausible and which, further, will play some role on my own Fair Play view.

I will argue that all of these views render the principle either over-inclusive or under-inclusive. To show this, I will appeal to what I consider to be strongly held common-sense intuitions about when free riding is wrong. I assume that these intuitions give us some reason to be skeptical of views that are unable to accommodate them, although this reason is not decisive. Of course, decisive reasons for accepting a Fair Play view should be given by the sort of systematic analysis of unfairness that I offer in Sections 3 and 4. That said, the capacity to capture strong intuitions about which cases of free riding are unfair represents an advantage for any view, and conversely, the failure to do so represents a disadvantage.

One thing all Fair Play theorists agree upon is that Fair Play's scope of application is restricted to the receipt of public goods. Classic examples of public goods include clean air, the rule of law, and public defence. The most important feature shared by all of these goods is what Cullity calls *jointness in supply*: if the good is available to any member of a group, then it is available to all the other members at no cost to themselves. It is this sense of receiving a good "for free," rather than, say, by stealing, that concerns Fair Play theorists. Public goods usually exhibit other features that have been considered important for Fair Play, such as non-excludability. Goods are non-excludable if it is impossible or excessively costly for the contributors to exclude third parties from enjoying them. Jointness in supply often goes together with non-excludability due to the nature of the good (e.g. clean air). But a good can exhibit jointness in supply while also being excludable. Organizers of a concert in a public

park could (and may permissibly) exclude those without tickets. If there are no ticket checks in place, anyone passing by could enjoy the concert at no cost to themselves.<sup>149</sup>

One important matter of controversy concerning the principle's scope is the role that the benefit-recipients' attitudes and beliefs regarding those goods should play in determining their obligations. Some authors, including Rawls, defend *voluntarist accounts* of Fair Play, according to which free riders can become obligated only if they voluntarily accept the goods in question, rather than regard them as foisted on them against their will.<sup>150</sup> By contrast, those who hold *receipt-based views* of Fair Play believe that fairness obligations may arise merely as a result of receiving certain kinds of public goods in certain conditions.<sup>151</sup>

Voluntarist accounts directly address Nozick's worries, for on such views only goods that people *will* to receive in some relevant sense can generate Fair Play obligations. However, this strategy seems to render Fair Play under-inclusive. Anyone who bizarrely thought that crucial goods like physical security or clean air were disvaluable would be exempted from having to pay their share even if they continued to receive them. This is particularly worrisome given people's tendencies to deceive themselves into thinking they do not want certain goods when this would let them off the hook.<sup>152</sup>

On the other side of the divide, George Klosko<sup>153</sup> argues that it is not people's subjective views, but the value of the benefit that plays the crucial role in restricting Fair Play's application. He distinguishes between presumptively beneficial goods and discretionary goods. Presumptively beneficial goods are indispensable for any minimally decent life, and as such, can permissibly be presumed to be beneficial for

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<sup>149</sup> See Cullity 1995, pp. 3-5, 32-34 for an exhaustive review of the features of public goods, including the distinction between jointness in supply and non-excludability.

<sup>150</sup> Lyons 1965; Simmons 1979; Rawls 1999a; Simmons 2001; Renzo 2014.

<sup>151</sup> Arneson 1982; Klosko 1987, 1992; Cullity 1995.

<sup>152</sup> See Renzo 2013 for an ingenious response to this issue of self-deception.

<sup>153</sup> Klosko 1987, 1992.

virtually everyone. By contrast, the beneficial character of discretionary goods depends on people's preferences. The mere receipt of presumptively beneficial goods is able to ground fairness obligations, argues Klosko, while the receipt of discretionary goods cannot generate clear obligations because the disputable value of discretionary benefits often cannot override the liberal presumption in favor of the liberty to choose one's own obligations.<sup>154</sup>

An alternative to Klosko's strategy within the receipt-based camp is to say that there are Fair Play obligations fairly to distribute the costs of discharging a shared moral duty. Clean air, clean water, public defence are presumptively beneficial goods (according to Klosko). But, arguably, they are also goods that we all share a moral duty to provide everyone with. So we might think that, if nothing else, fairness requires that we share the costs of providing morally required goods.<sup>155</sup>

Both of these strategies have a lot of initial plausibility. They also go some way towards limiting Fair Play's scope by restricting its application to crucial benefits, either because we can presume everyone to be benefited by them, or because we have a shared duty to produce them. Both strategies, however, face a problem of under-inclusiveness. For it seems that Fair Play obligations may also arise when one receives a benefit that is valuable to her even if it is not necessary for a minimally decent life, and even if it is not morally required. Imagine a shared flat where all three flatmates strongly prefer a level of cleanliness that goes beyond what may be considered presumptively beneficial or morally required for hygiene reasons (call this case Flat Share). If two of them do their share of upholding this level of cleanliness, it seems, intuitively, that the third person's refusal to do her share of the "extra" cleaning would make her an unfair free rider.

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<sup>154</sup> Klosko 1992, pp. 39-44.

<sup>155</sup> Casal 1999; Arneson 2014; Gheaus 2015.

Of course, the receipt-based strategies above can be read as providing only sufficient conditions for Fair Play to apply. So they might not be bothered by their inability to condemn free riding in cases like Flat Share, being open to the possibility that some other sufficient set of Fair Play conditions might apply to such cases. But I take it that providing a set of necessary and sufficient conditions for Fair Play, able to capture cases of morally required/presumptively beneficial goods, as well as cases of desirable but not morally required goods (like, arguably, public libraries), and even trivial but subjectively valued goods (like in Flat Share), would provide a more complete (and hence, more attractive) defence of Fair Play. This is what I aim to do in Sections 3 and 4.

Finally, a different set of conditions thought to help limit Fair Play's scope of application regards *the production* of the benefits. All Fair Play defenders agree that contributors must meet some "burdensome production" condition. That is, only those who produce benefits by incurring a sacrifice have Fair Play claims against free riders. Most commentators agree, further, on an "intentionality" condition: that claims of fairness may only arise for benefits that the contributors brought about intentionally.<sup>156</sup>

The trouble, as others have noted,<sup>157</sup> is that none of these conditions have been adequately explained or defended. It is unclear what constitutes a "sacrifice" for the purposes of Fair Play, and what makes it necessary for grounding contributors' claims. Similarly, the need for contributors' having certain intentions, and what exactly these should be, also remains underexplored.

One important reason why such ambiguities still plague the Fair Play literature is that hardly any attempts have been made at approaching Fair Play in a systematic manner. Before attempting to rectify this, let me first turn to the "big picture" notion of fairness

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<sup>156</sup> Simmons 1979, p. 336; Casal & Williams 1995, p. 106; Casal 1999, p. 368.

<sup>157</sup> Boran 2006; Olsaretti 2013; Gheaus 2015.

that I will draw on, and discuss in some detail the account of Fair Play that has been thought to be supported by it.

#### **4.4. Unfair free riding as a failure of impartiality**

Garrett Cullity is the only Fair Play supporter who has sought to offer a general view about what unfairness consists in and how the free riding conditions he picks out as wrong-making contribute to making free riding unfair.<sup>158</sup>

At the most abstract level, I join him in thinking that fairness is a matter of appropriate impartiality.<sup>159</sup> Fairness requires that we treat people with a particular form of impartiality, suited to the context at hand. In the context of a 100m sprint, fairness as impartiality requires that competitors share the same starting point. In the context of a game, it requires that everyone play by the same rules. It is *unfair* if a contender starts the race from an advanced position, and if some people do not abide by the same rules. Free riding, when unfair, is also an instance of a failure of impartiality. The wrongful form of partiality that the unfair free rider is guilty of is allowing herself a privilege, or unjustifiably making an exception of herself, by not paying her share for the benefits she receives.<sup>160</sup>

But when does the failure to pay one's share actually amount to making an exception of oneself? In this section I briefly lay out Cullity's answer. I do not subscribe to all of his claims, but I will not, here, engage critically with them. Instead, my strategy is to offer an internal critique to his account, having accepted all of his claims *arguendo*.

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<sup>158</sup>Cullity 1995, 2008. Some theorists do say more about the sort of wrongness they believe free riding involves. Arneson 1982 argues that it can be understood as a breach of the producers' entitlement to the fruits of their labour when they cannot exclude third parties from enjoying them. Tosi 2018 believes that Fair Play is normatively similar to the principle of consent. However, neither explains why a violation of the producers' entitlement, or of the terms of a contract, amounts to acting unfairly.

<sup>159</sup> Cullity 2008, pp.2-5.

<sup>160</sup> Cullity 1995, pp. 22-23.

Cullity proposes three conditions under which free riding counts as unjustifiably making an exception of yourself. Two of them are fairly uncontroversial: first, that the free riders must receive a net benefit from the benefits-producing scheme they are asked to participate in, and second, that they do not raise legitimate moral objections against it<sup>161</sup>

The third condition, the “fair generalization requirement,” states that the refusal to pay for a benefit one receives is unfair only if it is true that the practice of honoring the sorts of demands for payment being made in the case at hand, and in all other similar cases that might arise, would make virtually everyone worse off.<sup>162</sup> This requirement captures the thought that a plausible Fair Play principle should not generate unreasonable demands. A good hypothetical test for whether a particular demand for payment is unreasonable is to ask what would happen if we had to comply with that kind of demand not just in this particular case, but in all the cases that might potentially arise, where contributors might make similar demands on us. If having to comply with all the further similar demands that might arise would make virtually everyone worse off, Cullity argues, then the particular demands being tested are unreasonable, and refusing to comply with them is not unfair.

For illustration, Cullity offers the *Entreprising Elves* case, where a band of elves go around repairing the shoes of people unwittingly leaving them out overnight, and then attempt to charge a reasonable price.<sup>163</sup> Cullity argues that refusing to pay the elves is not unfair because their demand for payment does not pass the fair generalization test. If we recognized as legitimate and complied with their demand, then we would also have to honor further requests that we pay “for all unsolicited benefits that are worth their cost,” and this would be an inefficient commercial system that would make virtually everyone worse off.<sup>164</sup> Various mechanisms would make this so. This

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<sup>161</sup> Cullity 1995, pp. 18-19.

<sup>162</sup> Cullity 1995, pp. 14-15.

<sup>163</sup> Cullity 1995, p. 10.

<sup>164</sup> Cullity 1995, p. 14.



system would presumably force us to pay for benefits that were unintended and unforeseen positive externalities of others' activities. It would also force us to pay for benefits that others foisted upon us with the sole purpose of getting paid in return. Even though each individual benefit might be worth its cost, overall such a system would lead to a harmful proliferation of obligations.

Cullity justifies his three conditions for unfair free riding by reference to his notion of appropriate impartiality. In the case of the fair generalization requirement, refusing to comply with unreasonable demands like the elves' does not amount to making an exception of oneself, for if their demands fail the fair generalization requirement, everyone has good reason to refuse to comply, including those who are currently complying with them.

Cullity's view is meant to offer a Fair Play principle that is not only theoretically supported by a general view of fairness, but that also yields a plausible scope of application. It is intended to distinguish cases of "predatory demands" like the Elves from cases of unfair free riding like Cullity's Recalcitrant Fisherman. In this case, fishermen band together to reduce pollution in the lake they rely on for their livelihood. One fisherman protests that he has not asked for this benefit, and has no intention to participate in the effort.<sup>165</sup> The recalcitrant fisherman is an unfair free rider, according to Cullity, because the demand made on him by the fishermen (making "a fairly assessed sacrifice" so as "to preserve the livelihood of all"), if allowed to generalize, would not make virtually everyone worse off.<sup>166</sup>

Cullity's view is on the right track, especially in its attempt to limit our vulnerability to unreasonable Fair Play demands. However, the fair generalization requirement is too vague to be able to distinguish cases of unproblematic free riding from cases of unfair free riding. Whether free riding is unfair turns on how exactly we describe the

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<sup>165</sup> Cullity 1995, p. 11.

<sup>166</sup> Cullity 1995, p. 15.

demands for payment that should be run through the fair generalization test. Yet we have no guidance as to how to determine what the salient features of the demands for payment are that should be tested. To see the problem, consider this case.

*The Enterprising Scientists*

Everyone in our town runs the risk of contracting a mild chronic illness because the water supply source is tainted with a dangerous chemical. One day, I am delighted to find that the water supply is safe to drink thanks to a group of scientists who have passed through our town and implemented a water-purifying mechanism overnight. I am less delighted when I receive the (reasonably priced) bill.

Here, it is not clear what the salient features of the scientists' demands for payment are. We might think that their demands are of the same sort as those made by Elves: "holding everyone liable to pay for all the unsolicited benefits that are worth their cost." The scientists seem to be engaging in the same sort of "business" as the elves. They have identified some needs, and met them without the beneficiaries' consent, before attempting to charge a reasonable price. Generalized compliance with this sort of demand, we could argue, would lead to a commercial system that would be unreasonably burdensome for virtually everyone, and that would, therefore, fail the fair generalization test.

We might think, instead, that the demands made by the scientists are more similar to those made by the fishermen. The relevant features of the scientists' demands for payment could be described as follows: the town's inhabitants are asked to help preserve everyone's health by contributing to paying the scientists for their effort. If this description is right, their scheme passes the test because participating in this, and any other potential, future efforts to preserve everyone's health would not make virtually everyone worse off.

Indeed, it might be said on Cullity's behalf that since the good promoted by the scientists is what Klosko calls presumptively beneficial, this is clearly a salient feature in *Enterprising Scientists*, so the latter's demands for payment are reasonable indeed, as it would make everyone better off to pay their share for securing presumptive goods.

This is true. However, the point was never that the scientists' demands for payment did not share salient features with the fishermen's demands. The point is that they *also* share very important features with the elves' demands for payment. The scientists are not engaged, like the fishermen, in a beneficial cooperative effort which third parties are asked to join. Rather, they are implementing a new technology in a town they are passing through, seeking to get paid. In this respect, what they do is similar to the elves' waiting for people to leave their shoes out. Thus, some salient features of the scientists' endeavour make it appropriate to describe it as a sort of *imposed commercial transaction* that, if allowed to generalize, would arguably lead to an inefficient commercial system that would make virtually everyone worse off.

Cullity's account thus remains inconclusive with respect to one of his most important goals: to distinguish between unfair free riding and "predatory demands" for payment. There will be many cases like the *Enterprising Scientists* in which it is unclear what the salient features of the demands are, or in which opposing views of the salient features seem defensible.

The Fair Play account I propose in the following section takes on board the core of Cullity's view, but is better equipped to carve out a clear and reasonable scope of application for Fair Play.

## 4.5. The Shared Preference View of Fair Play

Recall that we are looking for a principle of fairness that condemns free riding as unfair when it is a breach of impartiality, and in particular, when it involves unjustifiably making an exception of oneself. We need a criterion to determine when free riding amounts to making an exception of oneself that applies across different kinds of goods, including discretionary goods like in Flat Share, but without leaving us vulnerable to predatory demands like the Enterprising Elves’.

As a methodological point, I assume that in order to determine when free riding amounts to making an unjustified exception of oneself we need to spell out the ways in which the free riders and the contributors are relevantly similarly situated. The thought is that when the free riders are similarly situated to the contributors with respect to *all* the relevant facts regarding the receipt and production of a benefit *except for* the free riders’ failure to pay their share, their failure to pay cannot be justified on impartial grounds. I argue that the free riders and the contributors are similarly situated when *we can justifiably ascribe to both a qualified preference for free riding*. I call this account the Shared Preference View.

There are, I argue below, two such preferences for free riding that we can identify, that correspond to two distinct (but structurally similar) opportunities to free ride, depending on whether the goods in question are “optional goods” (i.e. not morally required) or morally required goods (by which I mean that we have a moral duty to provide people with). The Shared Preference View distinguishes between the opportunity to free ride by internalizing a benefit that others have produced, on the one hand, and the opportunity to free ride by letting others discharge a collective duty that applies to one, on the other hand. The first kind of opportunity may arise when either kind of good is being produced, while the latter only arises in cases of morally required goods. In this section I develop the Shared Preference View as it applies to optional goods, leaving morally required goods for the next section.

I start by positing that the only necessary requirement relating to the nature of the optional goods themselves is that they exhibit jointness in supply (which, recall, means that if someone in the group receives them, everyone else can do so at no cost to themselves). To signal this minimalist requirement, I will call such goods “collective” from now on, rather than public goods, to distinguish my view from those on which other typical features of public goods are necessary for Fair Play to apply, such as non-excludability.<sup>167</sup>

I propose that when a group of people receive a collective good produced by some members of that group, Fair Play obligations arise only between those among the free riders, and those among the contributors, to whom the Free Rider’s Preference can be ascribed.

*The Free Rider’s Preference (FRP): I prefer that others pay for this valuable collective good that I can enjoy for free and for which I would be prepared to pay, in the conditions under which it is offered, if I had to.*

As is familiar from the extensive literature on Prisoner’s Dilemmas and collective action problems (Olson 1965, Parfit 1984, Gauthier 1986),<sup>168</sup> in contexts where free riding is possible, each person faces the following potential scenarios, ordered from the one that makes her best off to the one that makes her worst off.

1. I receive the benefit without bearing the benefits-producing costs.
2. I receive the benefit and I bear the benefits-producing costs.
3. I do not receive the benefit and I do not bear the benefits-producing costs.
4. I do not receive the benefit despite having borne the benefits-producing costs.

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<sup>167</sup> I here follow Cullity, in contrast to all the other Fair Play defenders, who treat non-excludability as necessary. See e.g. Arneson 1982; Klosko 1992. Recall that, as mentioned above, jointness in supply does not necessarily entail non-excludability.

<sup>168</sup> Olson 1965; Parfit 1984; Gauthier 1986.

One counts as sharing the FRP when one can be ascribed the two top-ranking preferences in that order.<sup>169</sup> And we can ascribe people this ranking of preferences on the basis of two elements: (a) their having a certain pro-attitude to the receipt and payment of the collective good, and (b) an assumption about the kind of beings we are that we may apply to everyone for fairness purposes, namely that we are prudentially rational.

To elaborate: the first condition, (a), that must obtain in order to justifiably ascribe the FRP to someone is that they believe the good they are receiving is worth its cost to them. This condition obtains when the benefit-recipients subjectively value the good enough that they would prefer to pay its attendant cost if they had to (that is, *if free riding was not an effective option*), rather than forgo the good altogether. When this condition obtains, the two scenarios in which the good is produced, either with or without one's own contribution, rank higher than the two scenarios in which the good is not produced at all.

Now note that, once the first condition is met, the question is which of the top two scenarios ranks first. On the assumption that (b) spells out, namely that people are prudentially rational, the scenario in which one receives the valued good *for free*, rather than having to pay for it, would come first. The notion of prudential rationality at work here is the familiar technical notion of an individual who would act so as to maximize her own well-being. Receiving for free a good that would be worth its cost to the individual is prudentially better than paying for it, all else equal. For one is then free to direct one's resources to other desirable ends, without losing out on the benefit. Therefore, free riding on the production of a good that is worth its cost would be, in principle, the top-ranking option for any prudentially rational individual.

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<sup>169</sup> The ascription of preferences 1 and 2 in that order is sufficient for my Fair Play purposes here. I mention preferences 3 and 4 for the sake of completeness, as I am borrowing the entire set of options from previous work on collective action problems.

For illustration, consider the paradigmatic case of unfair free riding, that of, quite literally, riding free on public transport. It is possible to ascribe the FRP both to someone who buys a ticket, and to someone who does not, provided only that both in fact believe the benefit is worth paying this price, and assuming it would be to their advantage to get this good for free rather than pay for it. The best scenario for both parties, then, would be the one where they enjoy the benefit for free. The second best scenario for each is to benefit from the public transport *and* pay, since the benefit of public transport outweighs the price of the ticket by their own lights. And so on down the ranking of preferences.

The important point worth stressing here is that the relevant ranking of preferences applies to the fare-payers regardless of the fact that they do not actually *act in line with* the top-ranking option (*i.e.*, the free riding option), like the free riders do. Someone might wonder how it is possible to ascribe the FRP to the fare-payers. If you pay your fare, doesn't this show you do not actually prefer to free ride? In response, it is important to stress that the Free Rider's "preference" itself is just a term of art. Its ascription is justified only partially by a person's actually held, subjective preference, namely, that identified by condition (a), that people deem the benefit to be worth the cost; and partly by an objective judgment about what is in people's prudential interest.

So, some people act on the preference identified by (a), by buying a ticket even when they could ride for free (when there are no ticket checks and enough others are buying tickets anyway). Others, by contrast, choose to free ride when this is possible, even though they *would* pay their fare if ticket controls were in place and/or if the public transport system was in danger of failing due to lack of contributions (so they also share (a) but they do not act in line with it). Despite their different actions, the FRP could be ascribed to both parties because it is true of each that it would be to their advantage, as prudentially rational people, for *them* to be the ones who get the valued benefit for free. The similarities that matter for the Shared Preference view are

(a) that both parties actually value the good, and (b) that it is true that both would be better off if they enjoyed this good for free. Taken together, these two elements allow us to ascribe the FRP.

Still, one might insist, if the fare-payers would be better off free riding, why don't they? There is a host of reasons why fare-payers might decide to buy their tickets. They might be following the laws and conventions that stipulate that each should pay for a ticket, or they might be more risk-averse than the fare evaders about the possibility of getting caught without a ticket. Or they might recognize the unfairness of free riding and pay their fare for this reason, as many surely do. But to repeat: none of these reasons challenge the fact that they can be ascribed the FRP. Riding the public transport for free would be in each contributor's best interest, just like it is in the best interest of the free riders. In section 6 I discuss cases in which some reasons why people bear the relevant costs do undermine the ascription to them of the FRP.

We can now single out what it means for free riders to make an unjustified exception of themselves. Among all those who receive a collective good, those who count as *relevantly similarly situated* for fairness purposes are those to whom we can justifiably ascribe the FRP. When some of those who share the FRP nevertheless bear the costs of securing the collective good, those who allow themselves to free ride arrogate to themselves an unjustifiable privilege. They get to act in line with the FRP at the expense of those who, despite sharing it, act in frustration of it.

The Shared Preference View allows us to distinguish cases of unfair free riding on optional goods like Flat Share from cases of "predatory demands" like Entreprising Elves. The flatmates in Flat Share can all be ascribed the FRP: each of them places high value on enjoying a spotless flat, and each would be better off if the others did the work instead of them. So if one of them refused to do her share of the extra cleaning, she would be acting unfairly. By contrast, the elves in Entreprising Elves are not similarly situated to those who benefit from their services because the elves



themselves do not have an interest in enjoying the same goods as the beneficiaries. They cannot be ascribed the FRP, which, to repeat, states the following. *I prefer that others pay for this valuable collective good that I can enjoy for free and for which I would be prepared to pay, in the conditions under which it is offered, if I had to.* The elves are not interested in the benefit of having their shoes repaired. Unlike their clients, what they seem to have an interest in is making a profit, or getting recognition, or something of that sort.

Someone might wonder why it should matter, for the purpose of establishing whether the Elves ought to get paid, that they do not have a preference for enjoying this good themselves. The Shared Preference View conceives of the relevant unfair free riding situation as one where individuals are at a “standstill.” Everyone wants to enjoy the *same* collective good, and each would be better off by not contributing to its production. When some people contribute, thereby breaking this deadlock, the Shared Preference View condemns those who fail to do their share in return. By contrast, Enterprising Elves seems to be a simple commercial transaction between those who act exclusively as producers, and others who occupy the role of beneficiaries. But such transactions are arguably more appropriately governed by explicit consent to receiving and paying for a benefit, not by Fair Play. Fair Play applies, I have argued, to situations that are importantly different from typical transactions: those where individuals are relevantly similarly situated in that they share an interest in benefiting from a collective good themselves, and an interest in not bearing the costs themselves. It is in light of this symmetry that failing to pay one’s share amounts to unjustifiably making an exception of oneself.

#### 4.6. The Shared Preference View and morally required goods

On the Shared Preference View just sketched, fairness obligations are generated between those contributors and those free riders who share the FRP. And we have seen that whether or not a free rider can be attributed the FRP partly depends on whether she subjectively values the benefit enough to prefer to receive and pay for it rather than do neither, which goes some way to meeting Nozick's voluntarist objection.

At this point, however, someone might think we are giving *too much* weight to free riders' subjective views. Think back to Cullity's Recalcitrant Fisherman. In this case, fishermen band together to clean up the polluted lake they rely on for their livelihood. The one fisherman who protests that he has not asked for this benefit and will not participate in the common effort seems very unreasonable indeed. If people claim they would rather do without crucial goods like a clean lake in this case, should they be exempted from paying their share for these goods?<sup>170</sup>

The answer is no. This is because the good of an unpolluted lake is arguably a morally required one in this case, since it is stipulated that everyone's livelihood depends on being able to fish there. As mentioned in the previous section, when such goods are at stake, there exist not one, but two kinds of opportunities to free ride unfairly. One is found in cases of optional collective goods as well, namely the opportunity to internalize a valued good that others have produced. The second arises only in cases of morally required collective goods. It is the opportunity to have a collective duty that applies to you (alongside others) be discharged only by others. Where morally required goods are produced, then, it is possible to be guilty of both forms of unfair free riding (for example, if the recalcitrant fisherman secretly subjectively valued the benefit of a clean lake he would be both internalizing a valued good for free, *and*

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<sup>170</sup> This is an important worry facing any voluntarist view. See e.g. Arneson 1982, p. 632 directing this objection to Simmons's view.

allowing others to discharge a collective duty that applies to him too). But it is also possible to be guilty only of the latter sort of unfair free riding, as the recalcitrant fisherman arguably is if he truly believes that having a clean lake is disvaluable or not worth the cost. And in this case, as we shall soon see, his subjective views do not exempt him from having Fair Play obligations. In the rest of this section I explain how the Shared Preference View can make sense of this second kind of opportunity to free ride.

Let me start by clarifying what is meant by the collective duty to produce certain goods. Think of goods like safe drinking water. Most of us would agree that they are morally required in the sense that there is a moral duty to see that people have access to them, and that this duty is a general, agent-neutral duty that, in political communities like ours, usually falls on the state as a collective agent to discharge. No particular citizen has any more responsibility than any other to discharge it, all else equal. Moreover, it is a duty for which it is usually not practically or morally required that every member of our community act so as to discharge it, as it can be effectively discharged by only *some* people's bearing the relevant costs.

I propose that, out of a group of people who are all under a collective duty to produce a certain good, Fair Play obligations arise between those who act so as to discharge it and those who do not, and who can be said to share the Free Rider's Collective Duty Preference.

*The Free Rider's Collective Duty Preference (CDP): I prefer that others discharge the collective duty that also applies to me.*

Think of Recalcitrant Fisherman. The duty collectively to avoid dangerous lake pollution can be discharged even if some fishermen do not participate in the effort. This gives rise to a hierarchy of preferences that the free riders and the contributors share.

1. The collective duty is discharged without my bearing the costs.
2. The collective duty is discharged and I bear the costs.
3. The collective duty is not discharged and I do not bear the costs.
4. The collective duty is not discharged despite my having borne the costs.

One can be ascribed the CDP when one can be said to share the two top-ranking preferences in that order. And we can ascribe this ranking of preferences to anyone who falls under the scope of a collective duty, on the basis of the following two assumptions about the kinds of beings we are: (a\*) that we are appropriate subjects of moral evaluation, and (b\*) that we are prudentially rational.

Condition (a\*) assumes that we are appropriate subjects of moral evaluation in the sense that we have a moral interest in seeing the moral duties and obligations that apply to us discharged. Assuming we can conceive of individuals this way, the two scenarios in which the collective duty is fulfilled, with or without our contribution, are superior, from the point of view of morality, to the ones in which it is not.

Condition (b\*) assumes we are prudentially rational. As before, this is just to say that, for fairness purposes, we can conceive of ourselves as the kinds of beings who would act so as to maximize our well-being. This makes it the case that, out of the top two scenarios, the one in which the collective duty is discharged *without our own contribution* is superior, from the point of view of prudence, to the one where we contribute; then, we are free to invest our resources elsewhere while still seeing the demands of morality that apply to us satisfied.

Who exactly the obligation-bound free riders are depends on the particular collective duty at stake. The particularities of how we pick out the individuals on whom the duty falls in the first place are important, but this can be left aside for now. Once the appropriate scope of the collective duty has been established, free riders falling under it can be ascribed the CDP automatically. For the CDP, like the FRP, is not an actually

held preference. Unlike the FRP, the ascription of the CDP to free riders does not rely on any subjective views held by them, not even in part. For we ought not to allow people's subjective preferences to play any role in determining the general duties they are held to. From the point of view of morality, it is better for each person that the duty that applies to them be discharged rather than not. And from the point of view of prudence, it is better for each that *others* discharge it rather than them. For the latter judgment we need not conceive of people as wanting to shirk their responsibilities. The collective duty simply requires that a particular outcome be secured, but says nothing about who exactly should secure it, so there is no obvious wrongdoing in failing to contribute if the outcome could well be secured by others.

This view, then, allows us to condemn the recalcitrant fisherman despite his negative appraisal of the value of having an unpolluted lake. His subjective views may prevent us from ascribing the FRP to him, for we ought to allow people the freedom to decide for themselves which goods they consider beneficial, and which benefits they wish to receive and pay for. However, we ought not to allow people's subjective views to affect the general duties they are held to. So, assuming the CDP can be ascribed to both the recalcitrant fisherman and to the other fishermen, he is bound by Fair Play to do his part in discharging the collective duty of avoiding dangerous lake pollution.

Thus, the Shared Preference View has the advantage of capturing all the cases of presumptively beneficial goods that Klosko is interested in (as I take it that presumptively beneficial goods are also morally required) without relying on the paternalistic claim that they are beneficial even for those who sincerely believe they are not and would be prepared to forgo them. For on the Shared Preference View we can fall back on the opportunity to unfairly free ride constituted by *the failure to share the costs of discharging a shared duty*. To denounce this sort of unfair free riding there is no need to establish that the free riders *themselves* are benefited by the goods being produced. All we need to establish is that there is a collective duty to produce a good

(for the benefit of *others*, if not also for one's own benefit), and that the relevant parties share the CDP.

This view, then, can also serve to ground political obligation, as theorists like Rawls and Klosko have argued, since governments normally provide a range of morally required goods like public defence or the rule of law. Even those who deny the value (for themselves) of such benefits may be enjoined to pay their share if they can be attributed the CDP. It is worth mentioning that in reality the obligation to pay for the morally required goods provided by the state is often over-determined. More often than not, those who fall under a collective duty to participate in securing them also consider themselves benefited by them and can be said to share the FRP in addition to the CDP. However, if states provide goods that are desirable but not morally required (like, perhaps, public libraries), they cannot appeal to Fair Play reasons to extract taxes from those who, for example, sincerely believe themselves to be worse off by having this benefit available to them and having to pay for it compared to doing neither.

As further illustration of the Shared Preference View, consider how it applies to the case of Entreprising Scientists I mentioned earlier, in which a group of scientists passing through town implement a water-purifying mechanism that saves the town's inhabitants from risk of a mild chronic illness, and then seek to charge a reasonable price for their service. I argued that Cullity's view of unfair free riding would be unable to generate a clear answer in this case because it is not clear, on his view, which features of this situation should be salient for fairness purposes. On the Shared Preference View, one feature, in particular, makes all the difference: the fact that the scientists are providing a morally required good. If they had not implemented their technology, the townspeople would have been morally required to find some other way to ensure water safety. Here the question that I bracketed earlier becomes important, namely who can be said to fall under the relevant collective duty in the first place. Provided that the scientists fall under the duty as well, the CDP can be ascribed

to both the scientists and the beneficiaries of their technology. And since, by hypothesis, the scientists charge a fair price for their effort, the townspeople have Fair Play obligations to compensate the scientists for having discharged a collective duty for them.

Note that even though the scientists do not have an interest in enjoying the benefit of safe water themselves (because they are only passing through), here this fact does not undermine their Fair Play claims, like it did for the Entreprising Elves. For what matters here is whether there is a collective duty that both the producers (the scientists) and the free riders (the townspeople) can be said to fall under. Assuming that there is, Fair Play kicks in.

To take stock, I have provided a framework for identifying the morally relevant similarities between those who do their part in securing an optional collective good, or in discharging a collective duty, and those who do not, such that the failure of the free riders to do their part amounts to making an unjustified exception of themselves. Out of all the individuals of a group that receives a collective good, or that sees a collective duty satisfied, only those individuals who share the FRP, or the CDP, have fairness obligations to contribute to the production of the good. What the two contexts have in common is that not everyone who can be ascribed the relevant preference can satisfy it compatibly with everyone else's doing the same. If some people act in a way that frustrates their FRP or their CDP thereby enabling others (the free riders) to act in line with *theirs*, then free riders ought to similarly frustrate that preference. Otherwise, they count as allowing themselves an unjustifiable privilege. In the next two sections, I show how the Shared Preference View also enables us to identify those types of cases where, though there is free riding, it is not wrong.

#### **4.7. Benefits recipients who lack Fair Play obligations**

In the previous section we have seen that free riders' subjective views play no role in whether we can ascribe to them the CDP. If others discharge a collective duty that applies to them too, it does not matter whether they believe they stand to gain from the goods being produced or whether they see the value of the duty being discharged. They will be bound to do their share regardless.

But now consider the Shared Preference View as it applies to the provision of optional collective goods. We may be unable to ascribe the FRP to some free riders because (i) the good is disvaluable to them; (ii) the price they would have to pay for it exceeds the benefit; (iii) they might have alternative sources for enjoying the same benefit, which they prefer; (iv) they prefer to forgo this benefit altogether in order to invest their resources into other projects; finally, (v) they raise legitimate moral objections to how the good is produced. Those of whom any of (i) through (iv) is true would have a complaint against being held to a Fair Play obligation.

These cases of seemingly innocent free riding have often been acknowledged in the literature in some form or another.<sup>171</sup> The Shared Preference View offers a unified explanation for why they are all cases in which free riding is not wrong. For they are all cases in which the free riders' hierarchy of preferences is different from the one shared by the contributors and the unfair free riders.

Recall the top-ranking options in the hierarchy of preferences shared by the contributors and the unfair free riders.

1. I receive the benefit without bearing the benefits-producing costs.
2. I receive the benefit and I bear the benefits-producing costs.

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<sup>171</sup> Arneson 1982, pp. 620-621; Simmons 2001, p. 20.



If free riders sincerely raise complaint (i) or (v), their top-ranking preference presumably is:

1. I do not receive the benefit and I do not bear the benefits-producing costs.

If my flat mates subject me to loud jazz music, and I hate jazz, I am made worse off. Alternatively, if a good is provided through some form of injustice (say, its production infringes on some people's rights), I may not want to receive it. In either of these cases, I cannot be ascribed the FRP because my top preference is not to receive the good at all.<sup>172</sup>

If the free riders sincerely raise complaints (ii) through (iv), their top-ranking preferences presumably are as follows.

1. I receive the benefit without bearing the benefits-producing costs.
2. I do not receive the benefit and I do not bear the benefits-producing costs.

As illustration, think of Nozick's famous public address (PA) system example,<sup>173</sup> which Nozick tried to use to discredit the fairness principle altogether. Imagine a neighbourhood where some residents set up a PA system for entertainment. Each resident is expected to contribute by being in charge of it for a day per year, during which they can play records, make announcements, and so on. Many authors have agreed with Nozick that there is no moral obligation to do one's share in supporting this entertainment scheme even if one voluntarily enjoys it, say, by opening their window from time to time.

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<sup>172</sup> Note that, in cases of benefits produced by unjust means, the Shared Preference View can support the view that Fair Play obligations do not arise in the first place even when recipients prefer to receive them. This would be the case if there were a collective duty to oppose unjust benefits-producing schemes. I believe this to be the case, and that it would prevent Fair Play obligations from arising from such schemes, but I will not argue for this here.

<sup>173</sup> Nozick 1974, p. 93.

On the Shared Preference View there *can* be fairness obligations to participate in this entertainment scheme, but only for the free riders who can be ascribed the FRP. As a matter of fact, when such trivial, discretionary goods are at stake, it is often the case that the FRP cannot be ascribed to many who free ride, because condition (a) is not true of them, that is, they do not think the benefit is worth its cost, typically for the reasons given by (ii) through (iv). Since, unlike the contributors, they would be prepared to forgo the good of the PA scheme rather than pay for it, such dissenters do not share the relevant ranking of preferences, which means they do not share the FRP.

#### **4.8. Benefits producers who lack Fair Play claims**

I mentioned in Section 3.3 that Fair Play defenders have maintained that only those who produce a public good through some sacrifice, or net burden, have claims against the free riders. Yet it remains unclear what the relevant sacrifice or burden is. Similarly unclear is whether the intentions that contributors exhibit matter, and if so, what kinds of intentions they must be. The Shared Preference View allows us to shed light on both these issues, and thereby, to also identify those cases in which, although contributors benefit others who do not pay for those benefits, they lack Fair Play claims.

Consider the Flat Share case again, and a variation on it. In Flat Share, all three flatmates happen to prefer a high level of cleanliness in the common area enough that they would be prepared to do what was required to maintain this level of cleanliness if free riding was not an effective option (for example, if each lived alone and there was no one else around on whom they could rely to do the cleaning). I am assuming that for some reason they cannot make a cleaning agreement that all can trust will be respected. Two of the flatmates nevertheless do their share of maintaining the high level of cleanliness that all prefer. One does not. As a variation on this case, we can

think of Flat Share II: this is the same as before except here the cleanliness is maintained thanks to the fact that two flatmates enjoy exercising around the house with a duster, as their preferred way of staying in shape.

I submit that only the flatmates in the original Flat Share have Fair Play claims against the free rider, for reasons related to their intentions in bearing the costs of cleaning. I share this opinion with authors like Casal and Williams who claim that contributors have fairness claims only when they “bear costs, that they would not otherwise bear, *in order to* produce the good”.<sup>174</sup> They do not spend much time explicating or justifying this claim, however. The Shared Preference View enables us to do just that.

The notion of intentionality that is of interest here regards the intentional production of certain beneficial outcomes in a way that grounds fairness claims with respect to those outcomes. As such, I will not explore the intricacies of the literature on intentional action, for this would take us too far afield. Here we need only identify which features of the producers’ intentionality are relevant for Fair Play and why.

Using an intuitive and commonly used definition, I will understand intentions as referring to the goals, or outcomes, or consequences at which our actions aim. The sense in which I use this term is synonymous with what Scanlon has called “narrow intentions”, which he defines as follows.

To ask a person what her intention was in doing a certain thing is to ask her what her aim was in doing it, and what plan guided her action – how she saw the action as promoting her objective. To ask this is in part to ask what her reasons were for acting in such a way – which of the various features of what she realized she was doing were features she took to count in favor of acting in this way.<sup>175</sup>

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<sup>174</sup> Casal and Williams 1995, p. 106.

<sup>175</sup> Scanlon 2008, p. 10.

Scanlon contrasts the notion of narrow intentions with that of broad intentions. One performs an action intentionally in the broad sense when one is aware of what she is doing, or is aware of certain consequences of her actions. A broadly intended outcome of one's activities, then, is one that does not come as a surprise to the agent. However, by contrast to a narrowly intended outcome, the broadly intended outcome is not one that the agent took as a *reason* for her to act in the way that she did. It is merely a foreseen, but not properly aimed at.

For Fair Play purposes, it is narrow intentionality that is relevant, for an outcome that is merely broadly intended (that is, foreseen but not aimed at) is, for all intents and purposes, a mere externality of the agent's intentional action.

Of course, a narrowly intended outcome or state of affairs can form part of a larger plan of action. That narrowly intended outcome can then be described as a *means* to ultimately achieving what we might call an *ultimate* aim. Ultimate aims refer to outcomes or ends that are narrowly intended and also non-derivative. They are the *terminus* of our actions or plans for action, and cannot be further explained by pointing to some further goal we wish to achieve. An ultimate intention, then, would refer to the agent's ultimate aim in a chain of narrowly intentional actions: for instance, for someone who deliberately works towards obtaining a degree achieving that degree is most likely not their ultimate aim. It is a means to a further end, perhaps their ultimate end of practicing their chosen profession.

In a tradition going back to John Stuart Mill, Steven Sverdlik also distinguishes between intentions and motives. Expressing this widely shared view, he writes:

[F]rom the agent's point of view (and, perhaps, from others') her motives specify what is of value about her action. (...) The two main types of motive seem to be emotion and

desire. Typical motives are, on the one hand, jealousy, spite, affection, or sympathy, and, on the other hand, greed, ambition, curiosity, or a sense of duty.<sup>176</sup>

So, for example, the flatmates in Flat Share intentionally produce the outcome of a clean flat in the narrow sense: having a clean flat is the aim of their action. But this may or may not be their *ultimate* intention. If it is, perhaps their *motive* is self-regarding: they might be motivated by the pleasure of living in a clean environment. Alternatively, if their ultimate intention is to ensure the flat is clean when their family visits, they might be motivated by other-regarding motives. They might be aware that their family enjoy a clean environment and they might act out of altruistic motives to ensure their family get to enjoy a clean flat whenever they come visit. But their motive might be self-regarding in this case also: perhaps they want to be praised by their family for maintaining such a clean flat. The flatmates in Flat Share II also produce the outcome of a clean flat intentionally in the broad sense, in Scanlon's terms. This is to say, it is not an accidental, unconscious, or involuntary consequence of their bearing the costs of exercising with dusters. But their narrow intention has to do with their fitness aims. And their motives could range from vanity to the desire of enjoying health.

Of course, the distinction between intentions and motives has been contested, and in particular, the distinction between ultimate intentions and motives can be quite blurry. W.H.F. Barnes, for instance, writes:

It is a highly plausible view to take that intention is a complex consisting of different elements and that motive is the name we give to one element in the intention, namely that element which is of chief interest to the agent. In this sense it seems to be roughly synonymous with aim, end and purpose.<sup>177</sup>

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<sup>176</sup>Sverdlik 1996, p. 335.

<sup>177</sup> Barnes 1945, p. 234, cited in Pall 1965, p. 151.

The philosophy of action literature no doubt has a lot to say about this, but it is well beyond the scope of this thesis to engage in these debates. For our purposes here, the often-used distinctions between intention (understood as narrow intention), ultimate intention, and motive will suffice for the time being.

The first thing we need to establish for Fair Play purposes is the *object* of the requisite narrow intention. The question is, which outcome, or consequence, must contributors purposefully bring about if they are to have Fair Play claims against free riders? Contributors must intend to bring about the outcome that free riders internalize and for which they would be asked to pay their share.<sup>178</sup> In the Flat Share cases, the relevant Fair Play outcome is a very clean flat. Note that their ultimate intention need not be to *benefit others* by cleaning. Nor do they need to want to *act fairly* towards others by doing so, or to deliberately *discharge a duty* as such. Some contributors may well exhibit such intentions, but there is no need for them to aim to benefit others or to act out of duty. Their ultimate intention may only be to benefit themselves by deliberately producing an outcome that is (also) beneficial to others or that is required by a collective duty.

Having specified the requisite object of contributors' intentions, we must clarify the *place that this intention should occupy in their motivational structure*. I propose that contributors must have the production of the relevant Fair Play outcome as their necessary motivating reason for action. We can use the following counterfactual intentionality test for determining whether contributors aim for the relevant Fair Play outcome in the sense just described. We can imagine asking contributors: *If you came to believe that the costs you are bearing were not contributing to the production of the relevant Fair Play outcome, would you still be willing to bear them?* If the answer is no, this shows that contributors regard the production of the relevant good as a necessary motivating reason for bearing the relevant costs. Something like this test seems to be

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<sup>178</sup> For ease of exposition, I will often refer to the goods which contributors must purposefully bring about (either a collectively beneficial optional good, or the outcome demanded by the collective duty) as the *relevant Fair Play outcome*.

implied by Casal's and Williams's contention that contributors do not have claims unless they bear costs they would not otherwise bear but for the production of the benefit.

The contributors in Flat Share pass the counterfactual intentionality test. If they came to believe that the burdens they were bearing would not lead to maintaining a spotless flat, they would cease to bear them. By contrast, the contributors in Flat Share II would presumably continue exercising with the dusters regardless. This is a natural consequence of the fact that cleaning the flat was not their necessary reason for acting in the first place. And even though, as things stand, they are deliberately (meaning, not unexpectedly) causing a spotless flat, this outcome in itself plays no motivational role for them. If the third flat mate were to consistently clean the flat all by herself, such that the duster exercises were not needed to clean the flat anymore, the two fitness-oriented flatmates would presumably still do their exercise. Or if they came to find that the duster exercises simply were not effective for maintaining the flat clean enough, once again they would continue to do them. Maintaining a spotless flat, then, is not their necessary reason for action in the first place: they have enough independent reasons to engage in this activity.

Now, *why* should we think that these are the features of the contributors' intentionality that are required for Fair Play? The intentionality requirement as described is a necessary condition for the ascription of the FRP. And the ascription of the FRP is crucial for ascribing the relevant hierarchy of preferences to the contributors:

1. I receive the benefit without bearing the benefits-producing costs.
2. I receive the benefit and I bear the benefits-producing costs.

Contributors in Flat Share can be ascribed this hierarchy of preferences. They are bearing costs they are not prepared to bear *but for* wanting to maintain the flat clean.

This involves investing, or indeed “redirecting” time and resources from their usual activities towards producing the relevant outcome. But since the desired outcome is collective in nature, and since there are others around who also desire it and could produce it, each of these contributors could enjoy the benefit at no cost to themselves. As prudentially rational persons, they can then be ascribed the preference not to divert resources from their usual pursuits towards producing an outcome that they may get anyway. This is to say, they can be ascribed the preference to free ride.

By contrast, contributors in Flat Share II cannot be ascribed that hierarchy of preferences. Failing the counterfactual intentionality test means they would bear the benefits-producing costs anyway, in light of their other ends (here, a fitness aim). Their hierarchy of preferences, then, is this:

1. I receive the benefit and I bear the benefits-producing costs.
2. I receive the benefit without bearing the benefits-producing costs.

We can now explain what the relevant burden, or sacrifice, is, in virtue of which contributors have Fair Play claims against free riders. I submit that the relevant burden is the contributors’ acting against their free riding preference. Fair Play as I understand it applies in situations where it is not possible for each person to pursue their ambitions, in the way they want to pursue them, compatibly with everyone else pursuing *their* ambitions, and without this leading to a collectively suboptimal outcome. So, if the suboptimal outcome is to be avoided, some people must modify their ambitions, or divert resources away from them, as needed to produce the beneficial outcome. But since the desired outcome is collective in nature, each of the contributors could enjoy it at no cost to themselves. Each can be ascribed the FRP, and those who act in frustration of their FRP by bearing the benefits-producing costs have Fair Play claims that the free riders similarly frustrate *their* FRP. Failing to do so would amount to enjoying an unjustifiable privilege at the expense of the contributors.



In contexts like Flat Share II, where there are enough people willing to bear the benefits-producing costs in light of their other ends, it *is* possible for each to pursue their ambitions compatibly with everyone else pursuing their own, and still avoid the collectively suboptimal outcome. The contributors in Flat Share II enjoy the same “privilege” that free riders enjoy, which is to pursue their ambitions as normal without losing out on the collective benefit.

So far I have argued that the FRP can be ascribed to contributors whose only intention is to contribute to the relevant Fair Play outcome, but not to those who are only aiming to achieve goals that are unrelated to the relevant Fair Play outcome. Now the question is what we should think of contributors with mixed intentions, namely those who want to produce the relevant Fair Play outcome *as well as* to achieve some other aim at the same time. We can imagine a case where the flatmates want to kill two birds with one stone: they want to both maintain a very a clean flat, and to get other benefits at the same time, like getting some exercise. Can they still be ascribed the preference not to bear the costs of cleaning?

If they pass the counterfactual intentionality test, the answer is yes. If it is true that, even factoring in these other benefits (or incentives), they would not bear the benefits-producing costs if they came to believe they were not needed to produce the relevant collective good, we can still ascribe the FRP to them. They still count as making some necessary adjustments or changes to how they use their time and resources in order to enable themselves to bear the benefits-producing costs. They might change the means by which they pursue their usual ambitions (perhaps, if left to their own devices, they would rather jog instead of cleaning the flat for exercise), or they might acquire new aims and preferences which they consider conducive to producing the collective good (like acquiring a new fitness goal that they did not have before and which they judge to be well served by cleaning the house). Once again, these are changes that others could have undertaken instead of them. And once again, they could enjoy the relevant Fair Play outcome without having to modify their

preferences and ambitions in any way, provided that enough others did instead. Insofar as they would not be willing to bear the costs of cleaning (even with private incentives available) unless they believed they were conducive to producing the relevant Fair Play outcome, they still pass the counterfactual intentionality test, and hence they count as acting against the free riding preference when they do bear the benefits-producing costs.

Now, what about the contributors' motives? Is it the case that we can automatically ascribe the FRP to contributors so long as they pass the counterfactual intentionality test? The answer seems to be no. There are some motives (granted, a minority of them) that make it the case that those contributors who act from them act *in line* with their ambitions even when they pass the counterfactual intentionality test. An example could be seeking praise or glory for oneself *by* producing a collective good. Someone might have the production of a collective benefit as their necessary motivating reason for bearing the relevant costs, but they positively value the opportunity to help produce the collective benefit as a way to attract praise or glory.

This suggests that we need a second test to discern between the contributors who can be ascribed the FRP and those who cannot. We must ask contributors who pass the counterfactual intentionality test this second question: *Other things equal, if the relevant Fair Play outcome could be secured through a costless, problem-free process such as manna from heaven, would you rather it be secured through that process, or would you still prefer to contribute to it yourself as you currently are?* Call this the *counterfactual motivational test*. The only contributors who would prefer to help produce the collective benefit themselves rather than see that same outcome secured through manna from heaven are those for whom, in reality, producing the Fair Play outcome is in line with their preferred activities and life plans. As such, they cannot complain that free riders are enjoying a privilege that they themselves lack.

Contributors who pass the counterfactual intentionality test but do not pass the counterfactual motivational test will surely be only a minority of all those who pass the intentionality test. Passing the motivational test is compatible with a wide range of motives that contributors might act from, including moral reasons. Someone who does her share out of a sense of duty, or indeed out of a Fair Play-informed motive specifically, might seem to have an interest in bearing the benefits-producing costs herself and not to rely on others to do it instead of her. But such a person will almost certainly pass the counterfactual motivational test: she would rather that *no one* bear any costs, or make any sacrifices, to produce this good. If it were possible, she would rather this good be secured through manna from heaven, and she would be willing to forgo the opportunity to bear these costs herself (and, by extension, she would also be prepared to forgo any other private benefits she might accrue as a result of bearing these costs). A person motivated by sympathy, beneficence or altruism towards others, too, will pass both the intentionality and the motivational test in a majority of cases.

At the same time, moral or altruistic motives are not *necessary* for contributors to have claims. Self-interest, for example, is also a motive that is compatible with passing both the intentionality and the motivational test. Indeed, in my Flat Share case I have been assuming all along that the flatmates who have Fair Play claims are, first, aiming solely at producing an exceptionally clean flat, and secondly, that their motive for wanting to produce this outcome is self-interest: they simply want to enjoy a clean flat for themselves.

This feature of the Shared Preference View is noteworthy for the aims of this thesis because many on the pro-sharing side of the parental justice debate have criticized anti-sharing theorists for working with too stringent a view of Fair Play, namely one that requires contributors to do their part out of an altruistic motive, or with the

ultimate intention of benefitting others.<sup>179</sup> The Shared Preference View agrees that altruistic or beneficent ultimate motives towards others are not necessary for Fair Play claims to arise. As we shall in the next chapter, the Shared Preference View nevertheless denies that typical parents have Fair Play claims against non-parents, since they do not typically pass the counterfactual intentionality test.

Another noteworthy feature of the Shared Preference View is that the relevant burden, or sacrifice, in virtue of which contributors have Fair Play claims is *not*, as some have been tempted to think, an *ex post* imbalance in benefits and burdens between the contributors and the free riders. It may be thought that what is wrong in cases of unfair free riding is that, at the end of the day, free riders are enjoying comparatively more resources, or more welfare, relative to the contributors in virtue of the fact that the free riders get to benefit for free while the contributors also pay the benefits-producing costs.<sup>180</sup> Or it may be thought that the unfairness lies in the fact that the free riders enjoy a *net* benefit or advantage while the contributors enjoy a net burden or disadvantage as a result of doing their share.

But these are not very good ways of understanding the wrongness of free riding. First, with respect to locating the wrongness of free riding in the fact that contributors can experience a net loss by paying their share, this seems like it would restrict the scope of Fair Play implausibly. In Flat Share, perhaps the two flatmates would be so bothered by a lower standard of cleanliness that they would not regard themselves as incurring a net loss overall even if forced to bear all the costs of cleaning. But this, by

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<sup>179</sup> Most notably, Olsaretti 2013, p. 246.

<sup>180</sup> E.g. This seems to be what bothers George (1987, pp. 1-3) when he argues that fairness demands we rectify what he calls the “Imbalance” in resources between parents, who invest in raising children, and non-parents who benefit from their investment. Boran (2006, pp. 106-107) reconstructs Fair Play as a principle denying claims of compensation to those benefits-producers who, were they rewarded for producing collective goods, would enjoy more welfare than those who find producing the same kinds of benefits burdensome. She criticizes this version of the view (pp. 107-112).

itself, should not settle the question of whether they have claims against the third flatmate who also prefers a very clean flat.<sup>181</sup>

Second, comparative *ex post* inequalities in resources or welfare in themselves need not be unfair either. Merely pointing to the fact that some people received something for free, or that some people have more resources at the end of the day compared to others, is not obviously unfair, as this can also be the case with the results of gambles or with doing favors for others. More importantly, there are many cases where the contributors are, at the end of the day, better off in terms of resources or welfare than some free riders. Some parents may be better off both in terms of resources (for example, if their children grow up to be very wealthy and very generous with them, especially during their old age) as well as in terms of welfare (overall they may enjoy richer, more flourishing lives thanks to their decision to become parents compared to some non-parents). And many parents certainly consider it a net benefit to enjoy the goods of having and raising children, even while having to bear all the costs for them, compared to doing neither. If Fair Play were a principle meant to redress certain forms of *ex post* inequality of resources or of welfare (namely, those resulting out of collective goods production), we should conclude that contributors who end up better off than free riders (by virtue of having borne some of the benefits-producing costs) do not have Fair Play claims against the free riders. But I take it that this would not fit with the conclusions that the pro-sharing camp would like to secure for parents, nor with how we understand the role of Fair Play more generally.

The Shared Preference View maintains that, in order to have Fair Play claims, contributors must see the production of the relevant Fair Play outcome as a necessary motivating reason for them to bear the benefits-producing costs. Such contributors have claims because they are bearing costs that are worthwhile for them to bear only insofar as they contribute to the desired beneficial outcome. But this outcome is

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<sup>181</sup> Olsaretti (2013, p. 243) makes this point in the context of parental justice, where it is acknowledged that parents often do not regard having children as a net loss, and she rightly asks why this fact alone should entail denying parents' Fair Play claims.

collective in nature, which means that the contributors could get it even without bearing these costs, depending on whether there are others around who also have an interest in the outcome and who could bear the costs instead. There is, then, a clear sense in which the contributors, like the free riders, have an *ex ante* interest in not bearing the benefits-producing costs themselves, for this means diverting time and resources away from their other ends and ambitions and directing them towards the production of an outcome that they could enjoy for free. The relevant sacrifice for Fair Play purposes, then, is not an inequality of resources or welfare between the contributors and the free riders, nor is it incurring a net loss by bearing the costs (though this can also be, and is, the case in many instances of unfair free riding). The relevant sacrifice, or burden, on the Shared Preference View is the willingness to incur what is ultimately an “unnecessary” restriction, so to speak, of one’s usual ambitions. It is “unnecessary” from the point of view of each individual, because each person could sit back and allow others to produce the good that everyone enjoys. But it is necessary from the collectivity’s point of view, because unless *some* people restrict their usual ambitions, all will suffer a collectively suboptimal outcome. Those who do sit back and allow the contributors to produce the collectively desirable outcome enjoy a privilege at their expense: they get the best of both worlds, namely to pursue their ends and ambitions in an unaltered fashion while enjoying the collectively beneficial effects of others’ restricting theirs.

#### **4.9. Conclusion**

In this chapter I have put forth a principle of Fair Play that is, first, justified by a systematic account of what makes free riding wrongful when it is wrongful; second, that takes seriously the voluntarist objection pressed by Nozick; third, that carves out a plausible scope of application that does not lead to implausible proliferation of obligations, and that is, finally, capable of condemning the intuitive unfairness of free

riding across a range of benefits, both optional and morally required. In the next chapter I draw out the implications of this Fair Play view for the question of parental justice.

## **Chapter 5**

### **Are Non-Parents Unfair Free Riders?**

Having developed what I consider to be the most defensible account of the Fair Play principle, in this chapter I evaluate the prospects for a fairness-based case in favor of subsidizing parents. I examine three brands of fairness-based arguments that have been defended in the parental justice literature. The main difference between them is how they conceive of the relevant goods that parents create by having and raising children, and which non-parents are accused of unfairly internalizing. Thus, Section 5.1 will consider the argument according to which parents create public goods by having and rearing children; Section 5.2 discusses arguments that take children to be morally required goods; and Section 5.3 turns to the ‘children as socialized goods’ argument. In each case I investigate whether the Shared Preference View can support the claim that non-parents ought to help shoulder the costs of children as a matter of fairness. I argue that parents do not typically have Fair Play claims against non-parents because they fail the intentionality requirement.

#### **5.1. Children as public goods**

It seems undeniable that parents create many public goods through having and raising children. A world with children in it is clearly preferable to one without them. This is so for various reasons. First, as Samuel Scheffler argues, our capacity to go about our lives as we do now might depend on the implicit assumption that humanity will not end with our generation. If we had reason to believe that humanity would go extinct



after we ourselves died, says Scheffler, we would abandon many or all of the projects that we currently find valuable, such as scientific research, upholding cultural traditions, or political activism. Arguably, we might even lose our appetite for life altogether, as our confidence in almost all of our values implicitly depends on the belief that there will be life after we die.<sup>182</sup> Whether or not we ultimately find Scheffler's claims plausible, at the very least we can say that if the chain of generations were to end with us, we would find our lives negatively affected to some extent or another. Second, and relatedly, insofar as we have specific projects and commitments that stretch beyond our own lives, we benefit from the existence of future generations which can complete the projects we left unfinished or honor the commitments we held dear and perhaps even made sacrifices for.<sup>183</sup>

Then there are more material ways in which new generations benefit both parents and non-parents, which pro-sharing arguments have tended to emphasize. All, or virtually all, of us depend on new generations of productive citizens to contribute to maintaining welfare schemes such as pensions, public healthcare systems, disability benefits, unemployment benefits, and so on. Our economies, as well as our institutions and our welfare measures, crucially depend on the existence and the participation of future generations. Finally, new generations might develop new cultural and technological goods that enrich all of our lives. Nancy Folbre, one of the better-known defenders of the 'children as public goods' argument, describes the relevant benefits as follows.

Parents who raise happy, healthy, and successful children create an especially important public good. Children themselves are not the only beneficiaries. Employers profit from access to productive workers. The elderly benefit from Social Security taxes paid by the younger generation. (...) Fellow citizens gain from having productive and law-abiding neighbours. These are all examples of

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<sup>182</sup> Scheffler 2013, pp. 23-26.

<sup>183</sup> See Lenman 2002, p. 262.

“positive externalities” because they are external to the actual decision to provide care.<sup>184</sup>

The ‘children as public goods’ arguments claim that, since parents produce these substantial benefits, everyone who internalizes them (or at least everyone who *voluntarily* internalizes them) ought to share some of the costs of producing them. Rolf George puts the core issue in the following way:

Children grow up and become, among other things, providers of pensions, maintainers of society. (...) 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?<sup>185</sup>

As mentioned at the beginning of the previous chapter, I will not take issue with the empirical contention that parents create benefits for the rest of society. Although there may be contexts in which, given certain conditions, parents create public harms (such as perhaps in conditions of overpopulation and extreme resource scarcity), it is certainly the case that our society relies on the creation of *some* number of children or another. So I assume that the ‘children as public goods’ arguments are relevant at least when it comes to a number of children that does represent a net benefit to society. This is enough for the purpose of this thesis, which is to establish what sorts of claims, if any, parents can raise against non-parents as a matter of basic justice, and assuming a responsibility-sensitive view of justice. For this to count as a worthwhile question of justice it is enough that there exist some conditions under which having and raising children does create the public benefits outlined above, in virtue of which parents can lay claims against the rest of society.

Granting, then, the empirical premise on which the ‘children as public goods’ arguments rely, we must now turn to the normative question: are they doing so in a

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<sup>184</sup> Folbre 2002, p. 50.

<sup>185</sup> George 1987, p. 31.

way that gives them a claim to have the costs shared by society as a matter of fairness? The question can be further specified: Are non-parents unfairly free riding on parents' efforts of having and raising children?

Before moving on to answer this question, let us address one potential misunderstanding. The charge that non-parents are unfair free riders should not be taken as accusing non-parents of contributing nothing whatsoever to the welfare schemes they benefit from, or of contributing no value to society. Of course, non-parents, too, pay their taxes throughout their working lives, and their taxes help support older generations. So non-parents could point to these contributions and argue that they *have* done their part: they have supported the retired population, and now they are entitled (in virtue of some principle of reciprocity) to be supported by the new generations.<sup>186</sup> In response, it is important to understand that the pro-sharing claim is not that parents produce all the value for society while non-parents merely internalize it, or that non-parents ought not to be supported in old age. Rather, it is that while both parents and non-parents contribute to society as productive individuals in their own right, and they both help support older generations, it is only parents who provide a further crucial "service" *on top of that*. They make it the case that a next generation exists and is able to further the current welfare schemes as well as other institutions or endeavors that must be supported over time. And since having and raising children is expensive, the pro-sharing claim is that non-parents should be enjoined to pay their share for *this* socially beneficial service as well.

Non-parents, I submit, are not unfairly free riding on parents' efforts. For parents seem to be more akin to the flatmates in my Flat Share II example from the previous chapter, rather than the flatmates in Flat Share. Like the contributors in Flat Share II, they do not pass the counterfactual intentionality test. Recall that the counterfactual intentionality test would ask parents: *If you came to believe that the costs you are bearing were not contributing to the production of the relevant Fair Play outcome,*

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<sup>186</sup> For an insightful discussion of principles of intergenerational reciprocity see Gosseries 2009.

*would you still be willing to bear them?* By “relevant Fair Play outcome” I mean, of course, those goods which non-parents are accused of unfairly free riding on. So the question is, if parents came to believe that having and raising children did not contribute to the production of benefits like thriving economic and welfare systems, cultural and technological advancement, and even the peace of mind that the existence of new generations gives us, would parents still want to have and raise children like they do now? I take it that most parents would answer positively. This is a natural consequence of the fact that they do not regard the production of *these* outcomes as their necessary reason for action.

What, then, are their necessary motivating reasons for action? We can look at what Christine Overall lists as common responses that people give when surveyed about their reasons for having children.

When people are asked informally to explain why they want to have children or why they had the children they had, they often speak in consequentialist terms of potential benefits for themselves: “I love children”; “I love being pregnant”; “I will not be fulfilled unless I have a child”; “I don’t want to miss out on the experience of parenting;” “To relive my own childhood”; “So I won’t be lonely”; “I just want someone to love me.” The Planned Parenthood Association says that people explain their desire for children as follows: “To give someone the opportunities I never had. To have a child to be like me. To keep me company. To pass on beliefs, values and ideas to” (quoted in Bergum 1997, 29).<sup>187</sup>

Whatever else we think of these reasons, it seems clear that contributing to securing some collective good is not what motivates the standard person’s procreative and parental choices. This much has been acknowledged by pro-sharing advocates as well.<sup>188</sup> Now, the Shared Preference View is able to explain why this widely acknowledged fact should mean that parents do not have Fair Play claims against non-

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<sup>187</sup> Overall 2012, pp. 77-78.

<sup>188</sup> See Olsaretti 2013, p. 246; Arneson 2014, pp. 19-20.

parents. On this view of Fair Play, those who bear benefits-producing costs that they would have borne anyway, for their collective good-unrelated reasons, cannot be ascribed the Free Rider's Preference. For the costs they are bearing are justified in light of ambitions they want to pursue regardless of whether pursuing those ambitions produces the relevant Fair Play outcomes. As such, they have an *ex ante* interest in bearing those benefits-producing costs, insofar as they have an interest in fulfilling their ambitions. The hierarchy of preferences that we may ascribe to parents, therefore, with regards to bearing the costs of children and to the receipt of the collective goods their children help create presumably is:

1. I receive the benefit and I bear the benefits-producing costs.
2. I receive the benefit without bearing the benefits-producing costs.

If parents cannot be ascribed the FRP, they cannot claim that, by having and raising children, they are acting against their FRP and thereby incurring the relevant sort of "sacrifice" or burden. The relevant sacrifice that paradigmatic contributors incur stems from the fact that they bear costs that they are not prepared to bear *but for* wanting to produce a collective good. So, paradigmatic contributors can be attributed an interest in not directing resources away from their other ambitions in order to produce a good that they may get anyway, with or without their own contribution, due to its collective nature. When such contributors pay their share, they can be said to have restricted their ambitions in order to produce a collective good, which allows free riders the privilege of enjoying that good without restricting theirs. But parents do not seem to lack this privilege either. Neither the parents, nor the non-parents, are diverting time and resources from their independently chosen pursuits *in order to* create the relevant Fair Play outcomes. Parents, like the non-parents, are pursuing ambitions and ends that they would do anyway, and they are also benefitting from the collective benefits that children represent or create later.

Now, it is possible that some parents pass the counterfactual intentionality test. There may be parents whose necessary motivating reason for procreating is, for instance, to save their traditions or community from disappearing. Such parents would pass the counterfactual intentionality test and could be attributed the FRP. But, first, I take it that such parents are the exception rather than the rule, at least in Western societies. Second, some argue that it would be undesirable if parents did regard producing collective goods as their necessary motivating reason for having and raising children. For if producing those collective benefits were their necessary reason for doing so, they would have to regard having children and raising them into successful adults as a means to the end of producing the relevant collective goods. Treating children as a means for producing societal benefits is a thought that many would find repelling. In a different context, Emily McTernan writes that it would be undesirable if parents made their procreative and childrearing decisions based primarily on what is good for society. “A parent who cares for their child only after reflecting that it is permissible given its contribution to wider society introduces one thought too many,” she concludes.<sup>189</sup> She is not referring to parental justice issues here, but she is pointing out that it would be morally undesirable for parents to base their childrearing decisions not on what is best for their children but on what is best for the wider society. If it is morally suspect, and perhaps even impermissible, for parents to treat children as a means in this way, parents’ claims Fair Play claims might be weakened. For Fair Play does not generate obligations to participate in unjust or immoral practices that might produce benefits.

Some have pointed out that parents do not typically treat their children merely as a means for benefitting society, but many do have mixed intentions, and perhaps also mixed motives, for having and raising children in the way that they do. That is, while their decisions are mainly motivated by their own welfare and the interests and welfare of the children they create, many parents are also motivated, at the same time,

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<sup>189</sup> McTernan 2013, p. 102.

by wanting to contribute to society by doing so. And we might consider this both morally permissible and sufficient for grounding parents' fairness claims against non-parents. Here is what Arneson writes on this.

I grant that people who either have sex with the aim of having children or who have sex and then make a decision to bring the fetus to term when it is discovered that a pregnancy has started normally act in the expectation that raising children will enrich their lives and make the decision for this reason. But there is normally another element in play. People decide to have children for self-fulfilment, but this is a moralized notion of self-fulfilment. Procreators think that their childrearing activities will significantly enhance the community in which they live, and they are also aware, perhaps in a somewhat inchoate or vague way, that there is a duty to be fruitful and multiply that falls on their community and is one that their procreative choices help to fulfil. People's motives are mixed, but that does not preclude their having the motivations that are the conditions for [the] Hart-Rawls [Fair Play principle] to apply. After all, many who volunteer to contribute to national defense, the paradigm of a cooperative scheme to which Hart-Rawls applies, have mixed motives and aim in part at their own self-fulfillment, through meaningful work or glory seeking or the like.<sup>190</sup>

This paragraph brings up, first, that parents' reasons may not be as divorced from the social benefits that non-parents enjoy as I may have made them seem in this chapter. Second, it suggests that acting out of such mixed reasons should be enough to ground parents' Fair Play claims. To support this, Arneson brings up the case of the glory-seeking soldier who is presumably motivated both by wanting to contribute to the collective benefit of national defence, as well as to engage in what he perceives as meaningful, glory-awarding work.

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<sup>190</sup> Arneson 2014, pp. 19-20. Olsaretti 2013, p. 246 shares this thought. She writes, « I think it is very plausible that many parents have *mixed motives* : they want their children to become economically successful and socially productive adults both because this is good for their children, and because this is good for others » ; emphasis in original.

In response, I want to suggest that if we look closer at the analogy between the glory-seeking soldier and parents we will discover, first, that not all glory-seeking soldiers have Fair Play claims, and that parents are more similar to those who lack claims than to those who do, even if we take their mixed intentions and mixed motives into account.

First, all glory-seeking soldiers seem to pass the counterfactual intentionality test. This is already a crucial difference between them and most parents, who most likely do not pass that test even if their reasons for action are as mixed as Arneson suggests they are. But when it comes to soldiers, if bearing the costs that they are bearing (by enrolling in the army and participating in military efforts) would not contribute to national defence, they would not have reason to bear them.

Now, whether or not glory-seeking soldiers ultimately have Fair Play complaints against those who free ride depends on whether they also pass the counterfactual motivational test. Recall that this second test asks: *Other things equal, if the relevant Fair Play outcome could be secured through a costless, problem-free process such as manna from heaven, would you rather it be secured through that process, or would you still prefer to contribute to it yourself as you currently are?* It is possible that different soldiers will answer this question differently. There are some people for whom going to war represents a good opportunity to attain glory or to do something they find meaningful, but whom might still prefer that no one had to attain glory or find meaning *by going to war*. They might still prefer that wars did not exist and that no one had to bear these costs. But since wars do exist, they are prepared to be among the people to bear the costs. Such people, I argue, can raise Fair Play complaints against those who bear no costs at all because there is still an identifiable relevant sacrifice they are making. They are bearing costs they would rather no one had to bear. Nevertheless, as things stand, they are prepared to bear these costs, first, because they are necessary to produce the relevant Fair Play outcome, and, second,



thanks to the fact that their values allow them to find other things of interest in this pursuit, such as the opportunity to attain glory.

As suggested in Section 3.8 in the previous chapter, however, other glory-seeking soldiers might not pass the counterfactual motivational test. They would regret not having the opportunity to go to war themselves if it turned out that any risk to national security were averted through some happy occurrence. That these people do not have Fair Play claims against their fellow nationals for having gone to war might strike some as counter-intuitive. But it is hard to see what sacrifice, or what restriction of one's ambition, they are incurring. Of course, they are engaging in an objectively costly and risky activity, but if they are the type of people who relish the opportunity to fight in wars, then, on the Shared Preference View, there is no way for them to be ascribed the FRP. This is not to say that we have no reason whatsoever to pay them a wage or to cover their medical expenses. But these reasons are not grounded in fairness because they cannot claim that their top preference is to enjoy national security without bearing the national security-producing costs. Indeed, they consider themselves lucky to have the opportunity to go to war in the first place.

When it comes to parents, no doubt many sincerely hope, and welcome the prospect, that their children might enrich the life of the community in various ways. However, if the thought of the social benefits that their children could produce are not actually decisive for their procreative and parental decisions, they still fail to have claims on the Shared Preference View. In other words, if it remains true that these parents do not pass the counterfactual intentionality test, they lack these claims. All that has been established, it seems, is that parents recognize and welcome the benefits that their life plans will cause for the rest of society: these benefits remain mere externalities to their choices, as far as Fair Play is concerned. And even if some parents passed the counterfactual intentionality test, they would not pass the counterfactual motivational test. Like the soldiers who relish the opportunity to go to war, parents normally consider themselves happy to have the chance to become parents. We can see this

point best if we consider what prospective parents would prefer in a situation where the number of children in their community was so high that a limit had to be imposed on the absolute number of children being created. Suppose there is no shortage of taxpayers, but creating too many more children would eventually cause great public harm for environmental reasons. Prospective parents would be happy for them to be the ones to take advantage of the limited opportunities for procreation despite the fact that the social benefits of children are plentiful already.

Another challenge that some pro-sharing theorists have brought regards the definition of the *object* of the intentionality requirement. Olsaretti acknowledges that parents do not normally aim to produce social benefits by having and raising children, but she argues that Fair Play need not require this of them in the first place. The beneficial outcome, she points out, is simply having a new generation of law-abiding, productive citizens. And most parents deliberately undertake to raise their children to be law-abiding, economically and socially successful adults. Their ultimate, non-derivative motivation for doing so typically regards the expected future welfare of their children rather than the public welfare. But *this*, Olsaretti claims, should not count against their fairness claims. For surely a Fair Play view that only acknowledged the fairness claims of those who contribute out of purely beneficent, or altruistic, ultimate motives would be too stringent a view.<sup>191</sup>

As pointed out before, I fully agree with the idea that altruistic motivations are not necessary for contributors to have Fair Play claims. I also acknowledge the point that one of parents' main aims is to raise their children to be law-abiding, productive adults. The fact that most children in society today grow up to be (minimally) law-abiding and productive adults is certainly no accident but rather the result of deliberate parenting choices. So *this* outcome is intended by parents. Furthermore, if raising one's children to be law-abiding and productive were the requisite object of contributors' intentions for Fair Play purposes, then most parents would arguably

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<sup>191</sup> Olsaretti 2013, p. 246.

pass the counterfactual intentionality test with respect to producing this outcome. We could ask parents: *If you came to believe that the costs you are bearing by having and raising children in the way that you currently are did not contribute to turning your children into law-abiding, productive, successful adults, would you still be willing to bear them?* Surely many or most parents would answer negatively. No doubt turning their children into law-abiding, productive, successful adults is the necessary reason for which they bear many or most of the costs they are bearing. As such, they would have Fair Play claims against free riders who benefited from this outcome.

However, regarding, first, parents' aim to raise law-abiding adults, I would argue that this is an outcome for which parents do not have Fair Play claims because it is their obligation to raise children in ways that do not harm or wrong others in the first place. Second, as regards raising children to be successful and productive in the society they live in, this is not *yet* an outcome that benefits third parties. As such, parents cannot have Fair Play claims with respect to this outcome because they are not aiming to produce the benefits that non-parents actually free ride on. I will address each of these points in turn.

One necessary reason for which parents raise their children the way they currently do is clearly geared towards creating a social benefit, or at least avoiding a social harm: making sure that their children grow up to be law-abiding and respectful of other people's moral rights rather than law-violating and insensitive to others' moral claims. But arguably, parents are not morally free *not* to raise their children in this way. In the same way as it is the responsibility of a pet-owner to ensure, as far as possible, that her pet is well-socialized and does not end up harming third parties, parents have the responsibility to take steps to ensure that their children do not grow up to wrong or harm others. Arguably, if an agent is under an obligation to act in a way that does not wrong or harm others, they cannot have claims of fairness against the beneficiaries for

having successfully avoided harming or wronging them.<sup>192</sup>

As regards parents' intentions to raise their children to be successful, productive adults, it does not seem correct to say that this outcome *is* that which benefits the rest of society. It is certainly a key ingredient of what ends up benefitting non-parents, but it does not seem to be *it* just yet. The society-wide benefits which non-parents free ride on seem to lie a step beyond those that are pursued by parents. We can see this by considering the fact that if society were organized differently, for instance if welfare schemes were not in place, or if non-parents were ineligible for welfare benefits funded by new generations, non-parents would not benefit from the new generations of productive citizens like they do now. Grown children can also leave their home countries as soon as they reach adulthood and fail to contribute to the collective benefits that non-parents are said to free ride on. Grown children can also individually or collectively decline to continue important projects that the previous generations of non-parents hold dear. It is possible, then, for the outcomes that parents aim at to be achieved without also achieving the outcomes that non-parents free ride on. This shows that raising successful adults is not the relevant Fair Play outcome for which they could claim fairness-based support.

## 5.2. Children as morally required goods

So far, I have been treating the goods that parents create by having and rearing children as cases of morally optional goods, and I have argued that parents cannot be ascribed the FRP, and hence do not have Fair Play claims against non-parents. Yet we might think that some of the goods that children represent or produce, and that are at the center of 'children as public goods' arguments, are morally required rather than

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<sup>192</sup> I say more about this sort of argument in the next chapter, when I consider the Fair Play claims that parents might raise against their children for having benefited them by giving them the sort of upbringing they are owed.

optional. Before presenting some arguments that have been made to this effect, I will note that the morally required nature of the goods would not, by itself, change the verdict regarding parents' claims on the Shared Preference View. This is because the intentionality condition is still in place. Regardless of whether the goods at stake are morally optional or morally required, on the Shared Preference View those who contribute to their production only have Fair Play claims if they pass the counterfactual intentionality test. As I have noted, passing the counterfactual intentionality test involves seeing the production of the relevant outcome (that is, that on which third parties are said to unfairly free ride) as one's necessary reason for bearing the relevant costs. If, as I have argued in the previous section, parents do not pass this test with respect to the relevant outcomes that non-parents are said to benefit from, it does not matter, on the Shared Preference View, whether we categorize those outcomes as optional or morally required. As such, acknowledging that (some of) the goods created by having and raising children are morally required rather than optional does not do much to change the verdict regarding parents' Fair Play claims on the Shared Preference View.

Nevertheless, it is worth considering 'children as morally required goods' arguments closely because they *do* seem to put some pressure on the Shared Preference View itself, by putting renewed pressure on the intentionality condition. For, intuitively, there seems to be something wrong when only some people bear the costs that result in discharging a collective duty that others share. More precisely, there may be a strong intuition that exhibiting the intention required by the Shared Preference View is irrelevant for determining contributors' fairness claims against those who bear *no* costs at all for producing the outcome demanded by the collective duty. In this section I will consider what supports this intuition. I will take this as an opportunity to defend the Shared Preference View, and more specifically the intentionality condition, in the face of the challenges it faces.

First, let us consider the ways in which parents might be producing morally required goods by having and raising children. This would be the case if we were under a collective duty to have children. The reason for such a duty might be that some of the central benefits that children grow up to produce (like a minimally functioning economy, goods that satisfy basic needs, or upholding just institutions) are morally required by justice or perhaps by beneficence. Anca Gheaus argues that a generation facing extinction would suffer grave material harms due to the breakdown of economic and political systems, as well as endure great psychological burdens from knowing that they will be among the last humans ever to live.<sup>193</sup> If so, each generation might have a duty to have children in order to avoid the severe harms of being the last generation. Alternatively, we could think that creating new persons is of impersonal value to the world (so long as they have a life worth living), or that preserving our species, our community, or our culture is of great impersonal moral value. This could ground a collective duty to have and raise at least enough children to avoid the disappearance of our species, our community, or our way of life.<sup>194</sup> We could even think, with Arneson, that there is a collective duty “to be fruitful and multiply” which parents can be said to discharge.<sup>195</sup>

The role that the collective duty to have children is meant to play within the parental justice debate is to block the conclusion that, because children in standard cases are the result of their parents’ choice, the parents ought to bear all the responsibility for giving them what they are owed. The thought is that whatever the conditions under which holding someone responsible for their choices are, surely these conditions should recognize the purported unfairness of holding someone responsible for the consequences of discharging a moral duty that others share.<sup>196</sup> So the ‘children as morally required goods’ arguments seek to show that while having children may be a

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<sup>193</sup> Gheaus 2015, pp. 91–95.

<sup>194</sup> See Smilanski 1995, p. 46.

<sup>195</sup> Arneson 2014, p. 9, p. 20.

<sup>196</sup> For this general point see Stemplowska 2009.

choice for the standard parent, it is one for which it would be unfair to leave parents to bear all the costs.

I am not convinced that there exists a collective duty to procreate, but for the sake of argument I will assume that at least one of the arguments according to which it does is true. “Children as morally required goods” arguments put renewed pressure on the intentionality condition of Fair Play and, in effect, force us to reckon with the question of whether this condition really is necessary for producers to have fairness claims when the costs they bear help discharge a duty that others share. To start, consider this case.

*Green Town v. Fitness Town.*

In Green Town, a majority of people opt for cycling as their main mode of transport in order to ensure they keep their CO<sub>2</sub> emissions low. They succeed in keeping the air pollution in their town below the dangerous threshold. Call these people Green Cyclists. In Fitness Town, a majority of people (Fitness Cyclists) also choose cycling as their main mode of transport, with the same positive effect on air quality. But Fitness Cyclists do it because this is their favorite way of staying in shape.

I am assuming that the benefit provided by both kinds of cyclists here is morally required: they are keeping pollution levels below the threshold where it would threaten the health of the town’s inhabitants. It seems clear enough that the Green Cyclists could claim that the car drivers in their town should help to bear some of the costs of their cycling because they are discharging a duty that car drivers fall under as well: that of avoiding dangerous air pollution. Can the Fitness Cyclists claim the same?

I take it that, intuitively, many people would be inclined to answer positively, for Fitness Cyclists, too, are producing a morally required benefit. It is helpful to disambiguate two elements that would seem to support this intuition. The first is that, on some views about the deontic relevance of intentions, the agent’s intention does

not matter for establishing the moral permissibility of their action. Thomas Scanlon provides a recent defence of such a view.<sup>197</sup> If correct, this view could support an argument according to which the Fitness Cyclists are discharging a collective duty regardless of their intentions, and that, further, discharging this duty should entitle them to have the costs of doing so shared by those who also fall under it.

The second element that supports the intuition that Fitness Cyclists have fairness claims for discharging a collective duty can be understood as a worry about double-counting. If we did not consider the Fitness Cyclists to be among the contributors to discharging the environmental duty in some relevant sense already, then we would be entitled to ask them to do their part if an environmental scheme needed to be instituted at some point. A scheme could be needed if the number of Fitness Cyclists shrunk to the point where the town faced dangerous pollution if other measures were not implemented. The Fitness Cyclists could be asked to do their part in this new collective duty-discharging scheme. But they could complain that they were *already* doing their share for avoiding air pollution, and that asking them to do more would be asking them to pay twice. I will address these two worries in turn.

### 5.2.1. The challenge from irrelevant intentions

Let me start with the first concern. The challenge here is that there are some views according to which an agent counts as acting permissibly, or indeed as fulfilling a morally required act, by merely performing the act that is permissible or required on some description and regardless of the intention with which it is performed. If so, then bearing the sorts of costs required by a collective duty is sufficient for one to count as doing her share for discharging that collective duty. It seems then that Fitness Cyclists, as individuals who are “acting in accordance with a duty” should have Fair Play claims

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<sup>197</sup> Scanlon 2008.



even though they might fail the intentionality condition and the motivational condition required by the Shared Preference View.

In response, there are two potential lines we could take in support of the view that Fitness Cyclists lack Fair Play claims. One is to say that in a place like Fitness Town the fact that there are enough Fitness Cyclists around who bear the costs of cycling for their own, environment-unrelated purposes, the collective duty to protect or improve air quality never arises.<sup>198</sup> The second line we can take is to acknowledge that there is a collective duty to protect air quality in the background, but that certain intentions are required in order to count as having discharged it *in a way that is relevant for Fair Play purposes*.

Let us start with the first kind of reply. If there are enough Fitness Cyclists around that air quality is never under threat, we could claim that there is no collective duty that they can be taken to discharge. It is a stroke of luck for the car drivers that they live in a town where so many people enjoy cycling for its own sake. If there were not, then presumably air quality would suffer and some collective solution would have to be found. But since there are enough people around who find cycling to be an enjoyable activity that awards them benefits such as improved fitness, the environmental problem never arises, so the collective duty to address the environmental problem never arises either. The cyclists, then, cannot raise Fair Play claims for having discharged a collective duty.

Today's parents are in a similar position, for humanity is not jeopardized by imminent extinction thanks to the fact that so many people prefer to have children anyway. Gheaus argues that there is a collective duty to have at least as many children as would be necessary to stave off the basic needs deprivations associated with being the last generation to ever live.<sup>199</sup> One answer to this proposal, then, is that this collective

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<sup>198</sup> I thank Andrew Williams for suggesting this point to me.

<sup>199</sup> Note that even if this argument went through, it would not ground Fair Play claims to all parents, but to a limited number of them. The number of children necessary to stave off basic needs deprivation

duty simply does not exist in society today because the threat of extinction itself does not exist. Millions of people around the world prefer to have children for personal reasons that are unrelated to species preservation or to the avoidance of basic needs deprivation associated with the imminent threat of extinction.

Denying the Fitness Cyclists' fairness claims on the basis that there is no threat of air pollution in the first place, and hence no duty to be discharged, has a lot of initial plausibility. However, we can see the limits of this response if we consider a variation of the Green Town v. Fitness Town Case. In this version, there are not enough Fitness Cyclists in Fitness Town, nor enough Green Cyclists in Green Town, to avoid the risk of collective harm entirely. The collective duty to avoid dangerous air pollution thus kicks in, and our main question re-emerges: ought we to regard the Fitness Cyclists, however few of them there might be, as contributors with Fair Play claims, just as we regard Green Cyclists to be?

Here we must explore the second reply which denies that Fitness Cyclists have Fair Play claims. Taking this line involves acknowledging that the collective duty to avoid air pollution exists regardless of whether pollution is an imminent threat, and showing that in order to count as discharging this duty in a relevant sense certain intentions are required on the part of the contributors.

I submit that the question of whether Fitness Cyclists have fairness claims for discharging a duty that others share cannot be settled by the general discussion about the deontic relevance of intentions. That is, even if a view like Scanlon's is correct about the fact that intentions are not relevant for judging the rightness or wrongness of an act, it is a further question whether they are relevant for establishing Fair Play claims. Scanlon argues that whether or not an act is morally permissible is determined solely by the balance of moral considerations in favor or against performing that act in

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associated with imminent extinction is surely much lower than the number of children being created by each generation of adults today.

those conditions. Of course, the moral considerations that may make an act permissible might include acting out of certain intentions and motives, as is the case for actions that are meant to express a certain attitude, but they need not. The agent's intentions become relevant in themselves only if we are looking to evaluate the agent's character: did the agent recognize and adequately weigh those moral considerations at the time of acting? If they did not, it makes sense to say that the agent did the right thing for the wrong reasons, and that their reasons reflect poorly on their character.<sup>200</sup>

I am open to the view that one's intentions are not ultimately relevant for establishing whether someone has discharged a duty, if by this we only mean that they have performed an action that under some description is morally required. But, I submit, whether they have discharged the duty in a sense that is relevant for Fair Play is a further question that can only be answered fully by giving a full-blown account of the conditions under which free riding is unfair, as I have tried to do in the previous chapter. On the view I have proposed, while it may be possible to discharge a duty for the wrong reasons, it is not possible to have Fair Play claims for having discharged if one did so for the wrong reasons.

To be clear, what the Shared Preference View of Fair Play requires of agents is not that they act *out of a sense of duty* as such. Acting out of duty is compatible with the Shared Preference View, but not required. The intention that agents must exhibit is to bring about the outcome that is required by the collective duty in a way that passes the counterfactual intentionality test, and their motive for wanting to bring it about must pass the motivational counterfactual test. The reason why this motivational structure is relevant for Fair Play is that it is relevant for determining whether the agents have incurred the relevant sacrifice that generates a fairness complaint over others.

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<sup>200</sup> Scanlon 2008, pp. 22-27.

Consider the following point made by Stemplowska, who argues that the conditions under which someone should be held responsible for bearing all the consequences of their choices should reflect whether the choice in question discharged a shared duty.

[L]et us assume that all members of a given society have a duty to keep pollution levels below a certain limit (...). And let us assume that, because some ignore their share of this collective duty, others have to carry heavier burdens than they would otherwise have to carry in order to make sure that the duty is being fulfilled. (...) In performing what others should do but do not, the dutiful people are in fact expanding the options of the non-dutiful ones – allowing them to spend time and resources on other things than the fulfilment of their duties. But then even if one is responsible for finding oneself at a disadvantage due to one's choice to fulfil a shared duty in the face of others slacking off, one is also entitled to have this disadvantage removed.<sup>201</sup>

Note that the Shared Preference View describes the unfairness of the situation in much the same terms as Stemplowska: it is unfair if some people's options for how to spend their time and resources are expanded by the fact that they need not worry about investing some of them into the fulfilment of a collective duty thanks to others' having fulfilled it. However, the crucial point of contention is one that Stemplowska's remarks are not clear enough about: do people count as fulfilling a collective duty regardless of their intentions? My suspicion is that Stemplowska's argument might be assuming what I have been arguing for: that the relevant loss of "options", or the relevant sacrifice, in virtue of which contributors acquire a fairness complaint against others depends on their intentions and motives. It depends on whether they bear the duty-fulfilling costs *in order to* bring about the outcome required by the duty (whether or not they do this out of a sense of duty or a self-interested motive), as opposed to bearing these costs as a matter of pursuing their preferred way of life. If the latter is the case, then the contributors do not seem to lack an option that only free riders enjoy.

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<sup>201</sup> Stemplowska 2009, p. 244.

So, going back to the Green Town v. Fitness Town case, the Fitness Cyclists do not seem to be “picking up the slack in order to fulfil the duty,” as Stemplowska says, but rather are only pursuing their life plan, as are the free riders. Similarly, typical parents do not decide to procreate and raise children in order to ensure that we avoid extinction, for instance. As such, they cannot be said to be discharging the collective duty to procreate and raise children, if there is one, in a way that gives them a fairness-based complaint against those who decide not to have children.

### 5.2.2. The challenge from double-counting

So far, I hope to have shown that we have no reason to believe that someone can have Fair Play claims merely in virtue of having borne the sorts of costs required by a collective duty, without exhibiting the relevant intentions. There is one lingering worry that this view seems to face, however, and it is the worry about double-counting. If we do not recognize the Fitness Cyclists as contributors discharging their share of the collective duty, then perhaps we could be justified in asking them to make some further effort in order to promote the environmental goal. But surely this would be implausible.

I agree that it would be unfair to ask people like the Fitness Cyclists to do more than they are already doing. But does the Shared Preference View commit us to, effectively, penalize people like the Fitness Cyclists by asking them to pay their share with the right intentions, regardless of the fact that they were already acting in accordance with the duty for other reasons?

I do not believe that the Shared Preference View commits us to such a conclusion. The Shared Preference View commits us to denying that the Fitness Cyclists are on the same footing with the Green Cyclists as regards the Fair Play claims they can raise against free riders who continue to pollute as usual. In contrast to the Green Cyclists,

they cannot claim to have restricted themselves in order to help discharge the environmental duty, and thus cannot complain that the free riders are wrongfully enjoying a privilege at their expense. But this need not entail that the Fitness Cyclists can be forced to bear further costs themselves.

In the previous section I said that if there are enough Fitness Cyclists in Fitness Town that air quality is never at risk of dropping below the critical threshold, those who prefer to drive everywhere are lucky; the nature of the ambitions of their peers means that they can avoid restricting how much they drive. But if, conversely, there are not enough Fitness Cyclists in town, and everyone else has to restrict themselves by bearing the sorts of costs that Fitness Cyclists are already bearing, it is the cyclists who get to enjoy the good luck of their ambitions' being in line with the requirements of duty. The fact that their ambitions are such that they are already bearing the sorts of costs that everyone is now required to bear is a form of good luck, but a form of good luck that those who are now forced to restrict their driving do not have a complaint against.

### **5.3. Children as socialized goods**

In the Children as Public Goods section of this chapter I claimed that parents lack fairness claims over the collective goods their children represent, or produce, because the outcomes they produce intentionally in the sense required by the Shared Preference View are not the same ones that non-parents are accused of free riding on. The beneficial outcomes that non-parents free ride on, I claimed, lie a step beyond the outcomes that parents intentionally produce.

However, it is usually the case that welfare states deliberately make that extra step of turning the outcome that parents aim at into a universally beneficial outcome.

Institutions of welfare are designed so as to ensure that the existence of a new generation of adults is harnessed for the benefit of parents and non-parents alike. The new adults are obligated to pay taxes, and their tax money is then invested into supporting various public schemes which aim to support both parents and non-parents.

This is the key insight of Olsaretti's 'children as socialized goods' argument.<sup>202</sup> She points out that some of the central benefits at the heart of the 'children as public goods' are, in fact, excludable but that welfare states intentionally extend these benefits to non-parents as well as parents. Welfare schemes could, and may permissibly, be set up differently than they are currently, such that non-parents could be ineligible to receive welfare benefits funded by the new generations. Non-parents, then, would be forced to make their own provisions for their pensions, disability support and so on. But since welfare states currently do harness and socialize the *benefits* of having new generations of productive citizens, Olsaretti argues, states should also socialize the *costs* of creating this valuable human resource by forcing non-parents to share the costs of children.<sup>203</sup>

A second important insight of the "children as socialized goods argument" is that many of the benefits that non-parents internalize are not only excludable in the way just explained, but are also avoidable (by the potential free riders) and rival in nature, which means that if some people get to enjoy them this diminishes the amount available for others to enjoy. Non-parents could choose to avoid receiving welfare benefits that are funded by new generations: they could choose to invest into a private pension fund and forgo publicly funded pensions, for instance, and they could purchase private insurance for all the misfortunes they are worried about suffering. The benefits of a welfare system are also rival in nature, given that if non-parents receive various welfare benefits from the same tax pool as parents, this leaves fewer

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<sup>202</sup> Olsaretti 2013.

<sup>203</sup> Olsaretti 2013, pp. 253-254.

funds to go around for parents. Surely, Olsaretti suggests, these features help to bolster parents' fairness case against non-parents. For it does not seem fair to let non-parents internalize avoidable benefits that they did not pay to produce and which, once internalized by them, would leave parents worse off than they would have been if non-parents had not internalized them.

The idea that non-parents' free riding leaves parents worse off than they would otherwise be is of importance to Olsaretti's argument, since this is surely at least an aggravating factor, as it were, on any plausible Fair Play view, if not at the core of what makes free riding wrongful.<sup>204</sup> She points out another way in which non-parents' free riding makes parents worse off, beyond the fact that non-parents' enjoying welfare benefits leaves less tax funds to go around for parents. A second way in which parents are made worse off, according to Olsaretti, is that the costs of childrearing are higher as a result of non-parents' free riding. Raising a child to be successful in today's society has become more and more costly because being successful means, in part, being productive in today's economy, which is to say creating value for the benefit of others as well. Insofar as parents can be said to bear greater burdens as a result of raising their children in ways that are beneficial to others, Olsaretti claims, they are worse off relative to a situation in which others did not benefit from their childrearing activities, and may have Fair Play claims against the beneficiaries.

Thus, the question that we must confront in this section is what relevance, if any, does it have for Fair Play that states deliberately take that "extra step" of socializing the benefits of having a new generation of productive adults, benefits which are excludable, rival, and avoidable?

I argue that these facts do not help to establish parents' Fair Play claims because they refer to benefits beyond those intentionally created by parents in the sense required

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<sup>204</sup> On the Shared Preference View the unfairness of free riding does not crucially depend on whether it makes contributors worse off.



by the Shared Preference View. Since the relevant socialized benefits lie beyond those properly intended by parents, the “children as socialized goods” argument could only succeed in grounding parents’ Fair Play claims if we relied on the notion that benefits producers are entitled to all the fruits of their labour, including those that are in effect a positive externality of their efforts. In the realm of parental justice, this would require us to accept the idea that grown children, and the results of *their* productivity, are their parents’ property in some sense, an idea that Olsaretti herself is explicit about wanting to avoid.<sup>205</sup>

Now, even when it comes to benefits intentionally produced in the sense relevant for the Shared Preference View, some of the features of these benefits that the ‘children as socialized goods’ argument highlights are not in themselves relevant for Fair Play on the Shared Preference View, while others are. Excludability is one of the features that is not relevant on the Shared Preference View. Suppose some people organize a concert where they publicize the fact that the concert-goers are expected to pay a fee, but for some reason there are no ticket checks at the entrance. On the Shared Preference View, whoever willingly and knowingly enters the concert has a Fair Play obligation to pay for a ticket, provided that the other conditions for Fair Play obtain, and despite the fact that this is an excludable benefit from which they were not actually excluded.

Other features highlighted by the ‘children as socialized goods’ view, such as avoidability, are, indeed, relevant for Fair Play. The Shared Preference View captures the relevance of avoidability insofar as voluntarily seeking or taking a benefit that one could have easily avoided is evidence of the fact that the free rider subjectively values the good in a way that is required for them to be attributed the Free Rider’s Preference. That is, a free rider who could have avoided a benefit but decided to take it anyway could not complain that they do not value it or that they regard it as being imposed against their will. In the same concert example, willingly and knowingly

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<sup>205</sup> Olsaretti 2013, p. 241.

going in to see the concert without paying for the ticket generates an obligation to pay for it. And this is regardless of the fact that one could have been excluded but was not.

The rival nature of the benefits at stake is also relevant on the Shared Preference View of Fair Play. I have not mentioned rivalry so far because the Shared Preference View as developed in the previous chapter identifies the wrongness of free riding in a way that does not depend on free riding being harmful to the contributors. That is, on the Shared Preference View, free riding can be wrong even if it does not strictly speaking make the producers *worse off*. That being said, when free riding is not only unfair in the way picked out by the Shared Preference View, but also harmful, Fair Play obligations are arguably even more stringent. The producers can be made worse off if free riding causes them to bear greater benefits-producing costs than they otherwise would. For example, in the Flat Share case, the fact that the free rider also makes the two flatmates worse off by forcing them to pick up the slack, and therefore bear a larger share of cleaning chores than they otherwise would, arguably makes the free rider's obligations even more stringent compared to a case where free riding did not increase the contributors' burden. The producers can also be made worse off by free riding in cases where the properly intended goods are rival. Suppose that the flatmates organized a potluck where only two of them brought food while the third ate a portion of it without contributing anything. Again, even though the Shared Preference View fundamentally condemns free riding for different reasons, the free rider's obligations would be even more stringent in virtue of the fact that she diminished the amount of food available for those who had done their part for producing it.

So, in general, it is right to consider features such as avoidability of the benefit, and the various ways in which producers might be made worse off by others' free riding, as relevant for determining Fair Play claims and obligations. However, as argued previously, parents do not properly intend to produce the relevant benefits that non-parents internalize and that exhibit these features. As I tried to show in the first

section of this chapter, the benefits that non-parents are said to internalize, and especially the economic benefits that the “children as socialized goods” argument focuses on, lie beyond parents’ necessary aims for action. Producing goods such as an enlarged tax base, a vibrant economy, or funding particular welfare benefits are not the things that parents aim at when they make their procreative and childrearing choices. As such, by bearing the costs of children they can be said to pursue their own ambitions, as opposed to frustrating them in a way that would generate Fair Play claims.

The features highlighted by Olsaretti, then, are exhibited by benefits that come about through the further workings of the state and which lie beyond parents’ properly intended outcomes. Thus, it is not clear that they should make a difference to parents’ Fair Play claims. They certainly do not make a difference on the Shared Preference View, which only condemns free riding on goods that are properly intended. If this is correct, the avenue left for parents to complain against the state’s socializing the results of their children’s productivity is to say that the state is socializing what is rightfully theirs, which seems like an implausible view of what rightly belongs to them. We would have to rely on the idea that they have a right to *all* the fruits of their labour, including those that make no difference to their willingness to bear the costs they are bearing. This view seems implausible, or at least would call for elaborate support. In the absence of such support, it seems more intuitive to think that the positive externalities of people’s activities should be considered akin to manna from heaven, rather than the fruits of one’s labour to which one has a claim.

Olsaretti anticipates this objection and suggests that claiming “that these benefits are on a par with manna from heaven overlooks half of the truth of the matter, namely, that parents have borne burdens that were necessary for the production of this ‘manna.’”<sup>206</sup> Indeed, parents bear certain costs that are necessary for the production of such benefits as an enlarged tax base, but not *because* they are necessary for it. As

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<sup>206</sup> Olsaretti 2013, p. 257.

such, it is a cogent question whether we can treat these benefits as manna from heaven, even though of course they are in one respect different from actual windfall: some people bear some costs that (predictably) result in their creation.

It seems that, on one side of the equation, we have benefits that are intentionally produced in the sense required by the Shared Preference View: producers bear costs *because* they are necessary to create certain benefits. These benefits clearly belong to the producers in some relevant sense, and socializing them without also socializing their costs would be unfair to the producers. On the other side of the equation, there are benefits that are produced unintentionally, so much so that they come as a surprise to their producers. These may be treated as manna from heaven and socializing them would not wrong the producers. The question is where, on the spectrum between these two kinds of benefits-production, we should place those cases where the producers know and expect that some collective benefits will come about as a result of their activities (either spontaneously or through the workings of a third party like the state), but which do not motivate their willingness to bear the costs they are bearing? The answer could only be provided by a fully worked out view of producer's entitlement. A view that was friendly to parents' complaints against non-parents would have to claim that parents' entitlements extended as far as their adult children's contributions to the welfare state. We might consider this an implausible view of how far our producer's entitlement reaches. But, moreover, in parents' case it would have an added layer of implausibility given the unwelcome thought that children are in some important sense their parents' property, and that parents can claim some entitlements in virtue of their adult children's productive participation in society.

All this being said, there is a particular feature that the "children as socialized goods" argument highlights which may yet seem relevant for establishing parents' Fair Play claims, namely the fact, if it is a fact, that parents bear greater childrearing burdens as a result of non-parents' free riding. Even if we accept that parents cannot complain

that they are made worse off by the state's socializing the results of their children's productivity, they may have a complaint if they are made worse off in this second sense. If they are forced to bear greater burdens as a result of other people's free riding, they can complain that it is not true that by rearing children they are merely pursuing their usual ambitions and bearing costs they would have borne anyway. For the costs they must now bear in pursuit of their ambitions are inflated as a result of these ambitions' creating benefits for third parties. Olsaretti makes the following argument, which is worth considering in some detail.

Some of the costs of parenting are socially created, *and they are created as a by-product of the activity's being beneficial* for third parties. Take, for example, a very considerable cost of children, the expense to provide them with adequate education. This cost has been rising steadily, in line with social, economic, and technological changes that require children to be in the education system for many more years in order to have good prospects as adult members of the economy. The increased costs for parents (in terms of education costs and maintenance costs for children who postpone becoming financially self-sufficient until much later than they used to) are to the benefit not only of their children, but of all citizens who benefit from a better-educated and skilled workforce. If someone's benefiting from others' activities makes those activities more costly for these others, this may make a difference to whether the beneficiaries incur obligations of fairness as a result of benefiting from those activities."<sup>207</sup>

The case for parents' Fair Play claims would be strengthened if it were true that the costs of childrearing were higher as a result of non-parents' free riding. I would argue, however, that the increased costs of childrearing of the sort that Olsaretti highlights are not the result of free riding. Rather, they can be attributed to the forces of the market economy and to the evolution of the sorts of skills that have become necessary for one to occupy desirable positions in society. In a society in which valuable positions require a high level of education, and often even sophisticated technological skills, it is no wonder that education has become a positional good to such an extent

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<sup>207</sup> Olsaretti 2013, p. 244.

that we can speak of a so-called educational arms race.<sup>208</sup> The fact that non-parents benefit from the productivity of new generations does not seem to play a causal role in the process of increasing the costs of childrearing. We can see this by considering the fact that these market forces would very likely still produce many of these same effects even if our societies had split welfare systems in which only parents benefited from their grown children's taxes. We have every reason to think that developments such as historically high educational costs and educational arms races would still exist in societies that were like ours in every other respect except for their having eliminated non-parents' free riding on new generations. So while such increased costs no doubt indirectly benefit non-parents, it does not seem correct to characterize those higher costs as the result of their benefiting.

#### **5.4. Conclusion**

In this chapter I have reviewed all the main versions of the 'children as public goods' arguments and I have argued that, on what I have proposed is the most plausible principle of Fair Play, they fail to establish an entitlement on the part of parents to having the costs of children shared by the rest of society. The reason for this is that parents do not exhibit the requisite intentions, which, on the Shared Preference View, shows that they are not incurring the relevant sort of "sacrifice" or cost in virtue of which typical public benefits producers can lay claims of fairness against third parties. In the next chapter I turn to a closely related, yet importantly different, attempt at grounding parents' claims. This is the view that parents may have claims of Fair Play against their (grown) children, since their children are the main beneficiaries of their efforts. This sort of argument brings up some very interesting issues in procreative ethics as well as issues regarding filial duties. But moreover, it is worth exploring its merits as a Fair Play argument as such because it seems not to be plagued by the

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<sup>208</sup> Halliday 2016.

intentionality challenge that the arguments reviewed in this section have faced: the benefits in virtue of which parents would raise Fair Play claims against their children, namely the goods of giving their children a minimally decent upbringing, are indeed the ones that they properly intended to produce in the first place.

## Chapter 6

### Are Kids Unfair Free Riders?

In this chapter I consider the possibility that the answer to the question of who should pay for the costs of children might include children themselves. According to one fairness-based view, the main beneficiaries of parents' efforts of raising children are the children themselves, and as such they might have Fair Play obligations to help pay their share for the benefits of an upbringing, once they are grown and able to. This kind of argument claims that grown children count as unfair free riders unless they devise a way to help pay their own way.

The most detailed version of this view to date has been developed by Patrick Tomlin.<sup>209</sup> His view, termed *Kids Pay*, aims to establish a pro-sharing fairness-based obligation that all of society should help pay for the costs of children since all adults, whether they are themselves parents or non-parents, have benefited, to some extent or another, from the upbringing that their parents provided for them.

Although the Kids Pay view was developed in the context of the parental justice debate, it can be read as offering, at the same time, an answer to the broader question of filial obligation: what, if anything, do grown children owe their parents? In this wider context, the idea according to which grown children ought to repay their parents for the upbringing they received is very familiar. According to one view of filial obligation, children incur a debt in virtue of the sacrifices that their parents made in order to give them an upbringing.<sup>210</sup> The debt that children accrue is directly correlated to the efforts made by parents. Another, perhaps more popular, account

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<sup>209</sup> Tomlin 2015.

<sup>210</sup> Post 1989.



claims that grown children owe their parents gratitude for their efforts, though the content of what is owed is much more open-ended. Grown children ought to show appropriate expressions of appreciation and gratitude rather than provide a *repayment* of debt as such.<sup>211</sup>

A Fair Play argument of the Kids Pay variety would complement this picture of filial obligation by offering another closely related, yet different, justification for whether grown children owe something to their parents, and what that might be. Children could be said to owe it to their parents not to unfairly free ride on their efforts of giving them an upbringing. What this obligation would require in substantive terms is that grown children ought to share the costs of their own upbringing with their parents.

In the first section I lay out Patrick Tomlin's *Kids Pay* view and I offer reasons to doubt its success. In the second section I argue that there is a very limited argument that can be made in support of parents' fairness claims against their children if one adopts the Shared Preference View of Fair Play, which I defend. In the third section I highlight some of the implications that the Shared Preference View has for the literature on filial obligations.

## **6.1. Tomlin's Kids Pay View**

The Kids Pay account begins by noting that raising children to become independent, autonomous adults benefits society in more than one way. First, as the previous pro-sharing fairness-based accounts have emphasized, non-parents stand to benefit from the work that parents do by having and raising new, productive members of society.

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<sup>211</sup> Berger 1975, pp. 298-301; Blustein 1982, part II, ch. 3; Callahan 1985; Wicclair 1990, pp. 172-173; Zola 2001. Other theories of filial obligation include the friendship account (English 1979), and the special goods account (Keller 2006).

But all adults were once children themselves, and they have all benefited (to some degree or another) from the childrearing work done by their own parents. Focusing on this second kind of benefit, Tomlin argues that current adults, whether they are parents or non-parents, could have Fair Play obligations to contribute to the costs of raising children on the basis that they have benefited from receiving an upbringing themselves.<sup>212</sup> The *form* that this obligation should take is a matter of debate, but, he suggests, an intuitively defensible scheme would be to have all of society “front” the resources that children need and thus subsidize childrearing. Then, when the children are grown, they can be asked to contribute, not by paying their own parents back directly, but by sharing the costs of raising the next generation.

To evaluate this proposal it is useful to maintain a firm distinction between these two parts of the Kids Pay argument: on the one hand, there is the *justification* for the existence of a Fair Play obligation on the part of children to contribute to the costs of their own upbringing. On the other hand, there is the argument concerning *one possible implementation* of this obligation. This argument involves, first, the claim that it is all of society who should front the costs of children to parents, rather than parents collectively sharing the costs of children amongst themselves. Second, the argument about implementation involves a commitment to the directionality of the obligation, namely that grown children should help pay for the *next* generation rather than benefit their own parents in old age, for instance. Of course, the two parts are related, for the content of the Fair Play obligation and the direction in which it should be discharged partly depend on the underlying justification. Still, these two aspects can and should be kept separate. For my purposes it is not necessary to discuss the details of Tomlin’s scheme of discharging children’s alleged Fair Play obligations. In what follows I focus on the justificatory component of his argument and I show that the Kids Pay view fails at this stage.

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<sup>212</sup> Alstott also makes this point but does not pursue it as an independent pro-sharing argument, distinct from the autonomy-based case she mounts (Alstott 2004, p. 51).

### 6.1.1. Kids Pay: the grounds for a Fair Play obligation

To establish a Fair Play obligation on the part of children, Tomlin adopts something like Klosko's Fair Play view according to which receiving presumptively beneficial goods in certain conditions can generate Fair Play obligations. He argues that receiving presumptive goods (i.e. goods that are necessary for a minimally decent life) generates a Fair Play obligation to help pay for the provision of those goods when the recipient is not available to give consent, and where it is not possible or reasonable to wait for the recipient to become available to give consent. Furthermore, he argues, when these conditions obtain, Fair Play obligations can arise even when the goods in question are excludable, and when they are private rather than public in nature.<sup>213</sup> To illustrate this view of Fair Play, consider this case.

#### *Beach-Goers*<sup>214</sup>

Someone is drowning near a crowded beach. Suppose there is a duty to save the victim that applies to all the beach-goers who are nearby and who can save the victim at little cost to themselves. Someone does so, and saves the victim. In the process, the rescuer incurs some mild injuries that require medical attention.

According to Kids Pay, we can consider the rescued victim as a party liable to share in the costs of her own rescue as a matter of fairness to the rescuer. For there is no reason to think that presumptive benefits, such as, here, the benefit of rescue, should come at *no cost* to the beneficiary. And this is so, says Tomlin, despite the fact that the benefit at stake is not public in nature, nor is it non-excludable, which are both features that are considered necessary for Fair Play to kick in on most views of Fair Play.<sup>215</sup> The good in Beach-Goers is private (it can only be enjoyed by the intended

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<sup>213</sup> Tomlin 2015, p. 669.

<sup>214</sup> The example is adapted from Arneson 2014, p. 14.

<sup>215</sup> See Section 4.3 above.

beneficiary, the victim herself), and it is excludable (the rescuer could have denied it to her). Normally, foisting such private, excludable benefits on someone and then demanding to be paid in return is impermissible, says Tomlin. A principle of consent to receiving and paying for such benefits should typically be the norm for establishing such obligations. However, if obtaining the beneficiary's consent is not possible, waiting for the beneficiary to gain the capacity to give consent is also not possible, and the goods are presumptively beneficial, it may be permissible to foist benefits on someone. This seems to be the case in Beach-Goers. The victim is not available to give consent, nor is it possible to wait for her to become available, as delaying the rescue would presumably cause her to drown. In such cases it seems plausible to claim, according to Tomlin, that foisting presumptive benefits is permissible and that the beneficiary has an obligation of fairness to contribute to the costs of providing that benefit. The victim in Beach-Goers, then, has a fairness-based obligation to help share the costs of her own rescue, which in this case means helping with the costs of the rescuer's medical bill.

Similarly, Tomlin argues, it is permissible to impose presumptively beneficial goods on children and then, upon their reaching adulthood, to ask them to share in the costs of providing them. He describes the range of presumptive benefits that parents may foist on children as including, first, the goods which are essential for reaching full agency, and second, the goods which are "not essential for reaching full agency, but which are essential for a minimally decent life and which can only be reasonably provided prior to full moral agency."<sup>216</sup> Taken together, we can call these the *goods of a minimally decent upbringing*.

Of course, there is an obvious difference between the parental case and cases like Beach-Goers. Unlike in Beach-Goers, someone is responsible for the existence of the need to provide children with costly, presumptive benefits. So why should society (i.e. now grown-up children who did not ask to be born) have to help shoulder the costs of

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<sup>216</sup> Tomlin 2015, p. 669.

the minimally decent upbringing they needed as a result of their parents' decision to bring them into existence? It should be only parents themselves, this familiar objection goes,<sup>217</sup> who should pay for giving children what they are owed.

Tomlin calls this the "parental responsibility objection."<sup>218</sup> His response consists in the following two moves. First, he argues that moral responsibility for causing someone to be in need does not automatically entail liability for meeting those needs. Liability will follow in some cases, but not in others. Second, he argues that causing children to exist, thereby causing them to be needy, is *not* one of those cases that attracts liability, provided that it is not true that parents harm children by bringing them into existence in a way that requires compensation.

The first step of this response claims that an agent's causal responsibility for the fact that someone is in need of costly benefits does not, by itself, imply that the agent is liable to provide those benefits (alone). For this sort of liability could apply to people like our rescuer in Beach-Goers. Indeed, to illustrate this point, Tomlin makes use of a case very similar to Beach-Goers, where the main difference is that, in the case he uses, the rescue is supererogatory rather than required. This change is useful for making the case more analogous to procreation, as most people believe that bringing someone into existence is not a morally required act (even if one believes it would represent a benefit for the person being brought into existence), but rather a matter of the parents' discretion.

*Bart saves Lisa*

Lisa is drowning, and no one is responsible for her being in this situation. Saving her is so dangerous that no one is obligated to do so. Bart dives in, nevertheless, to save her. Once on the bank of the river, Lisa requires essential and expensive medical treatment.<sup>219</sup>

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<sup>217</sup> This now-familiar objection has been raised in general terms by Steiner 1997.

<sup>218</sup> Tomlin 2015, pp. 671-672.

<sup>219</sup> Tomlin 2015, p. 671.

Lisa needs very expensive life-saving medical treatment once on the bank. This situation is caused by, or is the result of, Bart's decision to pull her out of the water. Had he not pulled her out of the water, she would not be in need of costly medical assistance, and no one would be obligated to provide this to her. But this fact does not seem to imply that Bart is on the hook for paying all her medical bills. If he does decide to pay her medical bills, and if the Fair Play principle sketched by Tomlin is plausible, Bart has claims of fairness against Lisa for having paid for her life-saving medical treatment. The important point here is that these claims are not undermined by Bart's responsibility for causing Lisa to be in a needy situation by bringing her to shore.

Such Fair Play claims *would* be undermined, Tomlin notes, if Bart had put the victim in that situation by harming her.

*Bart harms Lisa*

Bart intentionally and wrongfully knocks out Lisa and she falls into a coma. As a result, she requires expensive medical care.<sup>220</sup>

Here, it is clear enough that Bart has no fairness claims against Lisa for paying her medical bills, since he has an obligation to pay for these as compensation for the harm he caused. So the second move in replying to the parental responsibility objection is to make the Kids Pay argument conditional on it *not* being the case that bringing children into existence is a harm to them. If bringing children into existence were a harm to them in a way that required compensation (like in Bart harms Lisa), then providing for children's needs would seem to fall under parents' obligation to compensate for wrongfully causing those needs in the first place.

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<sup>220</sup> Tomlin 2015, p. 671.

We might believe that we harm children by bringing them into existence if their circumstances will be so bad that their life will be on balance worse than nonexistence.<sup>221</sup> Indeed, some may even think that no life is good enough to be worth living, and so each of us is harmed by having been brought into existence.<sup>222</sup> Or we might believe that even if our lives are worth living, our parents expose us to inevitable harms that come with any life, the imposition of which cannot be justified by the overall positive value of our lives, and for which they owe us compensation.<sup>223</sup> Provided that none of these is the case, Tomlin concludes that children can be asked, in fairness, to “pay their own way.”

The justification for the existence of children’s Fair Play obligation, then, can be summarized as follows.

1. Fair Play claims can arise for the bestowal of private, excludable, presumptively beneficial goods when the beneficiaries are unavailable to give consent to receiving and paying for them, and when it is not possible or reasonable to wait for the beneficiaries to become so available.
2. Fair Play claims can be undermined in cases where the benefactor is responsible for causing the need for someone to receive the presumptively beneficial goods by harming them in a way that requires compensation.
3. Parents benefit their children by providing them with the private, excludable, presumptively beneficial goods of a minimally decent upbringing during the time when they are unavailable to give consent, and it is not possible to wait for them to become so available.

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<sup>221</sup> See e.g. Parfit 1984, p. 358 and Appendix G; McMahan 1981, pp. 104-105. Some believe that bringing people into existence cannot benefit nor harm people. See e.g. Narveson 1978, p. 48; Velleman 2008a, pp. 242-244; Velleman 2008b, pp. 247-250.

<sup>222</sup> Benatar 2006.

<sup>223</sup> Shiffrin 1999.

4. Parents do not harm children in creating them and thereby placing them in the situation where they need the presumptive benefits.

Therefore,

5. Parents have Fair Play claims against their children for having given them a minimally decent upbringing.

The great advantage of the Kids Pay view is that it avoids the intentionality objection that has so far stood in the way of parents' claims to have the costs of children shared as a matter of fairness. Most people take on the specific parental activities that they do in order to provide their kids with those benefits of upbringing that the Kids Pay view highlights, namely meeting children's essential needs for the duration of their childhood, and raising them to become autonomous agents. Most parents would pass the counterfactual intentionality test with respect to (at least some) of these crucial benefits, which I defended in Chapter 3 as a necessary condition for deeming producers to have Fair Play claims. That is, if they came to believe that their efforts would not contribute to securing these benefits for their children, they would not bear the costs that they are currently bearing. So when, in reality, they do bear these costs, they are aiming at the relevant goods for which children, once they grow into adults, would be asked to share the costs of.

Parents also pass the counterfactual motivational test with respect to these goods: if they could be provided some other, costless way, parents would not do the work that they are currently doing. This is certainly the case when it comes to the financial efforts that giving someone a decent upbringing requires. For instance, if children's needs for shelter, food, clothing, health care, and education were already financially covered, most parents would not insist on investing their own resources into paying for these themselves. Of course, there are many goods that parents provide their children with that they *would* want to continue to provide even if these benefits were



guaranteed for their children from some other source. Reading bedtime stories to them would probably be an example.<sup>224</sup> But the Kids Pay view holds enough interest even if we only focus on those benefits which parents would indeed be happy to cease to provide hands-on, or to cease to bear the financial costs for, in a counterfactual scenario in which these things could be covered in a problem-free way.

### 6.1.2. The missing step in the Kids Pay argument

I contend that the Kids Pay view is not successful because it is too quick in assuming that parents have Fair Play claims against their children provided only that causing them to exist is not a harm to them. That is, it is too quick to assume that compensatory obligations are the only sorts of special obligations that parents might have towards their children and which would prevent them from having fairness claims against them. There is at least one other class of special obligations that parents might have towards their children, which I will call preventive obligations, and which might also be incompatible with parents' Fair Play claims. This idea has been present in the literature on procreative ethics for a while now, and, in a nutshell, it claims that while parents may not harm children by bringing them into existence, they do expose them without their consent to the risks of harm that come with any existence.<sup>225</sup> This is morally problematic, perhaps even impermissible, unless some conditions are met. Arguably, *one* of these conditions is that the procreators take on the responsibility to make reasonable efforts to ensure that those risks do not materialize.<sup>226</sup> And if what we may reasonably demand that parents do in order to shelter their children from these risks includes providing them with the goods of a minimally decent upbringing, parents cannot, at the same time, raise Fair Play claims against their children for having complied with that obligation.

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<sup>224</sup> See Brighouse and Swift, ch. 5.

<sup>225</sup> See e.g. Shiffrin 1999; O'Neill 1979.

<sup>226</sup> Shiffrin 1999, p. 139.

The idea of being liable for mitigating the risks that one exposes others to, in the absence of their consent, lies at the core of a well-established strand of theories aimed at explaining how parental obligations are acquired, namely causal accounts of parental obligation. Causal accounts claim that those who are responsible for the existence of a needy child are also responsible for ensuring that those needs are adequately taken care of, either by the procreative parents themselves,<sup>227</sup> or potentially by other willing parents, e.g. through adoption.<sup>228</sup> Importantly, the nature of the obligation to care for the child need not be a strictly compensatory obligation. Causalists need not, and do not, claim that bringing children into existence is a net harm to the child, or even just that it involves imposing some discrete harms on the child, which attract liability for compensation. The causalist claim has more of a preventive flavour. It regards procreation as a morally risky behaviour that could result in the creation of a needy child that *would* be harmed by having been created *if* it did not receive the care needed to avoid suffering and death. On the strict liability version of the causal account of parental obligation, someone who engages in a procreative act is automatically on the hook for making the necessary provisions to ensure that the harms of not being cared for do not befall the child, should one result out of this, even if the person responsible for its existence had no intention of creating a child or becoming a parent, and took steps to ensure they would not (for instance, if the child is the result of contraceptive failure, coupled with the unavailability of abortion).

For our purposes, we need not appeal to a strict liability version of the causal account, as the parental justice debate is typically conducted on the (ideal theory) assumption that parents willingly and knowingly bring children into existence in order to raise them. The Kids Pay view is no exception. With respect to such deliberate procreative endeavours, then, the causal claim is even more plausible. The thought is that “the right to beget or bear is not unrestricted, but contingent upon begetters and bearers

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<sup>227</sup> Nelson 1991; Callahan 1992.

<sup>228</sup> O’Neill 1979; Blustein 1997; Archard 2010.

having or making some feasible plan for their child to be adequately reared by themselves or by willing others.”<sup>229</sup> The reason for this is that it is impermissible to place someone in a situation where they are at risk of severe preventable harm, in the absence of their consent, without being prepared *to prevent* that harm from coming about.

Within the parental justice debate specifically, Erik Magnusson has developed an objection to the Kids Pay view along very similar lines. He argues that because parents “(a) electively put their children into a needy circumstance for the purpose of (b) satisfying a self-regarding interest in meeting their children’s needs, they lack a legitimate claim against their children to share in its associated costs.”<sup>230</sup>

A similar, though distinct, explanation of why causing someone to exist attracts liability to provide for their needs is Lindsey Porter’s account of procreation as “choosing for”. Choosing for someone, Porter argues, can sometimes be permissible, but only if one does their best to choose well. So we could also understand the obligation that Porter argues for as being of a preventive sort. Choosing for someone is only permissible if you try to make it a good choice, which is to say, if you try *to prevent* it from turning out to be a bad choice. Porter claims that when we cause someone to exist we choose for them, in the absence of their consent, that they exist, which is permissible only if we do our best to ensure that coming into existence turns out well for that person, which includes, at the very least, making sure they have a decent upbringing. She writes:

On this account of the moral force of causing existence, the obligation is not rectificatory; it is just what morally permissible choosing for requires. Making it the case that someone exists is only morally permissible if one does one’s best to make it

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<sup>229</sup> O’Neill 1979, p. 29.

<sup>230</sup> Magnusson 2018, p. 965.

the case that that someone exists decently. So, seeing that the child is “content with her condition” is just part of procreating in a morally permissible way.<sup>231</sup>

If any of these understandings of the moral relevance of causing someone to exist is right, then even while we grant that procreators are unlike Bart in *Bart harms Lisa*, we need not assume that they are, therefore, like Bart in *Bart saves Lisa*. For the conditions in which Bart’s saving Lisa is permissible seem to be different than those in which parents may permissibly procreate. What makes saving Lisa permissible is that she is saved from an even greater harm. Placing her in that needy state is necessary to avert the even greater harm of drowning if no one saves her. This seems more than enough to grant that Bart’s action is permissible, and that he carries no liability to bear the costs of Lisa’s medical bills (cf. Shiffrin 1999). But procreators cannot avail themselves of the same sort of justification. Placing someone in the needy state of being a child is not necessary to prevent a greater harm. Nonexistence is not a harm that parents save their children from by bringing them into existence.

Consider what is arguably a better analogy than Bart saves Lisa to what parents do when they bring children into existence:

*Bart teaches Lisa how to swim*

Bart throws Lisa, the toddler, into the water in order to teach her how to swim. She faces the risk of drowning unless someone takes the necessary precautions to ensure that she does not. Bart gets into the water with Lisa and makes sure she gets the instruction and support needed to learn how to swim.

For our purposes I am assuming a number of things about this case. I am assuming, first, that learning how to swim as a child delivers important benefits that justify teaching Lisa how to swim when she is a toddler, rather than waiting for her to reach the age of consent; second, that there is no other way to teach her how to swim that

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<sup>231</sup> Porter 2014, p. 198.

involves less risk. Then, I assume Bart's motivations are not problematic (to avoid any possible complications we can grant that he is motivated solely by wanting to benefit her, though note that in the case of procreation parents' motivations are often mixed and include selfish reasons). Finally, in order to make the case analogous to what is commonly thought of bringing children into existence, I am assuming that the benefits of learning how to swim as a child are not necessary to avert some greater harm that would befall the child.

If teaching Lisa how to swim is not necessary to avert a greater harm coming her way, the justification present in Bart saves Lisa is simply not available to Bart in the swimming case. In typical circumstances, throwing someone who does not know how to swim into the water is impermissible. Whether we conceive of Bart's act as exposing someone to the risk of preventable harm (as Shiffrin has it), or whether we conceive it as *choosing for* someone (in Porter's terms) that they learn how to swim, his act can be made permissible only if he takes all the reasonable steps needed to ensure that the harm of severe injury and even death do not actualize, or that the choice he makes for her turns out to be a good one respectively.

So far, Tomlin might not disagree. But at this point he might insist that while Lisa is owed those safety precautions, it does not follow that she is owed them at no cost to herself. So Bart might still be able to raise fairness complaints against Lisa if she fails to reimburse him for some of the costs of the instruction and support he has given her.

That we may be asked to contribute to the costs of meeting our own just claims is quite right in certain circumstances. We are owed life-saving medical attention when we get into an accident, but through our taxes we do contribute our share to the medical services that we receive if and when we need them. However, the difference between paying our share for the medical services we might happen to need and Bart Teaches Lisa How to Swim is that in the latter case a particular person is morally responsible for creating that need in a way that would be impermissible *unless* they

took the necessary measures to make sure that their action did not result in harm. This changes the situation considerably. It establishes not only that Bart is responsible for putting Lisa in a needy situation, but that he does so in a way that grounds a special obligation that he *meet* those needs, lest he would be acting impermissibly. If making the provisions necessary to ensure that his action does not severely harm Lisa is a condition of the permissibility of Bart's action in the first place, it is hard to see how he could accuse Lisa of unfairly free riding on his efforts not to harm her.

If this is right, parents' Fair Play claims against their children can be undermined even though they do not cause harm to them by bringing them into existence. So even though we can grant, at least for the sake of argument, that parents do not have compensatory obligations that could undermine their Fair Play claims against their children, they may still have preventive obligations that are also incompatible with raising Fair Play complaints. If the goods for which parents would raise Fair Play claims are those which they have a preventive obligation to provide their children with, they cannot accuse children of unfairly taking advantage of their efforts to provide them. Similarly, if we follow Porter, if the goods for which parents would raise Fair Play claims are those which they must provide their children to ensure that the choice of bringing them into existence was permissible, then they cannot complain of unfairness if their children refuse to share the costs for providing them.

So, are the benefits that the Kids Pay view focuses included in the range of benefits that parents have a preventive duty to provide? Recall, the goods that the Kids Pay view applies to are those necessary to bring children to full agency, plus those which are not necessary to bring them to full agency but which are essential for a minimally decent life and which must be provided during childhood (that is, for the provision of which parents cannot afford to wait until the children can give authoritative consent). I have called these the goods of a minimally decent upbringing. Providing children with the benefits of a minimally decent upbringing seems to be the minima that parents owe their children, as a matter of special obligation, if their procreative act is

to be permissible in the first place. For surely some of the worst risks of harm that children are exposed to by being brought into existence are the risk of suffering from basic needs deprivation during childhood, as well as the risk of failing to develop full agency and therefore failing to craft a life for themselves. The latter would presumably lead to their being under other people's domination during parts of, or even their entire, lives. If parents bring children into existence without the intention of making all the reasonable efforts to shield their children from these harms, arguably bringing children into existence is impermissible. And if the very permissibility of parents' procreative actions depends on their being prepared to alleviate these severe and urgent needs that come with any existence, surely they cannot turn around and accuse their children of treating *them* unfairly if they, the children, refuse to share the costs of meeting those needs. Of course, this is not to say that children should not pay something back to their parents, as they may have reasons of love or gratitude to do so. And indeed, many of them do. But parents cannot lay a *justice*-based claim that they should.

## **6.2. Kids Pay and the Shared Preference View**

In the previous section I have offered reasons to believe that the Kids Pay view fails on its own terms, even granting some of its major premises for the sake of argument. I have not challenged, for instance, the particular Klosko-inspired version of Fair Play at work in the argument. Secondly, I have granted that parents do not harm their children by bringing them into existence. I have argued that the argument still fails to secure the conclusion that children ought to pay their way as a matter of fairness to their parents because an important step is missing from this argument. While parents may not harm their children by bringing them into existence, I have suggested that they nevertheless have special obligations to provide for their children that (a) need not rely on the notion that causing them to exist is a harm, and that (b) undermine

their fairness claims against their children on the Fair Play view that Kids Pay relies on.

In this section I explore how the view of Fair Play that I developed in Chapter 3, the Shared Preference View, applies to parents and their children. This is worth doing for two reasons. First, it offers independent reasons to reject the thesis that children act unfairly if they fail to pay for the morally required goods their parents owe them. Secondly, and more importantly, the Shared Preference View, I would like to show, *can* ground Fair Play obligations, but for a different range of goods than Tomlin's view supposes. While the version of Fair Play that Tomlin employs is only applicable to the benefits of a minimally decent upbringing, the Shared Preference View is also applicable to the morally optional goods of an upbringing. I will show that on this view children may indeed have fairness obligations towards their parents when it comes to a very restricted class of goods, namely morally optional benefits that parents might provide and from which *both* the child and the parent directly benefit. However, the sorts of obligations established this way are arguably not enforceable because they apply to a range of goods that are not morally required.

In order to examine what the Shared Preference View has to say about the potential fairness claims that parents might raise against their children, it is helpful to remind ourselves that the conditions in which free riding counts as wrongful on the Shared Preference View differ according to the type of benefit at stake. I have distinguished between morally optional goods on the one hand, and morally required goods on the other hand. Where optional goods are at stake, I have argued that the relevant kind of opportunity to free ride arises thanks to the collective nature of the good, and it is the opportunity to internalize a good that one values and which others have produced. In the case of morally required goods the relevant opportunity to free ride arises thanks to the collective nature of the *duty* to produce those goods, and it is the opportunity to see a collective duty that applies to one, alongside others, be discharged only by others. If the morally required good happens to be itself collective in nature as well,



then both kinds of opportunities to free ride arise. This is the case, for instance, with public defence. There is a collective duty to secure public defence for all the citizens of a state, and it is also the case that each citizen can benefit herself by internalizing this good.

With this picture of what characterizes the opportunity to free ride in various types of cases, recall, furthermore, that according to the Shared Preference View, free riding counts as unfair when both the free riders and the contributors (or producers) are relevantly similarly situated, such that the free riders' failure to pay amounts to making an unjustified exception of themselves. On the view I defend, the free riders and the contributors count as relevantly similarly situated when we can ascribe to both a qualified preference for free riding. In the case of optional goods that preference, to repeat it, states the following.

*The Free Rider's Preference (FRP): I prefer that others pay for this valuable collective good that I can enjoy for free and for which I would be prepared to pay, in the conditions under which it is offered, if I had to.*

In the case of morally required goods, the preference that we must be able to ascribe to both parties was this.

*The Free Rider's Collective Duty Preference (CDP): I prefer that others discharge the collective duty that also applies to me.*

In order to establish whether parents have Fair Play claims against their children on the Shared Preference View, the first step we need to take is to separate the benefits that parents typically provide to their children into the two categories that are relevant for the Shared Preference View: morally required goods, and optional goods respectively. The first category comprises those goods that we believe children have a justice claim to. We might believe these include only the range of goods that Tomlin was concerned with, namely (a) the goods of a minimally decent upbringing.

Alternatively, we might believe that children have claims to much more than that, namely to what we could call (b) the goods of a good upbringing.<sup>232</sup> The latter might include, for instance, a level of education, health care, and guidance that exceeds what is sufficient to give a child a minimally decent life.

The second category of benefits that parents often offer their children, that of optional benefits, refers to those goods which go beyond what children have justice claims to receiving. Parents often do their best to act on the preferences that their children form about things that matter to them (of where to live, or what to wear to school, or how to spend free time). Parents also invest a lot of time, energy and resources into discovering and developing their children's talents, and into offering a great deal of guidance and advice for whatever children need. And indeed, some parents provide their children with what we might consider luxury goods such as very expensive clothes, gadgets, or holidays. These sorts of things belong to the category of morally optional goods.

The next step we need to take in order to establish whether parents have Fair Play claims against their children is to verify whether we can ascribe the relevant preferences for free riding, the CDP or the FRP respectively, to both parties. In the next section I show that parents cannot be ascribed the CDP if it is true that providing children with the goods of a minimally decent upbringing, or the goods of a good upbringing, is a matter of special obligation rather than a collective duty of the sort that is relevant for Fair Play. After this, I argue that a version of the FRP can be ascribed to both parents and their children for a very restricted range of morally optional goods.

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<sup>232</sup> See Clayton 2012.

### 6.2.1. The morally required goods of an upbringing

Consider, first, how the Shared Preference View of Fair Play might apply to the morally required goods that parents provide their children, whether these include only the goods of a minimally decent upbringing, or also the benefits of a good upbringing. For parents to have claims against children with respect to these, it would have to be the case that the duty to secure these goods is a collective one. In Chapter 3 I have defined collective duties as agent-neutral duties that fall on a group collectively to discharge. The duty to secure public defence, for instance, arguably falls on all the citizens of a particular country. For this duty to be discharged, it is not morally or practically necessary for *all* the citizens of that state to contribute. That is, the duty simply describes an outcome that can, practically speaking, be secured only by some citizens as opposed to all of them. And morally speaking, the duty does not *itself* require that all should work to secure it. Importantly for our purposes in this section, the collective duty also does not give fundamental reasons for some particular people to secure it rather than others. All that the duty tells us is that an outcome must be secured, and that the responsibility for this falls on the entire collective. Once the required outcome is achieved, the duty counts as discharged for the whole community in the sense that everyone is released from having to do anything more for it.

Giving children a minimally decent upbringing, or perhaps a good upbringing, does not seem to be a matter of discharging a collective duty so understood, once we keep in mind that, on the picture proposed by Tomlin, we are to see society as composed of parents and their (grown) children. Providing children with the sort of upbringing that they are owed by justice does not seem to be a duty that applies in an agent-neutral fashion to both the parents and their children.

As highlighted in the previous section, on some procreative ethics views parents have a special obligation to mitigate the risks that they expose their children to by bringing them into existence. If this risk prevention amounts to giving children a minimally

decent upbringing, or a good upbringing, then it cannot be the case that children and parents are both under a collective, agent-neutral duty to provide these benefits to children.

Of course, in one sense, everyone has a general reason (and sometimes a duty) to tend to the basic needs of any child, as everyone has a general reason to alleviate suffering and prevent harm from occurring when possible. Arguably, everyone could also be said to have a reason to help ensure that children develop into full, autonomous agents. But this is compatible with the existence of an agent-relative reason or a special obligation for particular people to bear the primary responsibility for ensuring that children get what they need, in virtue of the special relationship they stand in with those children, just like acknowledging that everyone has a reason to alleviate harm when they can is compatible with the existence of agent-relative reasons for why particular people should bear the primary responsibility for doing so as a matter of special obligation. The clearest such cases are those where someone's harm is wrongfully caused by an agent who then bears primary responsibility for alleviating it.

One does not have to subscribe to the particular view of the source of parental obligations which I discussed in the previous section (namely, a particular version of the causalist view) in order to deny that giving children a minimally decent upbringing, or a good upbringing, is not (or not merely) a matter of agent-neutral collective duty. Common-sense morality as well as most other theories of procreative ethics also tend to view obligations towards children as special obligations. As David Archard writes,

Recent philosophical work on parenthood starts from the assumption that it is in virtue of standing in a certain relationship to a child that adults have rights over and owe duties

to that child. Theories of the provenance of parental rights and duties include the causal, the genetic, the gestational, and the intentional.<sup>233</sup>

So, any of the commonly subscribed-to views of procreative ethics would characterize the responsibility of giving children the sort of upbringing that they are owed as a matter of special obligation as opposed to a form of collective duty. On the Shared Preference View, if an agent has a special obligation to provide certain morally required goods, they cannot, at the same time, have claims of fairness for providing those goods, for it cannot be the case that they are relevantly similarly situated with the beneficiaries for Fair Play purposes.

The Shared Preference View, then, offers a principled reason for endorsing the intuitively plausible conclusion, which I invoked in the introduction to this chapter, and which several prominent philosophers have already advanced,<sup>234</sup> that grown children do not owe a debt to their parents when it comes to goods that their parents are under an obligation to provide. On the Shared Preference View, the reason for endorsing this view has to do with the role that the nature of the duty plays for the ascription of the relevant free riding preference, the CDP: *I prefer that others discharge the collective duty that also applies to me*. Recall, this preference can be ascribed to people who fall under a collective duty in virtue of two assumptions about the sorts of beings we are. The first was the assumption that we are appropriate subjects for moral evaluation in the sense that we have a moral interest in seeing the moral duties and obligations that apply to us discharged. The second was the assumption that we can conceive of ourselves as prudentially rational, which is to say that we are inclined to act in a way that maximizes our well-being. Together, these two assumptions allow us to ascribe the preference to see a collective duty that applies to us discharged only by others, since this option satisfies both of our interests best. We get the best of both

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<sup>233</sup> Archard 2010, pp. 106-107.

<sup>234</sup> See e.g. Daniels 1988, pp. 30-31; Simmons 1979, p. 182.

worlds: our interest in seeing a duty that applies to us discharged is satisfied, and so is our prudential interest in not doing the work ourselves.

But this story relies on the duty in question being collective in the relevant sense. In particular, it relies on its being agent-neutral, such that *our moral interest can be fully satisfied even when the morally required outcome is produced without our contribution*. If it turns out, as it does in the case I am discussing, that the morally required outcome cannot be discharged without our contribution, because we have a special obligation to discharge it ourselves (whether in virtue of a past action or a relationship we are part of), then the correct description of our moral interest is to discharge the duty ourselves. It matters, now, *who* provides the morally required outcome, and if it must be us in particular (as opposed to any other agent), then we cannot claim that our moral interest is satisfied if *others* do it. Our moral interest will be satisfied only if we discharge the special obligations that apply to us. For this reason, we cannot ascribe to parents the relevant free rider's preference, that is, a preference to free ride on others' discharging the collective duty that also applies to them, by doing the work of giving children the childhood goods they are owed.

Not everyone agrees that parents' obligations to their children are fundamentally special obligations.<sup>235</sup> Robert Goodin, for instance, argues that giving children what they are owed is part of the general duty of protecting the vulnerable. We all have duties to act in ways that protect the interests of those who are vulnerable to our actions and choices, claims this vulnerability model. If parents owe more to their children than other people do, this is because children are particularly vulnerable to their parents' actions, and because parents may be best placed to meet some of their children's needs, and not because there is some fundamental special obligation at play. "Special responsibilities,' such as those of particular family members for one another, are on this model just instances of 'distributed general responsibilities,'"

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<sup>235</sup> These exceptions include Swift and Brighouse (2014, p. 51) as well as Vallentyne (2002).

writes Goodin.<sup>236</sup> On this view, in order to know who should meet children's needs, we should look at how we, as a society who recognizes general duties to protect the vulnerable, could best distribute the responsibilities to meet those needs in a way that best protects children's interests. It seems like parents are indeed best placed to bear responsibility for meeting needs such as children's need for intimacy, for having well-informed decisions made on their behalf, for guidance. But if meeting such needs would be facilitated by external, perhaps financial, support, then the rest of society has a reason (and perhaps an obligation) to provide such support to parents. And when it comes to meeting children's material needs, once again the thought is that if these needs could be best met by sharing the costs across society, rather than by holding parents alone responsible for meeting them, then society should do its best to meet that responsibility to the extent that's possible, compatibly with meeting other responsibilities that the state might have to other vulnerable social groups.<sup>237</sup>

If we accepted Goodin's view, the arguments I have just developed for denying that children owe Fair Play obligations to their parents for having received morally required goods would not apply. I do not here argue against Goodin's view, but note that if we endorsed it, we would not need to appeal to a Fair Play argument of any kind to give support to the claim that non-parents should share the costs of children with parents. This is because, on Goodin's view, the most natural justification for sharing the costs of children is not to do with the obligations that non-parents have as *former children* who were benefited by their parents, as the Kids Pay view would claim. The vulnerability model grounds an obligation on the part of all contemporary adults (parents and non-parents) to help share the costs of children at a horizontal level, if you will, in virtue of the fact that everyone has a general duty to help meet the needs of existing children as well as possible. So if the vulnerability model is useful to make a pro-sharing argument, it is not useful to make a pro-sharing argument of the Kids Pay variety.

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<sup>236</sup> Goodin 2005, p. 67.

<sup>237</sup> Goodin 2005, pp. 66-67.

### 6.2.2. The optional goods of an upbringing

Let us now turn to the range of childhood benefits that are not morally required. Can parents have fairness claims against children for having provided them with benefits that are morally optional, such as trying to satisfy their preferences as much as possible or giving them luxury gadgets and clothes?

In answering this question, we should note that with respect to most optional benefits, the Shared Preference View simply does not apply insofar as these are cases of private benefits transfers from a benefactor to the intended beneficiary. Indeed, the beneficiary of a gift or a favor gets to enjoy a benefit at no cost to herself, which is also what unfair free riders do. But the analogy stops there. Recall, the phenomenon of unfair free riding that we are interested in is in important ways distinct from enjoying a benefit for free by receiving a gift, or by stealing, as I explained in Section 3.3. If someone who gets something for free was the intended beneficiary in the first place we might doubt that there is something unfair about not paying the benefactor back. Either the benefit was intended as a gift with no strings attached, or, if the benefactor expected something in return, they should have sought the beneficiary's consent. If there was no consent to paying anything, or if the benefit was intentionally given as a gift, there seems to be nothing unjust (because unfair) about enjoying that good for free. So if children enjoy, say, expensive gadgets and toys and clothes at no cost to themselves, most likely they are the intended beneficiaries of gifts, not unfair free riders. They may incur a moral obligation to show gratitude for these gifts, but they cannot be enjoined to pay their share for them on Fair Play grounds.

This being said, there seems to be a special class of optional goods that parents provide their children with. These are goods that are in some sense collective, meaning that both the parent and the child benefit from them at the same time. Goods like spending quality time together, reading bedtime stories, learning new skills and playing together can be considered collective in that sense. They contribute to



relationship goods that enrich both parties,<sup>238</sup> and for which only one of the parties might be paying the costs.

Such shared goods, then, can give rise to an opportunity to free ride. The next step for applying the Shared Preference View is to see whether we can ascribe the Free Rider's Preference to both parties. The Free Rider's Preference states that individuals would prefer to enjoy the relevant collective benefit without contributing anything to it, and here, like with the case of morally required goods, we seem to face a difficulty in ascribing the Free Rider's Preference to either the parents or the children. This is because the collective goods of the parent-child relationship can only be beneficial for either party if *both* parents and their children invest the requisite time and effort into enjoying quality time together, reading bedtime stories, engaging in various activities together and so on.

If spending time and energy on these shared activities can count as costs, then enjoying the shared goods of the parent-child relationship at *no* cost to oneself, like the Free Rider's Preference would require in typical cases, would mean not enjoying the shared goods at all. That is, it seems that there are some costs the bearing of which is *integral* to the very possibility of enjoying the benefit in the first place. If so, then neither party can be ascribed the preference to receive these benefits entirely *for free*.

However, noting that some collective benefits are such that some costs are integral to the possibility of any individual enjoying them ought not lead us to the conclusion that the Free Rider's Preference cannot be ascribed to any party, and hence that no unfair free riding can occur. For the Shared Preference View was devised with paradigmatic cases in mind, in which a free rider could get a benefit for free without paying anything whatsoever for it. Someone can enjoy clean air for free thanks entirely to others' efforts of reducing their carbon print. There are no integral costs to be borne for the enjoyment of clean air. For this reason, investing any effort into contributing to

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<sup>238</sup> See Brighouse and Swift 2004, ch. 4 for a discussion of the value of familial relationship goods.

the clean air effort would be a waste for the free rider, and this is why the top preference we can ascribe to her is to pay nothing. But if the nature of the collective good is such that some sort of effort or cost is required of anyone who hopes to enjoy it at all, like it is the case with relationship goods, then it would not be illuminating to say that the parties have an interest in paying *something*, i.e., that which is necessary for the enjoyment of the good in the first place. For this would be equivalent to merely saying that both parties have an interest in enjoying the benefit. So when such goods are at stake, we should instead distinguish between the costs that are integral to the possibility of enjoying the benefit in the first place, and non-integral costs, and see who can be ascribed the Free Rider's Preference with respect to the non-integral costs. The reason for this is that the relevant opportunity to free ride (to receive the benefit without doing one's share) seems to only arise at the level of non-integral costs in the first place.

In the case of the parent-child relationship goods, it seems that the integral costs include things like investing time, thought, and energy into valuable shared activities and into building the sort of trust and intimacy that are thought to be important relationship goods between parents and children.<sup>239</sup> But then, of course, there are material costs that might accompany the realization of this relationship-building. Enjoying an afternoon of family quality time at Disneyland, for example, can be financially quite expensive. So, too, can be deciding to forgo lucrative work opportunities in order to stay at home and tutor one's child.

It seems, then, that we might be able to ascribe the Free Rider's Preference to both parent and child with respect to the non-integral costs, like the material costs just mentioned, that might accompany their shared relationship goods:

*I prefer that others pay the non-integral costs for these valuable shared goods of the parent-child relationship, which I would be prepared to pay if I had to.*

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<sup>239</sup> Brighouse and Swift 2014.

Since the two parties here are the parents and their children, it might seem odd to ascribe to parents the preference that others, here, their children, should bear all the material burdens of their valuable shared activities, like paying for the Disneyland trip, or compensating them for staying at home to tutor them. One reason this is intuitively odd is to do with the fact that children cannot pay for themselves. But of course, this problem can be by-passed once we think not of children as children, but as future adults, able to pay retroactively.

A second reason why the ascription of this preference to parents might strike us as odd is because it seems quite mean or unusually selfish for parents to wish that their children bore all the material burdens of their shared activities. If anything, we know that parents are prepared to sacrifice quite a lot for their children, so most would actually be prepared to bear all these costs themselves for the sake of their children.

In response, recall that the Free Rider's Preference is not an actual preference, but something we can ascribe to people on the assumption that they are prudentially rational in a quite narrow sense. To say that both parents and their grown children would have an interest in not paying the material costs is simply to say that, assuming that both value the benefits enough that both would prefer to pay all the materials costs rather than pay nothing and forgo the benefits, nevertheless each would be prudentially better off if for some reason the other party does, in fact, bear all the material costs. Once again, this is not about actual judgments that selfish, mean parents might make, but about the fact that, prudentially speaking, parents would in principle be better off if they did not have to bear all these material costs alone. And the same goes for their grown children. As it happens, since at the time of producing these benefits children cannot pay for themselves, parents bear all the material costs. We can say, however, that since both parents and children benefit from these shared goods and activities, there is no reason why the children, once grown and able to pay their parents back, should not be asked to pay their share for them. (What form their contribution might take is an open question.)

It concluding this section, let me consider an objection: it might seem very counterintuitive that children can be accused of unfairly free riding on their parents' efforts of giving them a minimally decent upbringing, or even a good upbringing, and I suggested that it is a virtue of the Shared Preference View that it denies the existence of such fairness obligations. Someone might wonder whether it is even more counterintuitive to conclude that parents have claims of fairness against their children for the morally optional, shared benefits of the parent-child relationship.

It seems to me that the reason why accusing children of unfairly free riding seemed implausible in the first place was mainly to do with the fact that this claim was attached to benefits that children are owed by justice – owed, indeed, by their parents in virtue of their procreative actions. Just like I thought it implausible to say that Lisa in the “Bart teaches Lisa how to swim” case owes anything to Bart for his averting the harms that he himself exposed her to, I also thought that parents cannot have fairness claims for giving their children the kind of upbringing they are owed for having been put in that needy situation by their parents. But if Bart, in addition to teaching Lisa how to swim and treating her in the ways that are morally required of him, also made efforts to benefit her in ways that went over and above what he owed her, then it does not seem to me so implausible to say that she could be required to share some of those extra costs, *if* she indeed judges Bart's actions to be beneficial for her.

A second thing we might say in response is that parents may well opt to release their children from the Fair Play obligation to pay their share. This, of course, is an option open to any benefits producer, but it is more likely to be taken up in such cases where reasons of love or friendship might cause producers to give up their Fair Play claims. So parents will often, as a matter of fact, relinquish their claims against their children, but the main point is that such claims can indeed exist for a restricted class of goods that parents provide their children with: those benefits that contribute to building a valuable parent-child relationship that *both* parties value *and* which go over and above what parents owe their children as a matter of special obligation. This

conclusion is in line with those views of filial obligation according to which grown children have obligations of gratitude or reciprocity only when their parents go beyond the call of duty.<sup>240</sup>

Finally, because parents have fairness claims only for having provided those sorts of shared relationship goods that fall outside the realm of justice (i.e. that go beyond giving children what they are owed), arguably their claims are not enforceable by the state.

### **6.3. The Shared Preference View and filial obligations**

It is worth taking a moment to consider the place that the Shared Preference View occupies within the filial duty literature, especially given that the two most widely-endorsed views of filial obligation, the debt theory and the gratitude theory, bear many similarities to the fairness argument advanced above.

To remind ourselves, gratitude obligations are typically defined as obligations to communicate or demonstrate feelings of gratitude for benefits that one has received, in recognition of the benefactor's time and efforts as valuable.<sup>241</sup> The debt theory claims that children and parents are in one important respect like debtors and creditors: your parents "fronted" you a lot of resources when you were a child, so when you become an adult you ought to pay back that investment.<sup>242</sup> Both theories, then, seem to rely on an intuitive, general notion of reciprocity or fair returns to make their case.

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<sup>240</sup> Blustein 1982, p. 182; Callahan 1985, p. 35.

<sup>241</sup> Keller 2006, pp. 257-258.

<sup>242</sup> Keller 2006, p. 256.

Despite the similarities, there are important substantive differences between Fair Play and these theories. The conditions under which gratitude obligations or filial debt may be incurred differ from the conditions under which fairness obligations to pay for the costs of children may be incurred, and the content of what is actually owed will also ultimately differ.

Take gratitude obligations. It is argued that gratitude obligations are generated when the benefactors are “acting, at least in part, from the motive of doing good for the beneficiary for the latter’s own sake,”<sup>243</sup> and that the amount of what the beneficiaries owe is correlated with the effort that the benefactors made, not with the size of the benefit that was given. So, if a wealthy parent finds caring for her child a fairly easy and enjoyable task, the child’s debt of gratitude to that parent will be smaller compared to the one incurred by someone whose parents had to sacrifice a lot in order to benefit them. Moreover, some argue that incurring such debts of gratitude is compatible with the parents’ having merely discharged their parental obligations by benefiting their children.<sup>244</sup>

On the Shared Preference View of Fair Play, by contrast, in order for a child to incur fairness obligations it is not necessary, in principle, that the parent be motivated by the child’s own good. They might be motivated, instead, by wanting to be seen as good parents. Of course, in reality most parents want to benefit their children for the children’s sake, but, in principle, even those who are not motivated in this way could have fairness claims against their children if the other conditions for Fair Play are met. Secondly, on the Shared Preference View the amount of what is owed *is* proportional to the amount of benefits (and their associated costs) that the parent provided for their children, not to how difficult or easy it was for the parent to provide these benefits. Thirdly, as I have argued in this chapter, benefactors cannot have fairness claims to be paid for benefits that the benefactors were obligated to provide to the

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<sup>243</sup> Jeske 2019, p. 239.

<sup>244</sup> Jeske 2019, p. 239.

beneficiaries in the first place. On the Shared Preference View of fairness, parents can only have claims for morally optional benefits that benefit both the parent and the child.

Most importantly, however, the gratitude view and the Shared Preference View of Fair Play are not in fact in competition with one another. This is because they do not seem to answer the same fundamental question. Fair Play is geared toward answering the overarching question of this project: who should bear the costs of children? Is it just parents, or perhaps also children themselves? Gratitude theories of filial obligation fundamentally address a different question: what do grown children owe their parents? Of course, these two questions, and their respective answers, can partially overlap. In particular, Fair Play can offer one kind of answer to the question of filial obligation. For we might think that what grown children owe their parents, perhaps among other things, is to share some of the burdens of their own upbringing as a matter of fairness. But theories of filial obligation do not generally offer an answer about who should pay for the costs of children. Showing that children have obligations of gratitude to their parents does not amount to saying, and arguably does not lend itself to supporting the view, that children *should pay their own way*. This is true regardless of the direction in which one might think this obligation should be discharged, i.e. by paying back one's parents directly, or, alternatively, by paying it forward to the next generation.

Suppose we thought that obligations of gratitude for what our parents did for us ought to be directed towards them. It is doubtful that trying to pay one's own way is a good way to show gratitude. For the point of gratitude is to show appreciation for acts of good will, not to try to make good the investments that your benefactors have made. In fact, attempting to do this might even go *against* the spirit of showing appropriate appreciation. If one makes an effort to visit a friend in hospital and to bring a gift, one would be offended (rightly, I would think) if that friend attempted to pay one back for that effort, for example by offering to pay for one's transport and to reimburse the gift,

or even by returning the visit and buying a gift carefully picked out to be of roughly the same value.

Now suppose the obligation of gratitude for what our parents did for us should be discharged in the other direction, by benefiting the next generation. This seems like an even more odd attempt at showing appreciation for our parents' good will. It would seem very odd if the friend I visit in hospital later makes an effort to visit a different person in hospital as a sign of gratitude *to me*. This is all to suggest that theories of gratitude and the Shared Preference View of Fair Play are not in direct competition with each other. A grown child might have both obligations to show appropriate gratitude to her parents as well as a Fair Play obligation to help bear some of the costs of her own upbringing.

Consider, now, the debt theory of filial obligation. One interesting difference between the debt theory and the Shared Preference View as applied to children is that the debt theory is vulnerable to a sort of voluntarist objection in a way in which the Shared Preference View is not. One might object that children did not ask to be born, nor were they able to consent to the benefits that their parents provided them with during their childhood, and yet they now find themselves saddled with this debt. On the Shared Preference View, given that fairness obligations are only incurred for the morally optional goods that both parents and children enjoy together, the grown children can be let off the hook if they believe that these optional goods were not, in fact, beneficial to them, or that they are not worth the cost, even if they are mistaken about these judgments. Someone might decide, for instance, that their parents ought not have taken them to Disneyland every summer. They might think that the benefit of spending quality time together in that particular way was not worth the cost, especially when there existed many alternative ways to spend quality time that were not as expensive. Another person might decide that their parents' choosing to bond over recreational hunting trips were in fact more harmful than beneficial, and that, in any case, they have moral objections to having been subjected to that activity. As



shown in Section 3.7, the Shared Preference View offers a way out of the obligation to pay their parents back for these activities, if it turns out that grown children cannot be ascribed the Free Rider's Preference with respect to them.

More importantly, the Shared Preference View is not in direct competition with the debt theory, though the reason why it is not differs from the reason why it was not in competition with the gratitude theory. The Shared Preference View can be seen as providing the deeper normative story for why and when a debt is incurred. For the debt theory itself seems to lack the normative explanation for why, exactly, and under what conditions, we should hold children to a debt, beyond relying on intuitive notions of reciprocity.<sup>245</sup>

## 6.4. Conclusion

In this chapter I have considered one last version of the Fair Play-based pro-sharing argument for parental justice. According to this view, everyone in society, parents and non-parents alike, has an obligation to pay for the costs of children in virtue of having benefited from an upbringing themselves. As the best developed version of this view to date, I have critically assessed Patrick Tomlin's Kids Pay view, and I have tried to show that it fails to secure the pro-sharing conclusion it sets out to establish. The Kids Pay view maintains that children have a Fair Play obligation to help pay for the costs of a minimally decent upbringing that their parents secured for them, provided it is not true that parents owed them these benefits as compensation for the harm of bringing them into existence. In response, I have argued that while parents may not owe their children *compensation*, they nevertheless have an obligation to prevent the severe risks of harm that any existence comes with from eventuating. I then argued that providing the goods of a minimally decent upbringing is part of these preventive

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<sup>245</sup> See Part I of Blustein 1982.

obligations, and that discharging these obligations is incompatible with raising Fair Play complaints against children. I have then shown that, on my proposed view of Fair Play, the Shared Preference View, there may be some Fair Play claims that parents can raise against (grown) children, but not with respect to the range of benefits we believe children are owed by their parents. Parents can only raise claims of fairness for a very restricted range of benefits that *both* the child and the parent directly benefit from but for which parents bear disproportionate burdens. These are the goods of the parent-child relationship that both parents and children have an interest in enjoying, but which parents are not under an obligation to provide. Precisely because these are relationship goods that fall outside the scope of justice, however, the sorts of Fair Play obligations established here are not enforceable. Finally, the conclusions of this chapter can complement those accounts of filial obligation according to which grown children owe gratitude or reciprocity to their parents only when their parents went beyond the call of duty.

## 7. Conclusion

The decision to become a parent is surely one of the most important life decisions any person can make. Creating and nurturing new life invariably brings important benefits and burdens to parents. Some might even say it transforms them as persons.<sup>246</sup> Having and raising children, then, seems to be not only a decision of great responsibility and, possibly, of high rewards for parents, but also of deeply transformative potential.

Yet what seems to be a decidedly intimate matter has substantial public implications as well. For someone's private decision to create and raise a child also means, at the same time, adding a new member to the community of free and equal persons to which one belongs. Bringing new life into the world, then, creates benefits and burdens for both those who are directly involved, but also for society at large. This raises an important question of justice, namely what is the just distribution of the benefits and burdens that having children generates?

This project has focused on the second part of that question, namely on the just distribution of the burdens of having children, and in particular on one important consideration that should feed into an all-things-considered answer to it: does a just liberal egalitarian society owe it *to the parents* to share some of the burdens of parenthood with them?

The thesis explored the most promising positive answers to this question and concluded that the prospects for grounding distinctive parental claims to having the

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<sup>246</sup> Paul 2014, p. 16.

costs of children shared are very limited, with the most promising avenue being the appeal to the value of personal autonomy. A restricted version of the autonomy-based argument that Anne Alstott has developed is defensible: it seems undeniable that the full-time carers of newborns and young children suffer a restricted life in terms of opportunities for self-authorship unless their burdens are alleviated. However, even here more work needs to be done to establish that these autonomy deficits provide full-time carers with a complaint against the state. What is needed is a plausible account of what the liberal state's commitment to protecting its citizens' autonomy amounts to.

The most important positive contribution this thesis makes is to develop a new account of the principle of Fair Play. This contribution is important for three reasons. First, it provides a systematic defence of Fair Play as a plausible principle of special obligation in the face of widespread skepticism about its plausibility, which is a significant theoretical gain in itself. Secondly, it weighs in on one of the most widely endorsed family of arguments of parental justice according to which parents as providers of children-as-public-goods can raise Fair Play-based complaints that they are the victims of unfair free riding by the rest of society. On the view of Fair Play that I defend, however, parents do not meet the necessary conditions for having such claims. Thirdly, the Fair Play principle has wider implications, reaching far beyond the parental justice debate. Chief among these is its potential to provide a basis for political obligation, as argued in Section 4.6.

One interesting set of questions that the thesis does not explore, but which would deserve attention in future work, concerns the implications of the arguments developed in this thesis for adoptive parents. Throughout the thesis I have worked with a definition of "parents" as being both the procreators of, and the custodial parents to, their children. Although this remains the standard case in reality, there are countless cases where this does not hold: procreators may not end up parenting their biological children for a variety of reasons, and many custodial parents are their

children's adoptive, as opposed to biological, parents. Acknowledging this more complex picture can have some important implications for what the just distribution of the costs of children should look like. For instance, in Chapter 6 I argued that parents (those who are both the procreative and custodial parents) lack claims of fairness against their children for the range of morally required goods that they provide them with because they have a special obligation to provide those goods in first place, in virtue of having brought the children into the world. But if the parents are not, in fact, their children's procreators, this argument does not hold. This does not immediately entail that adoptive parents have claims of fairness against *their children* for providing them with a range of morally required benefits, for it may still be the case that society ought to hold only the procreators liable for bearing those costs. Still, it may make an important difference that it is procreators who have to pay to give children the morally required benefits of an upbringing, and not adoptive parents.

Another way in which distinguishing between procreative and adoptive parents might have noteworthy implications is that perhaps a case could be made that there exists a collective duty to adopt orphaned children that adoptive parents are intentionally discharging on behalf of the entire community. It would be worth investigating whether the Shared Preference View could ground fairness-based entitlements on the part of adoptive parents against the rest of society. In any event, treating procreative and adoptive parents as separate types of agents that might bear liability for the costs of children raises interesting issues, of both parental justice and procreative ethics, that merit further exploration.

In closing, I wish to acknowledge what I consider to be the two most problematic theoretical implications of the view that a just liberal egalitarian society should hold parents responsible for bearing all the costs of children. Throughout the thesis I have been assuming that the costs of children include both the morally required costs of care as well as the costs that children impose once they become adults, namely the

costs required to give them their fair share of whatever justice requires they receive as equal members of society. As Olsaretti has pointed out,<sup>247</sup> if parents bear the primary responsibility for meeting all of these costs as a matter of basic justice, it follows that no one has basic claims of justice against their fellow citizens, but only, in the first instance at least, against their parents. And this, Olsaretti argues, goes against the egalitarian commitment to the value of solidarity expressed in sharing in each other's fortune and meeting each other's egalitarian claims of justice.<sup>248</sup>

The second challenge comes from Clare Heyward who argues that holding only parents liable for bearing the costs of children is incompatible with treating the new members with the respect they are owed as free and equal citizens.<sup>249</sup> For insisting that parents ought to internalize all the costs of children sends the stigmatizing message that these new members are an imposition, or a burden, on society, that it would have been in one way better if they did not exist, and that they are not considered part of a community where people are sensitive to each other's basic claims of justice. Heyward argues, then, that treating the new members with appropriate respect requires bearing the costs of children as a society, parents and non-parents alike.

I acknowledge the force of both challenges and I agree that effectively cancelling the commitment to meeting one another's claims of justice as equal members of a political community, and/or treating new members as the negative externalities of their parents' ambition is an undesirable place to end up in. One reply that defenders of the anti-sharing view could explore is to argue that the costs of children that parents should be held responsible for include only the costs of care, but not the costs of added adult members to society. In this way, anti-sharing views could make some space for acknowledging that, once they reach adulthood, children stop being their parents' responsibility and enter the social cooperation as moral equals who have

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<sup>247</sup> Olsaretti 2017, p. 165.

<sup>248</sup> Olsaretti 2017, p. 165.

<sup>249</sup> Heyward 2012, pp. 718-719.

claims of egalitarian justice against the other members. Whether this distinction can plausibly be drawn is worth exploring in future work, both in virtue of its relevance for the question of parental justice, but also because it would have bearing on some insufficiently explored issues of procreative ethics. For instance, it is not clear whether procreators' responsibilities toward their children end once the children reach adulthood, or perhaps only a subset of them do, and which ones those are.

To conclude, I would remark that the all-things-considered answer to the question of who should pay for the costs of children should avoid what I agree are implausible implications of the anti-sharing view. That is, we ought to acknowledge one another's claims of justice as fellow (adult) members of the community, and we should also avoid sending the message that children are a burden imposed on the rest of us by their parents. But I would also note that this is not something that society *owes to the parents*. It is something owed to the new citizens themselves, who have not asked to be brought into existence but who, once here, have a right to be treated as equals, whatever that entails. So, it may be right that, when the puzzle of the just distribution of the costs of children is complete, it turns out all of us, parents and non-parents, must share some of the costs of children. But if we, as a society, failed to do so for some reason, we would not be failing the parents. We would be failing the children themselves.

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