

# Self-Ownership and Equality: Brute Luck, Gifts, Universal Dominance, and Leximin\*

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## 1. Introduction

During the last twenty years or so egalitarian political theorists have been reexamining the role of freedom and responsibility in their theories. Increasingly, they are endorsing the view that at a fundamental moral level autonomous agents are (initially, at least) self-owning in the sense of having moral authority to decide how to live their lives (within the constraints of the rights of others). As will be explained below, this leaves open whether agents are entitled to the full benefits of their choices and of their natural personal endowments (e.g., intelligence, strength, or agility), and whether or how they own parts of the natural world (e.g., land). Important aspects of this issue have been developed by Ronald Dworkin, G.A. Cohen, Hillel Steiner, Amartya Sen, John Roemer, Richard Arneson, Eric Rakowski, Will Kymlicka, various economists working on envy-free allocations of wealth (e.g., Hal Varian, Marc Fleurbaey and Christian Arnsperger, to mention but a few), and others.

Philippe Van Parijs's Real Freedom for All is a state-of-the-art contribution to egalitarian liberalism. Van Parijs is a Belgian political philosopher who is extremely well-versed in the relevant economics literature. He is also a member (along with G.A. Cohen, Hillel Steiner, John Roemer, and others) of the highly innovative September Group which meets annually to discuss issues in egalitarian political theory. Van Parijs's book, which builds upon his earlier work (1990, 1991, 1992), makes clear that he is among the leading contemporary political theorists.

Van Parijs defends a theory of justice that has three main components. First, he holds that each autonomous agent is self-owning, at least in the weak sense that he/she (and not society, or someone else) has the moral authority to control the use his/her body in various ways. Van Parijs

articulates and defends a more specific, and stronger, notion of self-ownership, which will be examined carefully below. Second, he holds that compensation is owed to those who are disadvantaged for non-choice-related reasons in their endowments. More specifically, he holds that justice requires that no one's situation be so bad that someone else's situation is preferred to it by every single member of society. Third, subject to these two constraints, wealth is to be distributed in society so as to maximize the minimum sustainable level of real opportunities for the good life. Although I agree with his general egalitarian liberal approach, I shall challenge several of his specific claims.

Using this theory, Van Parijs argues that in contemporary Western countries justice requires that each citizen receive a fairly high unconditional basic income (independent of need or willingness to work). He also uses his theory of justice to argue that the best feasible forms of capitalism are more just than the best feasible forms of socialism, and he discusses and evaluates different notions of exploitation (especially those of John Roemer). Although Van Parijs is full of insight on these interesting and important issues, my discussion will be limited to his theory of justice.

## 2. The Egalitarian Liberal Framework

Van Parijs's approach is a form of egalitarian liberalism. It is liberal in that it endorses a form of self-ownership, and thereby protects certain liberty rights of agents. It is egalitarian in that it endorses a form of social ownership of natural resources, and in that it calls for social wealth to be spent on promoting a form of equality. (Here and below, I use "equality" loosely to include both equality of distribution and priority for the worse off.<sup>1</sup>) More specifically, Van Parijs endorses:

**Egalitarian Liberalism:** Subject to the (non-empty) constraints imposed by a plausible conception of self-ownership, equality should be efficiently promoted.<sup>2</sup>

This leaves open what exact constraints a plausible conception of self-ownership imposes, what the equalisandum is, and how equality is to be promoted. It makes clear, however, that the demands of self-ownership on some suitable construal are prior to the demands of equality.

Van Parijs is right to endorse Egalitarian Liberalism.<sup>3</sup> In the remainder of this section, I shall flesh out the part of Van Parijs's conceptions of self-ownership and of equality that I endorse. In the following sections I shall criticize the parts I disagree with.

Let us start by considering the conception of self-ownership that Van Parijs endorses. To keep things simple, I'll make three assumptions. First, I'll assume that in some relevant sense normal adult human beings are psychologically autonomous and make genuine choices. Second, I'll assume that an essential part of oneself is one's body, and thus that self-ownership includes ownership of one's body. This is a plausible assumption if necessarily selves occupy exactly one body. It becomes doubtful if selves are not necessarily embodied (e.g., as in free-floating souls), or if necessarily embodied selves can move easily among different bodies (so that bodies are like clothes). Finally, I'll assume that there are no beings with moral standing that are not full agents (fully psychologically autonomous). I'll pretend, for example, that there are no non-agent animals, and that agents pop into existence "over-night" (and so no children). This is obviously unrealistic, and dealing with the claims of such beings is an important problem. But there are enough problems for us to worry about without taking on here the claims of non-agent beings.

At the core of the idea of self-ownership is the idea that agents have the moral authority to control the use of their bodies. More carefully stated, the idea is the following:

**Control Self-Ownership:** In the absence of any previous commitments or wrong-doings by the agent, each psychologically autonomous agent has the moral right to control the use of his/her body.<sup>4</sup>

Spelling this out fully requires more space than I have, but the rough idea has two parts. First, if an agent has made no relevant previous commitments, and has neither committed, nor is about to, commit any relevant wrongs, then it is wrong for others to make use of the agent's body without his/her permission. Without permission, it is wrong, for example, to kill, torture, assault, or physically constrain that person, and wrong to remove bodily organs for the benefit of others. Second, if the agent consents to having someone use his/her body in various ways, and doing so violates no other rights, then it is permissible for that person to make such use.

Van Parijs doesn't explicitly discuss control self-ownership in these terms, but it is reasonably clear that he endorses something like Control Self-Ownership (ch.2). Although this condition is extremely weak, it rules out all standard forms of teleology or consequentialism (since they deny that agents have any sort of strong rights at a basic level). It also rules out rights approaches (which no one today would defend) that allow some autonomous agents to be non-voluntarily enslaved by others (either by individuals or by society). Finally, it rules out Hobbesian (but not clearly Lockean or Kantian) contractarianism, since agents are not self-owners in even the weak sense in a Hobbesian state of nature.

Control Self-Ownership has no implications for the legitimacy of various tax policies, since tax policies concern rights to income, not control of ones' body. Van Parijs endorses, however, another element of self-ownership that does impose some such constraints (p. 64):

**Leisure Self-Ownership:** No wealth tax on the value of personal endowments (e.g., skills and abilities) is legitimate.

To see the plausibility of Leisure Self-Ownership, consider a model where each person is taxed each year an amount equal to the maximum competitive value of goods and services that he/she could produce during that period. The tax is not based on what is actually produced, but rather on what one could produce. It is an asset tax (a tax on the ability to produce) rather than a production (or income) tax.<sup>5</sup>

Although this model is compatible with Control Self-Ownership, it is not, as Van Parijs makes clear, compatible with a plausible self-ownership in the context of Egalitarian Liberalism. For it leads to effective (although not formal) slavery of the talented: agents with highly productive capacities would have to work more hours (and thus have less leisure) to pay their taxes than individuals with less productive capacities. This follows because the tax owed is equal to the maximum competitive value that agent could produce during the tax period. Thus, before the division of the social pot, each agent has to work all day in his/her most productive capacity in order to pay his/her taxes. The returns from the social pot, however, can be used to pay taxes for the next period (and thus purchase some leisure time). Assuming that the social pot is divided so that disadvantaged individuals get no less (and presumably more) than advantaged individuals, the net result of this approach is that advantaged agents will have less leisure than disadvantaged ones. For a given dollar amount will cover a lower percentage of the taxes owed (and thus free up less leisure time) for the advantaged than for the disadvantaged (because the former owe higher taxes). Indeed, it can easily lead to scenarios in which the most advantaged individuals must work all day every day

at jobs they absolutely hate in order to pay their taxes, and slightly disadvantaged individuals do not need to work at all. This effective slavery of the talented is incompatible with a plausible conception of self-ownership.

Of course, instead of having a tax equal to the maximum possible production, the tax could be some positive percentage of maximum production. But this would only reduce, and not eliminate the problem. Agents with higher than average productive capacities would still have less leisure time than the less productive.

Given the problem of the effective slavery of the talented, Leisure Self-Ownership is a compelling principle. It is not legitimate to tax human capital. That leaves open, however, whether it is ever legitimate to tax income. Income, of course, can be generated in a variety of ways. As we shall see below, Van Parijs rejects a conception of self-ownership that includes the right to the (untaxed) income from brute luck (e.g., unforeseen gifts, unforeseen natural events, or favorable genetic endowments). He is, however, committed to a conception of self-ownership that includes the right to the income generated by one's choices in cases where there is no differential brute luck among agents.

To help focus our thoughts, consider a world with just two identically endowed agents (skills, wealth, etc.) and with natural resources being abundant relative to their desires. Suppose that each agent knows that to remain healthy he/she must regularly exercise and eat nutritiously. One of the agents, Prudence, chooses to forgo some of the short term pleasures of leisure and more exciting food, for the long term benefits of good health, whereas the other agent, Imprudence, chooses the short term pleasures. As a result of these choices and nothing else (nothing unforeseeable happens), after several years Prudence is in good health, and Imprudence is not. Does justice require that Prudence in some way compensate (e.g., by providing food to) Imprudence for his disadvantage?

Van Parijs rightly answers no to this question (p. 90, 99). Prudence has no duty of justice to compensate Imprudence for his current disadvantage. By assumption, Prudence's advantage over Imprudence is solely attributable to their respective choices, and it would be unfair to make Prudence bear the burdens of Imprudence's choices in such a situation.

In this example, we assumed that natural resources were abundant. As we shall see below, Van Parijs holds that where natural or other kinds of social resources are scarce, agents who appropriate them owe rent (a kind of tax) for the appropriation. The point and significance of this rent will be made clear below, but for the moment we simply need to note that, whatever rights to income Van Parijs holds are protected by self-ownership, they do not preclude the collection of rents on scarce social resources.

Van Parijs is, I believe, committed to:

**Non-Brute Luck Income Self-Ownership:** Redistributive taxation of choice-generated income is illegitimate except perhaps to the extent necessary to eliminate inequalities in brute luck (or where it is for the rent owed for the appropriation of scarce social assets).

Although Van Parijs explicitly endorses the content of this claim, he does not explicitly consider it a part of his conception of self-ownership. This is because he conceives (e.g., p. 183) of the demands of equality as limited to compensating for bad brute luck (e.g., as limited to equalizing initial endowments plus adjustments for later brute luck), and thus there is no need for the above constraint. In order to highlight Van Parijs's rejection of the equalization of any purely choice-generated inequalities, it will nonetheless be useful for the purposes of this paper to include the above element as part of Van Parijs's conception of self-ownership.

Van Parijs, then, rightly endorses the above three self-ownership conditions. For ease of reference, let us give their conjunction a name:

**Limited Self-Ownership:** Control Self-Ownership, and Leisure Self-Ownership, and Non-Brute Luck Income Self-Ownership.

The assumption of Limited Self-Ownership leaves open who morally owns the rest (the non-agent part) of the world. (Throughout, the ownership involved is moral, not legal, ownership.) In particular, it leaves open who owns the natural resources (in their unimproved state, before being transformed into artifacts). Van Parijs rightly holds the following:

**Social Ownership of Natural Resources:** All natural resources (land, oil, etc. in their natural state) are socially owned.

The idea is that, because natural resources were not created by agents, they belong to everyone. There are, of course, a great variety of forms that social ownership can take, ranging from joint-ownership in the sense that all decisions of use are made collectively (e.g., by voting) to common ownership in the sense that everyone is free to use a given resource as long as no one else is using it and the user doesn't reduce the value of the resource.

Van Parijs rightly endorses (roughly speaking at least; p.99-101) the following form of social ownership of natural resources, proposed many years ago by Thomas Paine (1795), Herbert Spencer (1851), and Henry George (1879, 1892):



**Georgist Social Ownership of Natural Resources:** Each person is entitled to use a given natural resource that is not already claimed by someone else as long as he/she pays society for any reduction in market value that the use involves. Furthermore, a person may claim exclusive use of a natural resource not already claimed by someone else, as long as he/she pays society the market rent value of those rights.

The idea is that in the absence of private property claims, everyone is free to use the natural resources as long as they pay the costs of any value-reducing activities. Private appropriation is allowed, but only in a weak sense that makes exclusive control conditional upon the regular payment of rent to society for the right of exclusive control. Thus, there is no joint ownership of natural resources (requiring collective decision-making), just common ownership modified by quasi-private appropriation.

This, of course, is only a sketch of a highly controversial position. Here I shall neither develop nor defend it, but rather simply assume it as the part of Van Parijs's framework that I accept.

Let us turn now to a more detailed look at Van Parijs's conception of self-ownership.

### 3. Self-Ownership and the Limits of Taxation

Van Parijs holds that, subject to the constraints imposed by Limited Self-Ownership, tax policy should be set so as to efficiently promote equality. I shall suggest in this section that Limited Self-Ownership fails to incorporate some important and plausible elements of self-ownership. As a result, Van Parijs endorses, I claim, illegitimate taxation.

In what follows we shall consider what sorts of redistributive taxation are compatible with the rights of self-ownership. Two points should be kept in mind. First, we shall be concerned only with redistributive taxation, and not, for example, with taxation for externalities or for public goods. Second, as Van Parijs emphasizes, the fact that people do not have the right to the income from certain sources does not entail that it should be taxed at 100%. For it may be that on efficiency grounds the total amount of tax revenue generated from these sources will be maximized if tax rates are less than 100%. For example, even if people have no right to gift income, taxing gifts at 50% rather than 100% may generate more gift tax revenues. All the following discussions are about whether self-ownership permits taxation, not about the level at which they should be taxed.

### 3.1 Good Brute Luck

Brute luck is luck (good or bad) that no reasonable person could have taken into account in his/her past choices, whereas option luck is luck the chances of which a reasonable person could take into account in his/her past choices. The completely unpredictable discovery by accident of oil on one's property, or the completely unpredictable increase in pay for one's professional services are examples of good brute luck to the extent that one could not have reasonably anticipated these events to be possible outcomes of one's choices. Winning the lottery is an example of good option luck (since a reasonable agent would know that such an event is a possible outcome of her choice to buy a ticket). The benefits of option luck are attributable to one's choices, whereas the benefits of brute luck are not.

In discussing brute luck, it is often useful to distinguish brute luck in initial endowments (as a starting adult) from adult brute luck (after the start of adult life)<sup>6</sup>. The initial endowment of an agent consists of his/her (internal, non-transferable) personal endowment (capacities, vulnerabilities,

etc.) and his/her (external, transferable) situational endowment (wealth, situational opportunities, etc.) at the onset of adulthood (psychological autonomy).

Within the framework of egalitarian liberalism, strongly egalitarian views hold that the benefits of good brute luck are socially owned (and thus taxable at up to 100%), and not owned by those who happen to be in the right place at the right time<sup>7</sup>, whereas strongly libertarian views hold that, as a consequence of self-ownership, the benefits are owned (and thus not taxable) by those fortunate to be in the right place<sup>8</sup>. Van Parijs (p.107, p.281 fn. 86 & 88) endorses the strongly egalitarian view, and rejects the view that a plausible conception of self-ownership includes the right to the benefits of one's good brute luck.

Although I shall suggest that a plausible conception of self-ownership includes the right to the benefits of certain kinds of brute luck, there is one type of brute luck where I agree that self-ownership entails no right to the benefits thereof. Consider a case where the natural resources that one "owns" (subject to paying rent to society) undergo completely unpredictable increases in value (e.g., because someone else accidentally discovers a use for the oil on one's land). Here I agree with Van Parijs that the benefits of the brute luck are socially owned. Because natural resources are socially owned, so are the benefits associated with that ownership. The level of the rent owed by the appropriators of natural resources depends on what rights they claim and are recognized by society. If the rights claimed include a right to income from good brute luck relating to the natural resource, then the rent will be higher than if no such right is claimed. Because this is largely a matter of conventional legal rights, this can be handled either by charging a higher rent and recognizing the appropriator's right to the income from brute luck, or by charging a lower rent with the benefits of good brute reverting to society. All that matters is that society get the competitive

value of the right claimed (including the value of any right to the benefits of good brute luck). So with respect to this sort of brute luck, I agree with Van Parijs.

Because ownership of personal endowments (skills, etc.) and artifacts (creations, such as cars, assuming the rent has been paid for the raw natural resources) is not conventional in this way, the issue cannot be dealt with so easily in these cases. The question is whether the owners of such assets are entitled to the benefits of good brute luck. Is a roofer entitled to the increase in pay that her services command after a completely unpredictable hail storm? Is the owner of an antique car entitled to the increase in market value after a completely unpredictable series of events destroys all the other similar cars?

Although I shall not pursue at length the issue here, I would argue that a plausible conception of self-ownership includes the right to the benefits of one's good brute luck relating to one's personal endowments and artifacts. Defending this claim would involve appealing to some deep normative (not metaphysical) separateness of persons that places limits on the extent to which one person is required to share in the unchosen burdens of others. Of course strong egalitarians will rightly insist that differences due to brute luck are morally arbitrary, but once some form of self-ownership is recognized as a legitimate constraint on the demands of equality (as on Van Parijs's view), then it is recognized that equality is not the only morally relevant demand. It then becomes a question of what the various relevant moral demands are, and of how they relate to each other. I would argue that (pace various monisms) there are several independent moral demands, that they include both a demand for self-ownership and a demand for equality, and that a very strong form of self-ownership (one that includes the right to the benefits of one's good brute luck) constrains the demands of equality.<sup>9</sup>

I should emphasize, however, that I agree with strong egalitarians that those who suffer bad brute luck have a claim for compensation. The social pot (e.g., from rents on natural resources and the gift taxes discussed below) should be spent on those disadvantaged by bad brute luck. The issue here is different. With Van Parijs, I hold that the demands of self-ownership are prior to the demands of equality. The question concerns how strong those demands are. I claim that they preclude taxing the benefits of good brute luck. The issue, that is, is whether self-ownership permits the benefits of good brute luck to be a legitimate source of compensation for bad adult brute luck (and not whether those suffering bad brute luck have a legitimate claim for compensation).

The issue is obviously extremely complex, and I won't attempt to provide an argument here. But I will at least sketch a defense of a weaker claim of self-ownership that Van Parijs (along with all strong egalitarians) rejects. We need, I claim, to distinguish between comparative and non-comparative brute luck. For both, brute luck concerns the net impact of factors that one could not reasonably have taken into account in one's choices. The difference concerns the standard of comparison. One experiences good comparative net brute luck during a given time period just in case one's net brute luck during that period is better than that of specified others (e.g., to some particular individual, or to the societal average). One experiences good non-comparative net brute luck during a given time period just in case the net brute luck experienced was good compared to its absence. If, for example, nothing happens to a given agent during a given time period that she could not have reasonably anticipated as a possibility, then she experiences no non-comparative brute luck. But compared to someone who did experience some bad non-comparative net brute luck, she experiences good comparative brute luck.

Consider now, two agents who started with equally valuable endowments, Neutral, who later experiences no non-comparative brute luck, and Unlucky, who later experiences bad non-

comparative net brute luck. According to Van Parijs (and the standard strong egalitarian view) it is legitimate to tax Neutral to compensate Unlucky for her bad brute luck. The rationale is that Unlucky had worse comparative net brute luck than Neutral. But from Neutral's perspective at least, this looks suspiciously like confiscation of his purely choice-generated income. After all, they had equal initial endowments, and Neutral experienced no later net non-comparative brute luck. Why should he have to part with any of his income? Wouldn't a plausible conception of self-ownership entitle him to his income under these circumstances?

Strong egalitarians will, of course, question the relevance of non-comparative brute luck. After all, they will rightly insist, brute luck with respect to initial endowments has to be understood in comparative terms (since there are no antecedent agent expectations to compare them with). So surely, they will claim, it is comparative brute luck that is the relevant notion.

This is a legitimate challenge that must be met if the suggested claim of self-ownership is to be defensible. And even if the suggested claim is defensible, it does not establish that one has a right to the benefits of good non-comparative good luck, or a right to the benefit of good comparative good luck in initial endowments. I hope, however, that I've said enough to at least give some plausibility to a form of income self-ownership that is stronger than the one that Van Parijs endorses.<sup>10</sup>

### 3.2 The Right to Make Gifts

Van Parijs holds (pp. 90, 101) that gifts (inter vivos gifts and bequests) are legitimately 100% taxable. I shall briefly mention two sources of doubt.

First, gifts are typically partly good option luck and partly good brute luck. Typically, gifts are made at least in part in response to the prior choices made by the donee. An attentive daughter

may receive more gifts from her parents than her neglectful brother. Gift income attributable solely to the choices of the donee (and not to any differential brute luck) is, I would argue (and most egalitarian liberals would agree) fully owned by the donee. So at best it is only the brute luck component of gifts (e.g., a gift from a great aunt that one was never aware of) that is 100% taxable.

Second, even if a plausible conception of self-ownership does not include the right to the benefits of one's good brute luck, it does not follow that brute luck gifts may be taxed at 100%. For, unlike natural brute luck, gifts involve two agents: the donor and the donee. Although it may not violate the donee's rights of self-ownership to tax gifts at 100%, it may violate the donor's rights of self-ownership. Gift-giving is typically an important part of the good life for most people. Most people care quite a bit about certain others, and denying them the opportunity to give benefits to such others would be to deny the benefactors something important. So, consideration for the rights of the donor make 100% taxation of gifts more problematic than 100% taxation of natural brute luck.

Indeed, I would argue that a plausible conception of self-ownership includes the right to transfer by gift without taxation any wealth that is purely donor-generated (as opposed to received by gift or by natural brute luck). If, for example, all agents had equal initial endowments, and there has been no later brute luck, then they are fully entitled to the wealth they generate through their choices. This entitlement includes, I would argue, not only the right to spend it on themselves, but also the right to transfer it (undiminished) to others.

This is not to claim that those who receive gifts have the right to transfer that wealth by gift to someone else without taxation. For wealth that one receives as a brute luck gift is not wealth that one has generated through one's choices. The rights transferred by gift may include the right to consume the wealth, but they need not include the rights to further transfer that wealth by gift.

Indeed, given that an unrestricted right to transfer by gift can lead to wealth dynasties that radically undermine equality of life prospects, it is very doubtful that a plausible conception of self-ownership includes the right to transfer by gift wealth that one gained by brute luck.<sup>11</sup>

#### 4. Social Spending on the Disadvantaged

Van Parijs holds, and I agree, that subject to the constraints imposed by a plausible conception of self-ownership, equality should be efficiently promoted as much as possible. Above I suggested that Van Parijs's conception of self-ownership is too weak in that it allows taxation of brute luck and of gifts of donor-generated wealth. I fully agree, however, that the social pot, derived from the rent from natural resources and taxes on gifts of brute-luck-generated wealth, should be spent to compensate those disadvantaged by brute luck.<sup>12</sup>

There are, of course, many approaches to measuring, and compensating for, inequality. Van Parijs discusses and effectively refutes Rawls's (1971) approach, and Dworkin's (1981b) two insurance approaches. He also insightfully discusses envy-free approaches (which in the technical sense require that no one prefer the endowment of someone else to his/her own). Given that envy-free allocations are not always possible when there are different personal (non-transferable) endowments, he develops a less demanding approach in the same general spirit of envy-freeness.

According to Van Parijs, justice requires that the social pot be spent so as to leximin the value of the opportunities open to each member of society, i.e., to maximize the value of the least valuable opportunity set, and where there are ties, to maximize the value of the second least valuable opportunity set, etc.. Leximin does not require that everyone's opportunity set have the same value, but only that the least valuable set be as valuable as possible. Although leximinning is more plausible than requiring strict equality, I shall criticize it as giving too much priority to the



worst off members of society when resources would provide greater benefits to other disadvantaged members. I shall also question his views about how the value of opportunities is measured.

#### 4.1 Evaluating Endowments: Universal Dominance and Transferable Wealth

Van Parijs holds that, subject to the constraint of Limited Self-Ownership, and the constraint that no one's endowment is universally dominated by another (i.e., such that everyone prefers the latter to the former), transferable wealth is to be leximinced. Although Van Parijs doesn't put it in these terms, his theory of justice can usefully be reformulated as requiring that, subject to the constraint of Limited Self-Ownership, the value of endowments be leximinced, where one endowment is more valuable than another just in case (1) it universally dominates the other (i.e., everyone prefers it to the other), or (2) it is not universally dominated by the other and it has more transferable wealth than the other. This reformulation simply moves the constraint against universal dominance inside the metric of value.<sup>13</sup>

In this subsection I shall raise some doubts about this conception of value of endowments by contrasting it with a competing conception of value, namely, one that evaluates endowments in terms of their opportunity for welfare. For simplicity, in this section, I assume that we are only concerned with evaluating initial endowments, so that we don't have to worry about adjusting for later brute luck.<sup>14</sup>

Start by contrasting Van Parijs metric with a simple version of the opportunity for welfare metric: With a given endowment, each agent has an array of possible life paths. Which path the agent follows depends in part on his/her choices, and in part on factors beyond his/her control. Each life path produces a certain level of well-being for the agent. By assuming that each agent makes the best choice (in terms of well-being) at each point of choice, and appealing to the probabilities for

factors beyond the agent's control, we can evaluate an agent's endowment in terms of the best achievable (by choice) expected level of well-being.<sup>15</sup>

This version of the approach evaluates endowments on the assumption that the agent makes the best choice that he/she is capable of at each point. Because this may be an implausibly high level of accountability, other assumptions might be made instead. One might assign probabilities that reflect how likely agents in that situation are to make the various choices (a sort of weighting for reasonableness), and evaluate endowments based on these probabilities. There are a host of important and difficult issues here, but I shall leave open exactly how they are addressed.<sup>16</sup>

To be plausible, this approach must defend a plausible account of individual welfare (happiness, preference satisfaction, etc.) so as to make clear the importance of promoting the opportunity for such welfare. The account of welfare must also be such that levels of welfare are interpersonally comparable.

Van Parijs writes as if he objects to the opportunity for welfare approach on the grounds that it fails to hold people responsible for their preferences. The core idea is that there is no reason why someone who cultivates expensive tastes (e.g. for expensive wines) should receive more resources than an otherwise identical person who does not cultivate such tastes. This core idea is right, and it is a powerful objection against standard utilitarianism, but it is not applicable to equality of opportunity for welfare. For the most plausible version of equality of opportunity for welfare gives agents equalizes initial endowments and then holds agents responsible for their choices. No adjustment in resources is made, if one of them chooses to develop expensive tastes, and thereby achieves less welfare than the other. That's a personal matter.<sup>17</sup>

The equality of opportunity for welfare approach does, however, compensate people who have expensive initial welfare dispositions (tastes, preferences, etc.). For such dispositions are

unchosen. Of course, agents may be able to alter their welfare dispositions, and if they are, equal opportunity for welfare holds them responsible for their choices. It insists, however, that otherwise identical initial endowments are unequal if it is more costly to achieve welfare with one initial welfare disposition than with the other. It holds that disadvantageous initial welfare dispositions are just as eligible for compensation as initial physical disabilities. Van Parijs, however, seems to treat initial welfare dispositions as ineligible for compensation. He seems (e.g., pp. 50, 71, 80-82, 93, 96) to hold that people are responsible not only for their chosen preferences, but also for their unchosen ones. I shall argue, however, that Van Parijs cannot consistently object to compensation for initial disadvantages in welfare disposition.

To see this, let us, following Van Parijs (p.80), consider a case where initial endowments are identical except for preferences, and where preferences are uniformly malleable in the sense that, although people may start with different preferences, the range of preferences that a person can choose to adopt is the same for everyone, and such adoptions can be done easily and quickly without any cost in welfare. In this case, equal opportunity for welfare judges all endowments as equal. For, given the (very strong, and unrealistic) assumption of uniform malleability of preferences, everyone has equally valuable opportunities for welfare. So there is no disagreement with Van Parijs in this case.

In real life, of course, initial preferences are not uniformly malleable. Some people have access to, and even have, preferences that are not accessible for others. And even where two people have access to the same preferences, the costs associated with adopting different ones are typically different (e.g. because they start with different preferences). The central question here is whether disadvantages in initial (unchosen) welfare dispositions is a source of inequality. I claim that they

should be treated just like any other (unchosen) disadvantage in initial endowment (e.g., physical disability).

To see this, let us focus on a second extreme sort of case. Suppose that initial preferences are unalterable. Nothing an agent can choose has any effect on the preferences, although choices can affect other aspects of the world. Consider now a world with two agents who are initially identically endowed except that one has a difficult-to-please (expensive) preferences. To start, let us suppose that both agents prefer the initial endowment of the agent with the easier-to-please preferences (since welfare is easier to achieve). In this case Van Parijs agrees that compensation is owed, since there is universal dominance. So, in this case at least, compensation is owed to those with disadvantageous initial preferences.

The same conclusion holds if we relax the assumption of unalterability. As long as all agents prefer one welfare disposition to the other, there will be universal dominance, and Van Parijs' approach agrees that compensation is owed for disadvantaged preferences.

So, Van Parijs should drop his objection that equality of opportunity fails to hold people accountable for their preferences. It does hold them accountable to the extent they can influence what preferences they have. And it, like Van Parijs's approach, rightly holds that disadvantages in initial welfare dispositions may be compensable sources of inequality.

Van Parijs's real objection to the opportunity for welfare approach is, I believe, that it implausibly presupposes that welfare—understood as a measure of the good life—is fully interpersonally comparable. The only plausible account of welfare, he might plausibly claim, is one based on people's preferences (what they care about). Any other account of welfare is perfectionist, and fetishistic (as Van Parijs's Hippie/Yuppie example on p. 81 makes clear). Now, if everyone had the same extended preferences, this would provide a full basis for interpersonally comparable

welfare (since extended preferences rank endowments that people may have). But people do not have the same extended preferences. And since, it might be plausibly argued, the only basis for interpersonal comparisons of preference-based welfare is intersubjective agreement, there is no full comparability of welfare. So, it might be concluded, the opportunity for welfare approach described above is a non-starter.

Not all is lost, however. The opportunity for welfare approach can hold that one endowment is less valuable than another, if everyone prefers (extendedly) one to the other. And that is just to say that one endowment is less valuable than another, if the latter universally dominates the former.<sup>18</sup> This is a fairly weak principle, since, given the variability in people's extended preferences, it will leave many pairs of endowments unranked. If, however, one endorses equality of opportunity for welfare, as well as the premisses of the above argument criticizing the presupposition that welfare is fully interpersonally comparable, one may well be inclined to accept the view that the requirement to promote equality is not as demanding as one might have thought.<sup>19</sup>

Van Parijs, however, takes a different approach. He claims that universal dominance is sufficient but not necessary for one endowment to be more valuable than a second. He holds that where neither endowment universally dominates the other, the one with more transferable wealth is more valuable. This produces a much more robust (and indeed, complete) ranking of endowments, and thus a more demanding conception of the demands for equality.

Van Parijs defends this approach by claiming that it measures real freedom, which he understands as the extent to which a person has the means to do whatever he/she might want to do. Where personal endowments are the same, transferable wealth measures the means to do whatever one might want to do. Where personal endowments are not the same, however, transferable wealth does not capture the differences in the means to do whatever one want that come from personal

endowments (e.g., skills). These differences are, Van Parijs argues, captured by holding that an endowment that universally dominates another is more valuable.

Although, as Van Parijs points out (p.75), there is more than one way to appeal to transferable wealth to obtain a complete ordering of endowments by expanding upon the universal dominance criterion, Van Parijs's way is arguably the most plausible. It's not clear, however, that it is plausible to expand the universal dominance criterion into a complete ordering. For doing so invokes considerations of value that are not grounded in people's preferences. Universal dominance captures everything that people agree about. For typical preference profiles, it ensures that, where personal endowments are the same, an endowment with more transferable wealth is more valuable than one with less. But it says nothing about two endowments where the personal endowments are unequal, and some people prefer the first, and others prefer the second. To hold, of two endowments neither of which universally dominates the other, that the one with the greater transferable wealth is more valuable is to import a questionable value judgement that is not solely grounded in people's preferences.

A particularly striking way of illustrating this point is to note that Van Parij's metric is incompatible with envy-freeness as a criterion of equality. Suppose there are just two agents one of whom is initially endowed with a poor singing voice but lots of money, and the other of whom is endowed with a good singing voice (which we will suppose has no market value) but little money. Suppose that each prefers her own endowment to that of the other (since the first cares little for singing and lots for money, and the second cares a lot for singing and little for money). In this case there is no envy, and so it is very plausible that there is no inequality. The universal dominance principle is silent here, since there is no universal dominance. But Van Parijs's metric judges the endowment with more money as more valuable than the other (since where there is no universal

dominance he ranks endowments on the basis of transferable wealth). But this is surely implausible. Envy-freeness may not be a necessary condition for equality (since it is not always possible), but it is surely a sufficient condition.

The issue is of course complex, and in the end the view that value is grounded solely in people's preferences may not be defensible. But if Van Parijs wishes to have a theory of value grounded solely in people's preferences, he needs to reject the appeal to transferable wealth, and appeal solely to envy-freeness, to the universal dominance, or other preference-based criteria.

#### 4.2 Efficiently Promoting Equality: The Worst Off vs. The Greatest Beneficiary

Van Parijs holds that justice requires that, subject to the constraints imposed by self-ownership, the value of endowments should be leximinized (i.e., that the value of the least valuable endowment should be maximized, and if there are ties, the value of the second least valuable endowment should be maximized, etc.). A standard objection to theories that endorse social spending on equalization of some sort is that under certain conditions they require spending almost all the social pot on a small number of difficult-to-help disadvantaged individuals. I shall discuss how Van Parijs deals with this objection, and suggest that a different approach is needed.

Because of decreasing marginal benefits, and related matters, all else being equal, a worse off individual will get more benefit from a given amount of resources than a better off individual. But typically all else is not equal. First, the worse off person, but not the better off person, may be in circumstances that are particularly expensive to improve (e.g. some hopeless medical condition). Second, the thesis of decreasing marginal benefit in its standard form is not interpersonal. It only says that for a given person, the less a person has of a given good, the more she will benefit from a given additional allocation. It is compatible with different people having different marginal benefit

schedules. It is compatible, for example, with my getting 1 unit of benefit from \$100, when I have \$1000, and your getting 100 units of benefit in the same situation. It is also compatible with my getting 1 unit of benefit from \$100 when I'm the worst off person, and you're getting 10 units of benefit from \$100 when you're much better off.

A worse off person may not get the greatest benefit from a given amount of resources. Indeed, the worst off person may be in such a hopeless condition that he/she would benefit only slightly from enormous allocations of resources. Nonetheless, leximin and several other standard approaches to equalization require that resources be so allocated in such cases. This is deeply counter-intuitive, and a problem that egalitarian spenders, and Van Parijs in particular, must address.

A first step to limiting this problem is to impose a strong conception of self-ownership as a constraint on legitimate taxation. This at least limits the demands that can be placed on others to deal with the problem. Egalitarian theories with no such constraints are extremely vulnerable to this objection. Van Parijs, as we have seen, endorses Limited Self-Ownership, and that goes some way to limiting the demands of equality. Still, if he endorsed the stronger libertarian conception of self-ownership, that would provide further plausible protection.

Van Parijs has, nonetheless, a number of ways of alleviating the problem (pp.83-84). First, his conception of value (universal dominance or non-universal-dominance and more transferable wealth) is much less demanding in the resources required to benefit the least well-off than a full-blown equality of opportunity for welfare (and various other conceptions of equality as well). This is because, given the variety of extended preferences, universal dominance will hold only for extreme cases, and where it doesn't hold, Van Parijs's principle evaluates endowments on the basis of their transferable wealth (as opposed to subjective welfare). Second, he qualifies his general



principle that requires the elimination/reduction of inequality so as to ignore cases where the beneficiary gets only a small benefit, and it is at a great cost to others.

I shall argue nonetheless that Van Parijs's appeal to leximin is mistaken because of its (well-known) monomaniacal concern with the worst off. Suppose that there are 3 billion people who are below average in life prospects, all but one of whom are moderately poorly off (e.g., bare subsistence with a moderate amount of pain) and one of whom is extremely poorly off (e.g., bare subsistence with lots of pain). Suppose that with the resources available for equalization one could either improve the lot of the worst off so that his lot is equal to that of the other poorly off people (whose situation is not improved), or improve the lot of all the other below average people so that they are moderately well off (a significant improvement), and leave the worst off person unimproved. A leximin approach to equalization requires that resources be allocated to benefit the one worst off person rather than significantly benefiting the other 3 billion less 1 people. Even Van Parijs's qualification about ignoring small benefits to the least well off when the costs to others are great is inapplicable here, since this is a significant benefit to the least well off.

I agree that equality should be efficiently promoted, but I reject the leximin conception thereof. It is crazy to hold that one should help one person moderately instead of helping many other needy people even more. The problem with leximin is that it gives absolute priority to the worst off person(s). A more plausible view would agree that a worse off person has some priority over a better off person, without claiming that this priority is absolute in the sense that any benefit (no matter how small) to a worse off person has priority over any benefit (no matter how great) to a better off person.

A plausible approach to egalitarian spending must give some consideration to how much benefit individuals will get, and not merely be based on how poorly off they are.<sup>20</sup> I will mention a few such approaches to illustrate how this could be done.

One approach would be to assign finite weights to each person, with larger weights assigned the worse off a person is. One could then hold that, for a given unit of resource to be allocated, a person with a greater weighted marginal benefit has priority over a person with a lesser weighted benefit. Thus, if a worse off person with a weight of 4 would get 1 unit of benefit, but a better off person with a weight of 2 would get 4 units of benefit from a given unit of resources, then the better off person would have priority. A defect of this approach, I think, is that it gives priority to the person with the greater weighted marginal benefit—no matter how many people with slightly smaller weighted marginal benefits could be helped instead. This approach, like leximin, is non-aggregative. This problem could be overcome by holding that one should maximize the total weighted marginal benefit. This is like utilitarianism, but with weights for how poorly off the person is.<sup>21</sup> Another approach would be to hold that (like utilitarianism) total (unweighted) marginal benefit should be maximized, but to count marginal benefits only up to the societal average (so that marginal benefits to those who are above average count for nothing).

Obviously, the question of egalitarian spending priorities is a complex issue. But it's reasonably clear, I think, that the absolute priority to the worst off person accorded by the leximin approach is not plausible. Equality can be efficiently promoted, in the sense that matters, by giving moderate benefits to enough disadvantaged people instead of even a significant benefit to the most disadvantaged. So, Van Parijs should replace his leximin conception of inequality reduction by a more plausible approach. His qualification of leximin for costs to others compared with the benefits to the worst off already moves in this direction, but it doesn't go far enough.

## 5. Conclusion

Van Parijs rightly holds that equality should be promoted, subject to the constraints of a plausible conception of self-ownership. He rightly denies that self-ownership includes a right to appropriate natural resources without paying competitive rent to a social pot, or a right to make untaxed gifts drawn from wealth one was given. I have suggested, however, that his conception of self-ownership is not strong enough in that it fails to give agents a right to the benefits of their good brute luck, and in that it fails to give agents the right to make untaxed gifts of wealth that they generated. I have also questioned Van Parijs's conception of value (based on universal dominance and transferable wealth), and criticized his appeal to leximin (instead of an approach that is significantly sensitive to marginal benefits).

Despite the above questionable features of Van Parijs's theory of justice, this is clearly an important work in political theory. It's superbly written and argued, and full of insights from economic theory. More importantly, it is, broadly speaking, right.<sup>22</sup>

## Addendum (2000)

In my critical notice, I made three main criticisms of Van Parijs's theory: (1) A form of self-ownership stronger than that posited by Van Parijs is plausible, and it, unlike Van Parijs's theory, gives agents a right to certain kinds of brute luck benefits and a right to give and receive gifts of self-generated wealth. (2) His metric of personal value (or well-being) should be changed from his partly resourcist criterion (involving competitive value of external wealth) to some kind of fully welfarist criterion (e.g., equal opportunity for welfare). (3) His conception of the demands of equality should be changed from leximin to an approach that does not give absolute priority to the worst off. I stand by the last two claims, but will here modify the first.

I was mistaken to claim that a stronger conception of *self-ownership* would ensure that agents have the right to the full benefit of the exercise of their capacities and the right to receive gifts of certain kinds. For full self-ownership entails nothing about rights in external objects. And although it includes the power to transfer rights over one's personal services to others by gift, it does not include the power to *receive* such gifts (since that is a right over others and not over oneself). Hence, my appeal to self-ownership in this regard was mistaken.

In light of this mistake, I am now tentatively inclined to agree with Van Parijs that agents have no right to receive gifts of wealth (even if donor-generated) without taxation. I still endorse, however, the claim that agents are fully entitled to the benefits they reap from exercising their capacities as long as they pay the full competitive value of any natural resources claimed, and do not violate anyone else's self-ownership or other (specified) property rights. Although this does not follow from full self-ownership alone, it does follow when combined with the view, which I endorse, that agents are *fully entitled to their products* as long as they have paid the full competitive value of the natural resources involved and do not illegitimately use any of the other

factors of production. Van Parijs rejects this entitlement on the grounds that initial capacities are just a matter of brute luck (which is of course true), so the issue returns to that raised by Nozick of whether one can be fully entitled to the benefits of using something that one acquired by brute luck.

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## Notes

\* A Review of Philippe Van Parijs, Real Freedom for All (Oxford: Oxford University Press, 1995), pp. xi + 330.

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1. See Parfit 1991 for the distinction and discussion of its significance.
  2. Although the names and formulations of this and other displayed principles come from me, it is clear from the text that Van Parijs endorses them (or something close to them).
  3. Strictly speaking, I reject Egalitarian Liberalism as formulated. For I hold that the demands of self-ownership and of equality do not impose constraints on what is just, but rather determine a welfare baseline such that justice requires (1) that no one be worse off than on that baseline, and (2) that welfare be promoted in a mutually beneficial manner from that baseline. Thus, violations of self-ownership and inequality are allowed, indeed required, when they benefit all in an appropriate manner relative to the welfare baseline. (I defend this view in Vallentyne 1988.) So, strictly speaking, I endorse Egalitarian Liberalism as setting the welfare baselines, not as imposing any constraints. For simplicity, however, I shall ignore this point, and write as if I endorse the principle as stated.
  4. See Christman 1994 for important and insightful discussion of the centrality of control self-ownership, as distinct from the ownership of the income that one generates in making choices. For discussions of the notion of ownership in general, and self-ownership in particular, see also Arneson 1991, Fressola 1981, Gaus 1994, Grunebaum 1987, Ingram 1994, Mack 1990, Munzer 1990, Snare 1972, Thomson 1990, and Waldron 1988.

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5. This approach treats initial personal endowments as socially owned. Each person owes competitive rent on the personal resources that he/she is managing. Dworkin's extended auction (including the auction of talents) and income-fair approaches to allocation have this general form.

6. Note that sometimes initial endowments are understood to be the endowments at conception or birth, whereas I am understanding them to be at the beginning of full autonomy. Recall also, that we are assuming for simplicity that agents pop into existence with full psychological autonomy.

7. See Dworkin 1981a, Dworkin 1981b, Rakowski 1991, Ripstein 1994, and Coleman and Ripstein 1996 for enlightening discussions of this issue.

8. Traditional libertarians include, of course, Nozick 1974 and Narveson 1988. Roughly speaking, my approach is what is called "left-libertarianism" which, with traditional libertarianism, endorses a strong conception of self-ownership, but which has a more egalitarian conception of natural resources and perhaps gifts. The two most influential authors on left libertarianism are G.A. Cohen (who rejects it) and Hillel Steiner (who develops and defends it).

9. Van Parijs has some very interesting discussion about an often ignored source of brute luck. Where, for a given good or service, the market price is greater than the price at which the market would clear (with demand equaling supply), the sellers of the good or service receive a clearance rent, understood as the income above that which they would receive at the clearance price. Van Parijs denies that agents are entitled to clearance rents, since this is a form of brute luck income. This view is far more plausible than the view, defended by Gauthier 1986, that agents are not entitled to any producer surplus, understood, roughly, as anything beyond the minimum needed to induce them to sell their service or good (which is implausibly sensitive to the preferences of

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the agent). See Cohen 1995 and Van Parijs 1995 for superb analyses of this issue.

10. For an excellent discussion of Nozick's Wilt Chamberlain example and the issue of the ownership of good brute luck, see Fried 1995.

11. The distinction between the right to make gifts of donor-generated wealth and the right to make gifts drawn from brute luck income (at least if from previous gifts) has been made, by Rignano 1924 (see Chester 1982 for useful discussion of the Rignano plan) and by Nozick 1989 (ch. 3). See also the discussion of inheritance in Haslett 1988.

12. Steiner 1994 (and elsewhere), like George 1879 and 1892, argues that the social pot should be divided equally with no compensation made for bad brute luck, whereas I agree with Van Parijs that the social pot should be spent to promote equality. I've recently discovered that the view that the rents on natural resources should be used to promote equality has already been held by Brown 1977 and Sartorius 1984. A very different, but loosely related approach is defended in Brody 1983. Some of my early thinking about compensation of disadvantages in initial endowments is in Vallentyne and Lipson 1989.

13. The idea of appealing to universal dominance is a generalization of an idea (applied to genetic endowments) of Ackermann 1980.

14. Benefits and burdens from choices might be factored out by focussing on initial endowments only and making some adjustment later for brute luck experienced. Exactly how this should be done, however, is not clear, and is an important problem. See Roemer 1993 for an important approach to this problem.

15. See Arneson 1989 and 1990 and Cohen 1989 for a full statement and defense of this approach. Cohen defends an equal opportunity for advantage, where this is not understood

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solely in welfare terms.

16. See, for example, Rakowski 1991 for discussion of some of these issues.

17. Arneson 1989, Arneson 1990, and Cohen 1989 make this point. I address the problem of expensive tastes in the context of welfare from illegitimate sources (e.g., malice) in Vallentyne 1991.

18. Van Parijs recognizes the deep similarity between his approach and the equal opportunity for welfare approach on p.81.

19. A natural supplement to the universal domination criterion of when one endowment is more valuable than another is, I would argue, the envy-free principle according to which all endowments of an endowment profile (one endowment for each person) are equally valuable if no one prefers someone else's endowment to his/her own.

20. See McKerlie 1984, Parfit 1991, and Temkin 1993 for important discussions of related issues. For simplicity I have assumed that marginal benefits are fully interpersonally comparable. The ideas apply (although with less force) even if they are only partially comparable.

21. Weirich 1983 advocates such an approach.

22. I'm indebted to Richard Arneson, Tony Ellis, Brad Hooker, Trenton Merricks, Gene Mills, Arthur Ripstein, Hillel Steiner, Philippe Van Parijs, Stuart White, and Andrew Williams for helpful comments.