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Six Reasons for Educational Resource Equality

Abstract:

At first glance, arguments on behalf of educational resource equality rely on a causal relationship between resources and achievement. I argue that even if there is no causal relationship between resources and achievement, resource equality is the superior policy using three important normative criteria: efficiency, equity, and moral rights. I draw on Justice Marshall's dissent in *Rodriguez* as a starting point. I develop arguments supporting his dissent using current literature in economics and political philosophy.

I. A Matter of Considerable Dispute

In 1971, a Los Angelean named John Serrano, sued the State of California claiming the system of school finance based on property taxes prevented his son from receiving a quality education (789, Murray et. al). At the time of the suit the tax bases of the richest districts in California were over 10,000 times larger than the poorest districts (2359, Dayton). The California Supreme Court ruled that the wealth of a district should not have an effect on a child's education. The court limited the between-district difference in per-pupil spending to \$100

In 1973, Mexican-American parents in the Edgewood District of San Antonio sued on behalf of children in the district. The parents claimed that the existing system of locally financed education discriminated against children in districts with a low property base. The U.S. Court ruled against the plaintiffs 5-4. (Dayton & Dupre, 1994, p. 2364). The Court's primary rationale for the ruling was that poor students in poor school districts did not represent a suspect classification according to Equal Protection Clause. (p.1, Briffealt). The Court also criticized the "assumption that the quality of education varies directly with the amount of funds expended on it." The Court found the asserted relationship between resources and educational quality "a matter of considerable dispute" among educators and commentators" (411 U.S 1).

Two decades later, the dispute continues. Card and Krueger are some of the best-known proponents of the 'money matters' side of the argument, "The literature suggests that a 10 percent increase in school spending is associated with a 1 to 2 percent increase in annual earnings for students later in their lives (p. 133)." Card and Krueger find that the average education expenditure in a student's state has a direct effect on a student's earnings. Krueger has also researched the effect of the class size on student achievement and found a significant relationship and found that being in small class size increases standardized test scores (p. 199). Eric Hanushek and Julian Betts are in the more skeptical camp about the effect of money. Betts asserts, "The literature suggests that, on average, inadequate funding per pupil is not the main problem that public schools face today (p. 184)." Betts finds fault with Krueger's estimates on student earnings, while Hanushek questions Krueger's estimates about student achievement.

Not only is there considerable dispute about the relationship between educational expenditures, there are also dispute about the appropriate normative criterion to employ. Take, for example, Justice Marshall's dissent in *Rodriguez*, "I believe the question of discrimination in educational quality must be deemed to be an objective one that looks to what the State provides its children, not to what the children are able to do with what they receive" (411 U.S. 1). Marshall's dissent employs a different normative criterion from the Majority. The Majority is concerned with the consequences of the unequal resources. Marshall argues that the consequences of unequal resources on student achievement are irrelevant to the question of wealth discrimination. Marshall's normative focus is on the resource inequality itself.

To untangle the empirical and normative questions wrapped up in educational resource equality, I will construct a policy analysis matrix. The matrix is displayed in Figure 1. I will argue that educational resource equity (RE) is a superior policy to district-based inequality (DI) for any plausible normative criterion (efficiency, equity, or autonomy). The superiority of RE is true if resources affect achievement (RAA) and if resources don't affect achievement (RDA). I will argue that resource equality 'runs the board.' By this, I mean that in any cell, resource equality is superior in terms of the criterion employed in that cell. I will also argue that the superiority is also insensitive to the empirical question of the effect of educational resources.

	Efficiency	Equality	Rights
RAA	RE is superior.	RE is superior	RE is superior.
RDA	RE is superior.	RE is superior	RE is superior.

(Figure 1.)

This approach may seem strange. A more common approach in political philosophy would be to decide the relative importance of the criterion and stake out a position on the empirical claim. Instead, I will assume that the six possibilities (the boxes) exhaust the plausible combinations of normative criterion and empirical realities. I will then argue that in all of the six possibilities, we may justifiably infer the superiority of resource equity. In the structure of this argument, it will not be necessary to assume one criterion is more appropriate than another. Nor will it be necessary to assume one of the empirical realities is more likely than another.

Organizing empirical possibilities and normative criterion in matrices is advocated by Duncan Macrae, Jr. and Dale Whittington in *Expert Advice For Policy Choice*. Macrae emphasizes that choosing multiple normative criteria allows an analyst to be sensitive to “the diverse valuative concerns of the public involved” (p. 68, 1997). Multiple criteria also allow for input from “academic fields such as philosophy, history, and anthropology.” (p. 70, 1997). Macrae argues that multi-criterion analysis is crucial for “reasoned public argument” (p. 75, 1997).

Macrae also suggests providing rows in a matrix when the causal effects of a policy are uncertain (117). In this case, the uncertainty surrounds the causal effects of educational resource equity, so I have created a row for each possible scenario.

Once the matrix has been constructed, the process of impartial reasoning starts by “considering all cells.” Macrae explains, “Each cell entry matches a possible argument in public debate: ‘Alternative A1 is better than Alternative A2 with respect to criterion C by a certain amount,’” (p. 194, 1997). Macrae notes that some policies “have particularly simple solutions, as when one alternative is clearly superior on all criteria” (193).

I will argue that the comparison between RE and DI represents just such simple solution. Because RE is a superior policy on all criteria, it should gain support of “an overlapping consensus” of citizens holding different doctrines. John Rawls used the concept of “overlapping

consensus” to describe the shared political values persons of diverse and irreconcilable moral doctrines could reasonably assent to (p.10, 1993). I am much less ambitious than Rawls. All I argue is that if a specific policy alternative can be proven superior in the criterion of all plausible moral doctrines, an ‘overlapping consensus’ should form in support of that specific policy.

Some of the cells enter into well-worn territory and others are underexplored. In considering a cell that is well-worn, I will provide a brief review of some of the relevant literature. I will focus most of the analysis on the underexplored cells.

II. Efficiency Criterion, if Resources Affect Achievement

This cell has been explored thoroughly by economists of education. Before beginning a brief review, an important clarificatory point is required. The two policies being compared are educational resource equality and district-based inequality. A specific *level* of educational resources expenditure is not being evaluated. Therefore the question of costs versus benefits of educating individual students is not relevant. The question at hand asks if resource equality is *more efficient* than district-based inequality, at any level of expenditure. By ‘more efficient’, I mean a comparison RE and DI in terms of costs and benefits.

In the absence of a reason that some students use resources more efficiently than others, distribution-neutrality should be the default position. Evidence would be required to depart from the default position. As Rawls describes the Principle of Efficiency, “The principle of efficiency does not by itself select one particular distribution of commodities as the efficient one” (p. 59, 1999). If the efficiency criterion is distribution-neutral, then shifting resources from student to the other should not effect overall efficiency. One student will *gain* exactly the same benefits of achievement that the other will *lose*. Distributive neutrality means that \$10,000 given to one student and \$5,000 to another will produce the same benefits in the aggregate as \$7,500 given to each.

However, some utilitarians have suggested that more equal distributions are more efficient than less equal distributions. This is because each additional dollar provides less utility at the margin than the previous one. If two persons are greatly unequal, then redistribution from the wealthy to the poor can increase aggregate utility. In that case, equality can be recommended as maximizing utility (Arrow, p. 408, 1971). The assertion that all individuals have diminishing utility functions is a controversial bit of psychology. However, we can employ the same concept to ask if returns to educational resources diminish at the margin.

Krueger's research indicates that low-income students (eligible for free lunch) respond to small class-sizes with almost double the effect of high-income students. For each year a low-income student spends in a small class, their percentile score in the Stanford Achievement Test score is .94 percentile points higher than low-income students in large classes. The effect is only .55 percentile points for high-income students. This evidence suggests that efficiency is not distribution neutral. If so, an efficiency concern supports more education expenditures on low-income students, exactly the opposite of DI.

Defenders of district-based inequalities might argue that high-ability students are more efficient converters of resources into achievement than low-ability students. They also might argue that high-ability students are concentrated in high-income districts. This was the contention of the state, the defendant in New Jersey's *Abbott v. Burke*. The New Jersey Supreme Court paraphrases the argument of the state:

"The State contends that the education currently offered in these poorer urban districts is tailored to the students' present need, that these students simply cannot now benefit from the kind of vastly superior course offerings found in the richer districts" (119 NJ 287).

The Court rejects the argument that poorer districts contain low-ability students who cannot benefit from additional resources: "The State's argument ignores the substantial number of children in these districts, from the average to the gifted, who can benefit from more advanced academic offerings" (119 NJ 287)." We should also reject the state's contention unless evidence can be produced in its favor.

However, even if we accepted the contention that high-ability students are concentrated in wealthy districts that would not necessarily mean that the efficiency criterion recommends DI. The research of Ashenfelter and Rouse suggests that marginal returns to schooling are probably less for high-ability students. They use twin studies to estimate native talent and its relationship to returns to schooling. The interaction effect between ability and returns does not reach significance, so they cautiously interpret the data as disproving a positive relationship between ability and returns to schooling.

If the efficiency criterion departs from distributive neutrality at all, then the evidence suggests that RE is more efficient than DI. Students in poorer districts produce greater achievement-per-dollar than students in wealthier districts. RE produces greater benefits than DI for the same expenditures.

III. Efficiency Criterion, If Resources Do Not Affect Achievement

In Justice Marshall's dissent to *Rodriguez*, he reveals one of the paradoxes inherent in using a "money doesn't matter" argument to defend district-based inequality:

"In fact, if financing variations are so insignificant to educational quality, it is difficult to understand why a number of our country's wealthiest school districts, which have no legal obligation to argue in support of the constitutionality of the Texas legislation, have nevertheless zealously pursued its cause before this Court" (411 U.S. 1).

In other words, if increasing the resources of the poorest districts would have no effect on achievement, then, conversely, decreasing the resources of the richest districts should also have no effect on achievement.

Hanushek argues, "No strong or systematic relationship exists between spending and student performance" (p. 56, 1996). However, Hanushek emphasizes, "the results come from the operations of currently existing schools" (p. 57, 1996). His point is that schools could be organized to use resources effectively, yet it also demonstrates that it is the *existing* variation in school funding that does not affect achievement. Spending \$6000 per-pupil instead of \$0 probably effects achievement, but the existing variation (in the state of Georgia, for example) is

between \$6000 and \$12000, and it is *that* variation that does not effect achievement (CASJF 2007).

If it is wasteful to increase the per-pupil spending in poor districts, then doesn't the existing extra spending in high-income districts also represent waste? One of the perennial objections to equality as a moral ideal is that it recommends bringing down the better off down to the level of the worse off, so that everyone is badly off. Derek Parfit calls this the Leveling Down Objection (p. 17). Caroline Hoxby criticizes *Serrano v. Priest* for causing just such a leveling-down. She argues that California's 'foundation grant' mechanism for ensuring equity made the tax-price of education so high that funding in California's poorest school districts was less than it would have been without the equity mechanism.

Yet, if the existing variations in resource expenditure represent wasteful spending, the leveling-down aspect of equality only reduces waste. In that case, resource equality is more efficient than district-based inequality.

IV. Equality Criterion, If Resources Affect Achievement

This cell has been well explored. Any argument for resource equality (assuming resources effect achievement) based on the criterion of equality is bound to be straightforward. We value equalizing achievement, and value equal resources as a means to equalize that achievement. Under the assumption that resources affect achievement, educational resources are not the focus of direct evaluation, it is the effect of those resources that are the focus of evaluation.

Resources are used to create what Bernard Williams would call "effective" equality of opportunity (p. 245, 1973). Williams does not object to "allocating grammar school education grounds of wealth," because the education itself should be distributed equally. He objects because the education provides an opportunity to "positions of prestige, management, etc." later on in life." The important thing to notice about those positions is that they are "by their very nature limited: whenever there are some people in command or prestigious positions, there are necessarily others that are not" (p. 243, 1973). So what educational resources do is increase the

chances that a person will be one of those fortunate to be in those scarce positions. Williams continues, "A system of allocation will fall short of equality of opportunity if the allocation of the good in question in fact works out unequally or disproportionately between different sections of society (p. 245, 197)." "

John Rawls develops the idea further as 'fair equality of opportunity.' Rawls defines it as such, "Those who are at the same level of talent and ability, and have the same willingness to use them, should have same prospects of success regardless of their initial place in the social system." (p. 63, 1971)." Why does Rawls demand strict equality with reference to "life chances," yet permit inequalities of income according to the difference principle.

Rawls answers thus:

"If some places were not open on a basis fair to all, those kept out would be justified in their complaint not only because they were excluded from certain external rewards of office but because they were debarred from experiencing the realization of self which comes from a skillful and devoted exercise of social duties (p. 73, 1971)." "

These 'places' are not the same thing as income. They are scarce 'by their very nature.' There is no amount of income that can compensate a person unfairly excluded from positions of power and prestige. The goods are incommensurable.

Often the values associated with equality can often be captured by other concepts. Three other concepts which attempt to 'steal the thunder' of equality are *priority*, *sufficiency*, and *reciprocity*. These concepts may be superior to equality in evaluating income distributions or provision of government services. Yet, I will argue that these values are not appropriate for evaluating educational resources. Equality retains its thunder in recommending resource equality over district-based inequality.

Prioritarianism is a response to the Leveling Down Objection. In the previous cell, where we assumed resources did not affect achievement, all that was leveled-down was waste. However, in this cell, we assume resources *do* affect achievement. What possible value could there be in making the wealthy districts worse without improving things for the poor districts? For the prioritarian, there is no value in equality for equality's sake (Parfit, 1991). The prioritarian

believes that what we are motivated by the absolute deprivation worse off, not their relative deprivation compared to better off.

Sufficientarians argue that there exists a minimum threshold of educational expenditures which everyone should receive, but that “inequalities above this threshold are not of particular concern” (p. 106, Anderson, 2004). Amy Gutmann, Elizabeth Anderson and Martha Nussbaum all endorse variations of the *democratic threshold principle*. This principle invokes a sufficient education for every citizen, sufficiency defined as the ability to participate in the democratic process. Education finance litigation has shifted from the equity standard to a sufficientarian standard. This “third wave” used the criterion of ‘adequacy’ instead of ‘equity’ (p. 1, Briffealt)

Reciprocity is the concept that permits inequalities which benefit the worse off. This is, of course, the basis of Rawls’ difference principle (1971, 1999). Rawls argues that inequalities must be acceptable to all, and that the acceptability of the inequalities results from the benefits to all from the inequalities.

None of these concepts should be the appropriate standard of equality when evaluating educational resources. The assumption of prioritarianism, sufficientarianism, and reciprocity is that the largesse of the better off does it any way harm the worse off. Yet, if the extra resources of a wealthy district increase the chances that its students will gain one of the scarce positions of prestige and power, then it does so by decreasing the chances of the students in the poorer districts.

A very recent article by William S. Koski and Rob Reich argues for a return to the concept of equity in educational law in policy for exactly this reason. They explain, “Equality is normatively important in education because education is in part, and in recent years has become in larger part, *a positional good*. Education is a positional because the possession of education relative to one’s peers matters a great deal” (p. 593, 2007). Koski and Reich compare students at Palo Alto High School and Choate Rosemary Hall. Should we worry about any inequalities between a very wealthy high school and a very-very wealthy high school? Students at Palo Alto certainly have a more-than-sufficient education. Yet, Koski and Reich argue that if the Choate student has “objectively better chances of getting into selective colleges and competing for high-

paying and high-status jobs,” then the Palo Alto students have been worse off by the extra-extra resources available to the Choate students, because the Palo Alto students’ chances have been reduced. So, unsurprisingly, resource equality is superior to district-based inequality, using the standard of equality.

V. Equality Criterion, If Resources Do Not Affect Achievement

Less has been written about the value of educational resource equality for its own sake, independent of the consequences of those resources. In Justice Marshall’s dissent to *Rodriguez*, Marshall responds to the majority’s skepticism about the effect of resources on achievement. Marshall argues that even if students in poor districts are not *harmed* by the inequalities, they may be *wronged* by the inequalities, “I believe the question of discrimination in educational quality must be deemed to be an objective one that looks to what the State provides its children, not to what the children are able to do with what they receive” (411 U.S. 1).

Harry Brighouse also addresses the question of the value of resource equality “if education yielded no benefits for effectiveness in the labor market” (p. 121, 2000). Brighouse invokes the Dworkinian phrase ‘equal concern and respect’ to explain the value of resource equality in the absence of an achievement effect. Ronald Dworkin argues that all moral persons have the right “to equal concern and respect in the design and administration of the political institutions that govern them” (p. 180, 1977). Brighouse and Dworkin are concerned with the *relationship* between institutions and citizens, not merely the consequences of policy. A student in a poor district who experiences district-based inequality has been *treated* without equal respect regardless of the consequences of the resource deprivation.

To help understand the distinct normative issue at stake, it is helpful to examine the work of Derek Parfit. Derek Parfit has provided what he calls an “unexciting” taxonomy (p. 34). He divides egalitarians into two types, *deontic* egalitarians and *telic* egalitarians. A telic egalitarian believes inequalities are *bad*, while a deontic egalitarian believes some types of inequalities are *unjust*, and involve wrongdoing.

To understand how a person can be wronged by unequal resources, we need to understand 'deontic' theories of social justice. Rawls distinguishes between deontology and consequentialism by examining how the two theories relate "the two main concepts of ethics," the right and the good (p. 21, 1971). The right refers to the moral appropriateness of actions. The good refers to the value of states of affairs in the world. A consequentialist defines the right act as that act "which maximizes the good," (p. 22, 1971). A deontologist defines the right independently from the good.

The most common and straightforward way to evaluate the justice of a particular policy is to examine the consequences of that policy. Many types of egalitarians see policy as an equality-maximizing instrument for some metric of equality. A subset of egalitarians view policy as an instrument to minimize inequalities that result from bad luck. Yet, for a deontologist, policies can be wrong, regardless of their consequences.

The question of what types of policies are *wrong* has been overshadowed by the questions of what types of equality are *good*. In "Equality of What," Amartya Sen constructs a "menu" of answers to the title question. He interprets Rawls as responding to the question, "equality of what," with the answer "primary goods" (p. 157, 1979). The "equality of what" question frames the debate within the boundaries of 'equality-consequentialism'. It asks, "What type of equality is the good to be maximized?" Sen adds his own answer to the "menu" which provides a much more compelling answer to that question. Sen answers that the equality to be maximized should be equality of "basic capabilities" (p. 160, 1979).

Similarly In "On the Currency of Egalitarian Justice," G.A. Cohen defined the egalitarian project as determining the proper "metric" for determining equality. He asks, "What aspect of a person's condition should count in a fundamental way for egalitarians?" (p. 906, 1989). For Cohen, egalitarian project is a search for an equalisandum, defined as "that which ought to be equalized, what, that is, people should be rendered equal in." (p. 908, 1989).

Both Sen and Cohen's approaches appeal only to policies as a type equality-maximizing instruments, and lose the important focus of policies as right and wrong, independent of the consequences.

Two recent articles have accomplished significant groundwork in rediscovering important aspects of Rawls' deontic strand. The first is Samuel Sheffler's "What is Egalitarianism?" Sheffler mirrors the consequentialist/deontic distinction when he writes, "Equality as it is commonly understood, is not in the first instance, a distributive ideal, and its aim is not to compensate for misfortune. It is, instead, a moral ideal governing the relations in which people stand to one another," (p. 21, 2003).

The second article to rediscover the deontic strand in Rawls is Alexander Kaufman's "The Myth of the Patterned Principle." In direct contrast to Cohen's consequentialist search for the appropriate distributive equalisandum, Kaufman notes, "As Rawls has emphasized from the start, 'justice is the first virtue of social institutions,' not of distributions" (p. 564, 1971).

Rawls is not interested in whether distributions that are good or bad, he is interested in a whether a basic structure that is just or unjust. Kaufman argues that Rawls is not constructing a theory of "allocative justice." Kaufman emphasizes that Rawls' theory is one of procedural justice and points us to the following passage in A Theory of Justice

"Thus in this kind of procedural justice the correctness of the distribution is founded on the justice of the scheme of cooperation from which it arises and on answering the claims of individuals engaged in it...By contrast allocative justice applies when a given collection of goods is to be divided among individuals with known desires and needs. The collection is to be allotted is not the product of these individuals, nor do they stand in any existing cooperative relations" (p. 77, 2004).

For a deontic egalitarian, the focus of social justice is not the goodness or badness of a distribution. Instead, the focus of social justice is the rightness or wrongness of the basic structure. The basic structure describes the cooperative relationship between citizens. Just as in deontological ethical theory, relationships create special obligations. A deontic egalitarian believes that the citizens involved in a cooperative relationship have an obligation not to treat each other *arbitrarily*.

A deontic egalitarian asks not "what does a person feel" nor "what does a person have" nor "what can a person do," as telic egalitarians of welfarist, resourcist, and capabilities

approaches. She asks, “what is being done” to a person. More specifically, “what is being done to a person by institutional arrangements?” or “What is being done to a person by policy choices?”

Even if resources do not effect achievement, district-based inequality represents an injustice of the basic structure. This injustice wrongs the students, even without any consequences for the student’s later achievements, because the institutions fail to treat the students with equal concern and respect.

VI. Rights, If Resources Affect Achievement

I have already discussed both rights and deontology in examining interpretations of the equality criterion. These next two cells will discuss rights and deontic considerations independent of the equality criterion. I will argue that an acceptable conception of moral rights will reveal that RE respects moral rights and that DI violates moral rights. In examining this cell, I will not be addressing the complex relationship between moral rights and legal rights. Instead, I will make the normative assumption that the prevailing education finance policy should respect moral rights and that legal rights do not represent a separate and complicating criterion.

There are two philosophical approaches to justifying moral rights. Leif Wenar divides the theories into “deontological” approaches and “consequential” approaches. Before discussing the way these two frameworks deal with moral rights, I need to highlight differences between deontology and consequentialism. There are five important differences between the two types of theories.

1.) *Constraints*. Deontology *requires* agents to refrain from maximizing the good if, by doing so, they would violate certain “constraints.” Constraints limit the way one moral agent is allowed to treat another moral agent. Kant’s absolute prohibitions on lying are an example of side-constraints (p. 425, McNaughton, 2006).

Robert Nozick argues that these side-constraints “express the inviolability of persons” (p. 32, 1977). Nozick claims a place in a Kantian deontological tradition when he argues that violating side constraints treats a person as a means instead of as ends. Similarly, Rawls argues

that using a person to maximize the good would “not take seriously the distinction between persons” (p.24, 1977). Rawls uses side-constraints to argue against a specific type of consequentialism, utilitarianism, which holds that the good to be maximized is aggregate welfare.

In *The Rejection of Consequentialism*, Samuel Scheffler labels the constraints associated with deontology as “agent centered restrictions.” Although Scheffler is unsatisfied with many of these restrictions, Scheffler advocates a “no harm” principle as an acceptable restriction. This principle states that if Moral Agent A’s actions cause Moral Agent B to be worse-off, Moral Agent A has violated the side-constraints of Moral Agent B (1994).

2.) *Personal space*. Deontology permits agents to maximize the good. Deontology gives each agent “personal space” to live her own life including actions that are sub-optimal at promoting the good (p. 425, McNaughton, 2006). Deontologists accuse consequentialists of having an overly demanding morality. They argue that consequentialism has the absurd consequence of requiring that an agent must spend every last second of every single day maximizing utility. Besides being unrealistically demanding, Bernard Williams also argues that this requirement is an attack on a person’s “integrity”. It requires her to abandon all personal projects in pursuit of maximizing the good every last second of every single day (p.117, 1973). Scheffler calls this personal space necessary to pursue personal projects “an agent-centered prerogative,” (p.67, 1994). He argues that this prerogative is a “rational strategy for taking account of personal independence.”

3.) *Acts and Omissions*. Consequentialists believe that if an act and an omission have the same consequences they are morally equivalent. If Moral Agent A refrains from saving Moral Agent B this has the same consequences as if Moral Agent A killed Moral Agent B. For consequentialists, the actions are morally equivalent. Deontologists, in contrast, make a distinction between “contributing to the suffering of others” and “letting others suffer” (p. 38, Thomas,). This feature of deontology can be seen as a product of the first two features. Deontologists believe some actions can be worse than others independent of the consequences because they violate side constraints. On the other hand, deontologists argue that a moral

requirement obligation to prevent bad consequences is a violation of personal space. These two features come together in deontology to create the moral *in-equivalence* of acts and omissions.

4.) *Special Relationships*. Deontologists believe that persons can enter into “special relationships” with other persons. These special relationships can require a person to perform an action if it does not maximize the good. If I promise to do something, I am required to do that thing even if it is a sub-optimal action. Promising is only one form of a special relationship. Parenthood and friendship are also examples of special relationships (McNaughton 425). Moral agents involved in special relationships have less personal space and more moral requirements than those who are not involved.

5.) *Supererogation*. Consequentialists require that every action maximize the good, while deontologists limit moral requirements to constraints and the requirements of special relationships. Deontologists refer to non-required good-maximizing action as “supererogation.” Joel Feinberg contrasts the actions morally required by “relations of commitment and trust” and acts which are “meritorious”, or mere “favors” (p. 395).

Feinberg gives an example of supererogation. Suppose Moral Agent A asks a stranger, Moral Agent B, for a match on the street. Moral Agent B refuses to give Moral Agent A the match. Moral Agent B is not violating any moral requirement because these two men are not in any special moral relationship to one another. However, it could be considered *supererogatory* for Moral Agent B to give Moral Agent A the match (setting aside the health consequences of smoking).

Given these important differences between deontology and consequentialism, it becomes apparent that a consequential approach to rights may be less than satisfactory. If a consequentialist believes rights are justified at all, she believes it because these rights are general rules to help maximize the good. Wenar notes that consequentialist-justified rights are “flimsy” because they can always be violated to maximize the good directly (1). Instead, the language of rights seems better justified by the features of deontology outlined above.

Many of the important features of moral rights can be understood in light of the features of deontology. Several rights theorists implicitly rely on the features of deontology. This understanding is necessary before a moral right to education can be articulated appropriately.

In "Are There Any Natural Rights," H.L.A Hart argues for the existence "of at least one natural right, the equal right of all men to be free" (14). Hart explains that this right means that "in the absence of special conditions" a person should be at liberty to do whatever does not coerce, restrain, or injure other persons. Here, the two elements of deontology appear to underlie the rights theory. A person should be allowed his agent-centered prerogatives, and prevented from violating side-constraints.

Hart distinguishes between "general" rights of non-interference and "special rights" (20). *Special rights* are the rights that arise from special relationships. Hart uses the familiar deontic example of promise making, but allows for the possibility that special rights can arise from special relationships that were not entered into by the deliberate choice of the parties involved. Hart also argues that some independent moral justification must be made if a "special right" is used to limit more "general" rights of noninterference. Hart continues, "to have a right entails having a moral justification for limiting the freedom of another person and for determining how he should act" (p. 19, 1979).

Joel Feinburg also argues for the centrality of rights in moral discourse. In "The Nature and Value of Rights," Joel Feinburg connects the concept of rights with activity of claiming. Rights are "to be claimed, demanded, affirmed insisted upon. They are especially sturdy objects to 'stand upon,' a most useful piece of moral furniture. Feinburg argues that claiming is a "rule-governed activity" (p.85, 1979). The validity of the claim depends on whether the claim is called for by the existing rules.

Feinburg defines a moral right as a *valid* claim. Here, validity is defined as how well the moral right can be justified from acceptable substantive moral principles. Rights are claims which follow from existing moral principles. Feinburg also argues that valid claims must be the ground of other people's duties. The moral principles justifying the right must be strong enough to justify

morally requiring others to honor that right. So rights cannot merely be asserted, because they are only as valid as the moral principles which serve as the foundations for those rights.

I will be using this examination of moral principles to criticize Robert Nozick's theory of *entitlements*. His theory of moral rights precludes a moral right to resource equality. He writes, "The major objection to speaking of everyone's having a right to various things such as equality of opportunity, life, and so on, and enforcing this right, is that these 'rights' require a materials and actions; and *other* people may have rights and entitlements over these" (p.238, 1977).

I will argue that Nozick's claims are *invalid*. They fail to follow from the moral principles which Nozick himself endorses. The moral principles Nozick attempts to use as a foundation for *entitlements* do not support his theory of moral rights. Instead they support a right to RE and condemn DI as a rights-violations.

Nozick argues that although equalizing opportunity may be "fairer," enforcement of equal opportunity would require an acquisition of resources that would override some people's entitlements and violate their moral rights. As a result, Nozick argues that no one can claim a right to an equal education. They are only permitted to enlist voluntary cooperation to pursue that goal. Nozick is arguing that provision of educational equity could be *supererogatory*, but not morally required.

Many of moral principles that are supposed to justify Nozick's entitlement conception are too weak to justify the strength of the entitlement. Other moral principles employed by Nozick are strong but actually support a right to equal education. So this criticism of Nozick is meant to focus on clearing a space for that right.

It seems as if Nozick uses 'moral right' and 'entitlement' interchangeably so I will use the term 'moral right' to serve as a reminder that these moral rights require independent moral justification. Nozick argues that no one can have "general" moral rights to have certain goods or services because all goods and services are already taken by persons with "historical" moral rights to those goods and services. Nozick argues that moral rights to goods and services can only be gained in two ways. The first is by acquiring something through just acquisition. The second is by acquiring something through just transfer.

As I will discuss in the final cell, the principle of just acquisition has limited application in a world without much valuable unowned land left. Yet, the interesting aspect of that principle is the deontic features used as a foundation for it. A person is free to acquire whatever she wishes even if the acquisition does not maximize the good (p.177, 1979). The permissibility of this acquisition is founded on the deontic idea of 'agent-centered prerogatives.'

Nozick also employs the deontic principles by including the "Lockean" proviso. Just acquisition cannot "worsen the situation of others" (p. 181, 1977). This seems to be in line with the deontic principles of side constraints. Exercising our agent-centered prerogatives cannot harm others because to do so would violate their side constraints Nozick argues that this proviso only applies to justice in acquisition and not other modes of "worsening the situation of others" (p.178, 1977). Justice in acquisition gains its intuitive appeal by respecting side-constraints. However, he does not provide adequate justification for not subjecting other types of transfer to the "worsening" standard of acceptability.

According to Nozick, the principle of just transfer is also justified by deontic principles. Nozick argues that people should be free to transfer what they wish. No one should be morally required to give up his resources to pursue good-maximization. Instead, the agent-centered prerogative permits people to spend some resources on what they enjoy, such as basketball games (p. 186, 1977). Nozick argues that these transfers do not violate side constraints of those involved in the transfer, or violate the side constraints of third parties (p. 161, 1977).

Nozick considers an important objection to his principle of justice in transfer. He anticipates that justice in transfer unregulated by any proviso may violate the 'worsening standard.' To respond to this objection he contrasts two different situations. In the first situation there are two planets isolated from one another. Although the inhabitants of these planets face different opportunities, "the situation of one does *not* affect that of another." If one planet does not affect the other, then there is no way the inhabitants of one planet could be violating the side constraints of the other planet's inhabitants. In the second situation, we exist on a single planet involved in the circumstances of economic competition:

“In the particular circumstances under discussion, a person having lesser opportunities would be better off if some particular person having better opportunities didn't exist. The person having better opportunities can be viewed not merely as someone better off, but as someone *blocking* or *impeding* the person having lesser opportunities from becoming better off” (237).

Although this seems like a violation of the ‘worsening’ standard, Nozick argues that this standard is inappropriate. He responds to these concerns by positing a *reductio*. He argues that if equal opportunity is a valid principle, we must also insure that women must choose their suitors according to principles of equal opportunity. He argues that this conclusion is absurd, and, therefore, the objection is absurd.

The absurdity of the conclusion does not demonstrate that equality of opportunity is absurd. True, the unsuccessful suitor has been made worse off by the unfair advantages of the successful suitor. Yet preventing this harm to the unsuccessful suitor would require extreme sacrifice on behalf of the woman. The woman, who can no longer choose her suitor, is then condemned to live a life as a prize of a contest. This almost certainly violates *her* side-constraints, and eliminates any agent-centered prerogatives she enjoys.

To clean the example from the harms experienced by a sentient ‘prize,’ I propose the following counterexample. Imagine a planet much like our own, except that human males are not sentient. These males are stationary like houseplants. They serve only two purposes, decoration and reproduction. The ratio of males to females in the population is always exactly one to one. Males have no moral rights. Only females have moral rights. In this situation, any female who owns more than one male is, in effect, depriving another female of an opportunity to reproduce. Should we allow a wealthy female (through justice in acquisition and transfer) to hoard hundreds of males for decorative purposes even if it worsened the situation of the deprived females?

If two agents are involved in a competition (economic or otherwise), then the loser is worsened by the winner. Side-constraints and prerogatives appear inadequate to explain rights *within* competition because the worsening is an avoidable consequence of the competition.

To show how these two concepts fail in a situation of competition, a variation on the 'two planet' example will be helpful. According to Nozick, a more fortunate planet has the moral right not to aid the less fortunate planet. The less fortunate planet has no moral right to aid *from* the more fortunate planet. However, then imagine a third planet is discovered. The inhabitants of the more fortunate planet (the Mores) can reach this third planet faster than the inhabitants of the less fortunate planet (the Lesses). The Mores can inhabit this planet and claim it through a principle of just acquisition. Yet the Lesses are militarily superior and when they arrive later, they have the ability to conquer the planet. Assume the Lesses have respect for moral rights. The Mores will appeal to the Lesses and argue that conquering any of the planet would violate the Mores' side-constraints. The Lesses will respond that the Mores' acquisition of the planet has violated the Lesses' side-constraints.

To resolve the impasse another deontic principle could help. The relationship of competition should be considered an example of a *special relationship*. As discussed before, special relationships can justify *special rights*. People who are in competitive relationship with each other have lost the right not to be worsened by each other, yet they have gained a special right. The special right gained by a competitive relationship is "fairness." Fairness is not a right which only appeals to the equality criterion, but instead is a way of respecting moral rights in competition.

To understand why justice in transfer may violate rights to fairness, we need to distinguish between two types of transfers. The first type of transfer is a *market* transaction. This type of transfer happens when a person "chooses to transfer [a holding] to someone who satisfies a particular condition (for example who can provide him a certain good or service in exchange)," (p.236, 1977).

The important aspect of this transfer is that a person is "equally willing to transfer to anyone else who satisfied that condition" (p.236, 1977). Nozick contrasts this with another type of transfer, which I shall label *nepotistic* transfer. This type of transfer is one where someone wants to make the transfer with a *particular* person, such as in a gift or inheritance. Nozick's

defense of justice in transfer focuses on defending the right to make market transfer, and underestimates the effects and importance of nepotistic transfer.

Oddly, Nozick describes unequal opportunity as the situation when someone has less opportunity than another to satisfy the condition of the market transfer (i.e. having the best product to sell). Yet Nozick fails to notice that his version of unequal opportunity is often caused by the accumulative effects of nepotistic transfer such as inheritance of property or receipt of extra educational opportunities. Nozick attempts to sweep nepotistic transfers under the rug.

For example, Nozick's famous example of justice in transfer is unaffected by the effects of nepotistic transfer. Wilt Chamberlain earns an annual income of \$250,000 because every season a million people have decided to pay a twenty-five cent surcharge to see him. Wilt Chamberlain is happy to exchange his time and energy for such a salary. The people "are excited to see him play; it is worth the price of admission to them," (161). The moral rights of those involved are intact.

Nozick adds that, "Third parties still have their legitimate shares," (p. 161, 1977). Even so, if we assume that Chamberlain is in competition for the disposable income of Philadelphia's sports fans, maybe their surcharge leaves less left over in the spring for attending Phillies games. The baseball team has had to take a \$250,000 cut. They have been worsened, but it would be hard to argue that their right to fairness has been violated.

This example is atypical in being unaffected from the effects of nepotistic transfers. Basketball courts and hoops are available to almost everyone. No one has made a nepotistic transfer to Wilt Chamberlain that effected his winning the competition for the disposable incomes of the sports fans.

In Nozick's minimal state, the right to educational resource equality does not exist. This may not affect the prospects of basketball players, yet it would certainly affect the prospects of those who want to achieve other types of success. For example, it would affect those who want to become doctors.

If resources affect achievement, then growing up in a wealthy district will increase the chances that a student can become a doctor. One can describe the transfers wealthy districts

give to their own students as nepotistic transfers. Assume Doctor Jones makes \$250,000 a year for his doctoring services, as much as Wilt Chamberlain. Dr. Jones sees 100 patients annually. The patients willingly pay, on average, \$2500 for Jones's services. It is worth it to them to avoid pain and death. The patients are not worsened in paying for the doctoring services, nor are any third parties worsened by the transaction. It was the nepotistic transfer that caused Doctor Jones to be the winner of the economic competition, and it was the losers of the competition who were impeded from becoming doctors who worsened off. More importantly, they were unfairly worsened.

Nozick paints an overly optimistic portrait of his minimal state, where "people often transfer holdings to others in accordance to how much they perceive these others benefiting them, the fabric constituted by the individual transfers is largely reasonable and intelligible," (p. 159, 1977). Nozick argues that allowing "capitalist acts between consenting adults" are necessary to respect the moral prerogatives of agents. There is nothing about ensuring a moral right to RE that constrains those "capitalist acts." Instead, RE prevents those nepotistic transfers from adults to children that violate the moral rights to fairness the children possess.

Nozick argues that all agents are paid their "marginal product," (p. 82, 1977). Nozick calls this principle "to each as they are chosen." Yet, as Hal Varian points out, "The market distribution of resources depends completely on the initial distribution of resources in the economy." (p. 231, 1975). Doctor Jones is chosen for his services because he makes others healthier. This is reasonable and intelligible. Student Jones was chosen to become Doctor Jones simply because his parents could afford to live in wealthy district. This is neither reasonable nor intelligible. It also violates the moral rights of Student Rodriguez, who could have become a doctor, but lives in poor district, and has been worsened off unfairly.

There are no moral rights which endorse DI. Instead a respect for moral rights would endorse RE as the rights-respecting policy alternative.

VII. Autonomy Criterion, If Resources Do Not Affect Achievement

In the previous cell, I argued that the deontic principles underlying the Lockean proviso demanded fairness in competition. This cell will briefly review arguments in favor of moral rights to resources.

When examining resource equality independent of their effect on achievement, it is the Lockean proviso *itself* that can be employed. The proviso states that a person can acquire property without the consent of others if “there is enough, and as good, left in common for others” (Sec. 27, 1690, Locke).

It is difficult to see how Nozick can accept the Lockean proviso, without having realized that there has been very little property, and not very good property, left over in the United States for a long, long time. Varian finds Nozick’s answer of just acquisition unsatisfying because “Eventually nearly all valuable things become owned and the unfortunate people who are born at this late date have nothing left to appropriate while the descendants of the original appropriators live in unearned wealth (p. 236, 1975).”

The last person to receive a claim under the Homestead Act was Kenneth Deardorff who staked a 1988 claim in Stony River, Alaska (NPS 1). It would be hard to make the claim that Stony River, Alaska represents enough and as good as some of the more desirable property in the lower 48 states.

Over two hundred years ago, Thomas Paine recognized that the Lockean proviso was already being violated in the United States. He claimed the acquisition of property by some violated the ‘natural inheritance’ of others who had just as much right to the resources necessary to make a living. He proposed taxing the property-owners to create a fund to compensate everyone for their lost right to use the property (p.1, Paine).

Recently, ‘left-libertarians’ such as Peter Vallentyne, Hillel Steiner, and Michael Otsuda have used the libertarian concepts of self-ownership and side constraints to challenge Nozickean right-libertarianism (Vallentyne & Steiner, 2000). Although left-libertarians subscribe to complete self-ownership of one’s talents and the products of one’s labor, they place limits on property acquisition. This is not motivated by a concern for the value of equality or efficiency. Instead these limits are motivated by the deontic prohibitions on harming others.

If right-libertarianism was a principled defense of the value the moral rights, wealthy districts could claim a Nozickean entitlement to spend more on their own students. Instead, Nozickean entitlements represent invalid claims. Those claims simply don't follow from the moral principles Nozick endorses.

Employing these concepts, we can say that the citizens in poor district are entitled to compensation from the wealthy districts because the wealthy districts have violated the Lockean proviso. Poor districts have the valid claim to compensating resources. These are owed regardless of whether the resources affect achievement.

VIII.

Conclusion.

There are many issues of policy where our basic values are at conflict. Efficient policies may be inequitable. Equitable policies may violate moral rights. Rights-respecting policies may be inefficient. The appropriateness of some policies may be contingent on empirical research.

These same basic values are at conflict in political philosophy. We discuss the balance of efficiency verses equality. We discuss the balance of equality versus moral rights. Yet, the appropriateness of resource equality does not represent a conflict of values in the political or philosophical community. It can be judged superior regardless of what basic values are adopted and what empirical research is deemed compelling. Resource equality is superior in every cell, and should be supported by citizens regardless of their conflicting values.

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