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The Social Injustice of Parental Imprisonment

<https://doi.org/10.1515/mopp-2019-0044>

Published online September 18, 2020

Abstract: Children of prisoners are often negatively affected by their parents' incarceration, which raises issues of justice. A common view is that the many negative effects associated with parental imprisonment are unjust, simply because children of prisoners are impermissibly harmed or unjustly punished by their parents' incarceration. We argue that proposals of this kind have problems with accounting for cases where it is intuitive that prison might create social injustices for children of prisoners. Therefore, we suggest that in addition to the question of whether children of prisoners are impermissibly harmed, we should ask whether the inequalities that these children endure because of their parent's incarceration are objectionable from a social justice perspective. To answer this latter question, we examine the negative effects associated with parental imprisonment from the perspective of luck egalitarianism. We develop a luck egalitarian account that incorporates insights from the philosophy of childhood. On our account, children of prisoners might endure two different types of objectionable inequalities, since they are often deprived of resources that are important for ensuring fair equality of opportunity in adulthood, but also because they are likely to suffer inequalities in terms of childhood welfare. After defending this account, we explore its implications for policy.

Keywords: children's rights, imprisonment, luck egalitarianism, social justice

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1 Introduction

Approximately 2.1 million children have at least one parent in a European prison on any given day.¹ These children are often negatively affected by their parents' incarceration. Among other things they suffer from separation anxiety, stigma, social exclusion, increased poverty, disruption of parent-child bonds and breakdown of family ties (see, e.g., Arditti 2012; Comfort 2007; Condry 2018; Condry, Kotova, and Minson 2016; Murray 2005). Despite all this, policies specially designed to support children of prisoners are often lacking.²

This raises several important questions about justice. What moral obligations are owed to these children and by whom? Is the current state of affairs even just to begin with? To some the answer to the latter question is obviously no – which might suggest that this issue requires no further attention. Still, we believe that there are good reasons to engage with these philosophical questions. Perhaps most importantly, being able to provide a plausible philosophical account for why the negative effects associated with parental imprisonment are unjust would not only confirm that the current state of affairs is indeed unjust, but would also provide an explanation for why that is so. Being able to answer this latter question, we think, is crucial in order to determine what ought to be done in response to this injustice. In short, we want to have a normative account that might help guide practice. The aim of this paper is to develop and defend such an account.

The paper proceeds as follows: To set the stage, we begin with a discussion of the widespread view that many of the negative effects of parental imprisonment are unjust simply because children of prisoners are impermissibly harmed or unjustly punished by their parents' incarceration. While initially plausible, we argue that proposals of this sort have difficulties in accounting for cases where it is largely intuitive that the use of imprisonment creates injustices for children of prisoners. Therefore, we suggest that in addition to the question of whether the children of prisoners are impermissibly harmed by their parent's incarceration, we should also be asking whether the inequalities that they endure as a consequence of their parent's incarceration are acceptable from a perspective of social justice. In order to answer this question, we propose that the negative effects associated with parental imprisonment should be assessed from the philosophical perspective of liberal egalitarianism, and in particular the family of views commonly referred to as *luck egalitarianism*. According to luck egalitarians, inequalities are acceptable

1 This estimation is made by the European organization Children of Prisoners Europe (COPE): <https://childrenofprisoners.eu/the-issues/>.

2 See, e.g., <https://childrenofprisoners.eu/the-issues/>. For important exceptions, as well as suggestions about how the situation for these children can be improved, see Scharff Smith (2015).

only if they are the result of choices for which the affected individuals are themselves responsible. By contrast, inequalities that are the result of factors beyond individuals' control are objectionable and ought to be corrected or mitigated. In making this argument, we develop a luck egalitarian account that incorporates important insights from the philosophy of childhood. On our account, children of prisoners often suffer two forms of inequality, both of which are objectionable. The first concerns resources of the sort that are crucial for ensuring fair equality of opportunity in adulthood, whereas the second concerns childhood welfare and the opportunity to enjoy what have been called the intrinsic goods of childhood. After outlining and defending our account, we then explore its implications for policy.³

2 The Unjust Harm Account

A number of philosophers have argued that the negative consequences that befall children of prisoners are unjust simply because these children are impermissibly harmed or unjustly punished by their parent's incarceration. For instance, Rita Manning (2011) argues that the harm caused to children of prisoners is 'incompatible with the bedrock retributivist principle that guilt is a necessary condition for the infliction of punishment' (p. 277). Similarly, Richard Lippke (2017) argues that failure to confine penal harm only to the offender comes perilously close to punishment of the innocent, which is widely considered to be morally impermissible. Let's call this the *Unjust Harm Account* (UHA).

The UHA is initially plausible. Few would deny that it is at least *prima facie* morally wrong to cause harm to those who do not deserve it. One response to the UHA, however, is that even though the children of prisoners are harmed by their parents' incarceration, it is first and foremost the imprisoned parent, rather than the state, who is responsible for and who should compensate for this harm. In response, it is important to note that the extent to which prison is used as a mode of punishment is the result of political decision-making. As we discuss later in this paper, much of the harm endured by children of prisoners is due to the fact that

³ We are not the first to analyze the negative effects of imprisonment on family members of prisoners from the perspective of social justice. In recent work, Rachel Condry (2018) examines the harm endured by families of prisoners through the work of Iris Marion Young, Martha Nussbaum and others. We agree with much of what Condry says in her analysis, and our discussion complements her in several ways. Unlike Condry, we examine this issue at greater depth using and developing one specific theory of distributive justice, rather than drawing from different theories that may not be fully compatible on a theoretical level. Moreover, while Condry focuses on families of prisoners – considered as a whole – our focus is on children of prisoners and the particular concerns that their situation gives rise to.

prison is used as the mode of punishment and could perhaps be avoided if the state were to rely on alternative forms of punishment (section 3.1). It is therefore reasonable to assert the state is indeed responsible for at least part of the harm caused to children of prisoners.

Another response to the UHA is to maintain that it is sometimes morally permissible for the state to cause harm to the families of prisoners, even if it is undeserved. While it is indeed morally wrong to intentionally inflict undeserved harm, quite a few philosophers believe that it is sometimes morally permissible to cause harm to innocent individuals under the condition that this harm is not intended but a merely foreseen side effect of bringing about some good effect. Within the framework of just war theory, for example, it is widely asserted that it is prohibited to deliberately attack innocent civilians (Walzer 2015/1977). Yet, it is often argued in this context that causing harm to innocent civilians might be unavoidable and sometimes morally permissible under the assumption that it is a merely foreseen side effect of promoting a good end (McIntyre 2019). Analogously, one might argue that although it is morally prohibited to deliberately punish an innocent person, it is morally permissible for the state to cause undeserved harm to families and children of prisoners, under the condition that this is a merely foreseen side effect of promoting a morally important end (such as preventing further crimes or giving people their just deserts).⁴

This argument relies on the doctrine of double effect. Leaving aside the fact that this is a contested principle, it is disputed whether invoking the doctrine really shows that the harm caused to children of prisoners is in fact morally permissible. Even if the doctrine suggests that it is sometimes morally permissible to impose harm on innocent individuals, on condition that this is a merely foreseen side effect of promoting some good end, it also requires that the good intended is good enough compared to the bad effect and that causing this harm to innocent parties is necessary for achieving the intended good (McIntyre 2019). However, as several philosophers have pointed out, it is debatable to what extent the harm often suffered by children of prisoners in many jurisdictions is necessary for achieving the justificatory aim that motivates their parent's punishment. Nor is it obvious that the actual benefits of prison sentences always outweigh the harm caused to the families of prisoners (Bülow 2014; Lippke 2017; Ristrup 2016). For example, while commenting on the US criminal justice system, Alice Ristrup (2016) argues that the devastating impact that high levels of imprisonment and long sentences

⁴ For a similar observation, see Duus-Otterström (2010), who notes that at least some retributivists might argue that it is morally permissible to 'pursue the good of punishing the guilty even though, say, this will as a side-effect cause undeserved suffering amongst their friends and families' (p. 357).

have on the lives of prisoners and their families, as well as the wider community, will most likely render this system widely disproportionate. Hence, under these circumstances families and children of prisoners are indeed impermissibly harmed. The same arguably holds for many other penal systems that rely heavily on lengthy and harsh prison sentences. As Lippke (2017) points out, such sentences only have modest gains in marginal deterrence and, dependent on the type of offense, not always an obvious incapacitative effect. Hence, it is not clear that the benefits that sentences of this sort have in terms of crime prevention outweigh their detrimental effects on the wellbeing of the offenders as well as their families and children.

We grant that this is a plausible response and reconceptualization of the UHA. Still, there are important challenges to this somewhat revised version of the account. Firstly, even if lengthy and harsh prison sentences can be discouraged on the basis that their use impermissibly harms families of prisoners, the question remains how to determine when the collateral harm inflicted on innocent third parties by a particular penal system is necessary and, if so, whether it is proportionate or not. Secondly, depending on how we respond to the first issue, it is debatable whether this approach takes us far enough. For example, while Ristrup and others recognize the urgent need to mitigate the collateral harm caused by what they (rightly) perceive as an excessive use of imprisonment, we should also ask whether the harm caused to children of prisoners is unjust even when imprisonment is used to a far lesser extent and when considerable attempts have been made to mitigate its collateral harm.⁵ After all, in that scenario too, children of prisoners are likely to suffer because of their parent's incarceration. In particular, they are much likely to be worse off relative to other children.

To illustrate, consider the Scandinavian countries, where the penal systems are characterized by comparatively low levels of imprisonment as well as more humane prison conditions. Here too, children of prisoners are likely to endure trauma and stigma because of their parents' incarceration (Scharff Smith 2015). Furthermore, a recent study in Sweden suggests that children whose parents are sentenced to prison, instead of being given a non-custodial sentence, are more likely to be convicted of teen crime. They are also less likely to graduate from high school and secure employment in early adulthood. These effects are all concentrated and most prevalent among children from more disadvantaged families (Dobbie et al. 2019). Intuitively, these are still serious concerns from a social justice

⁵ For a discussion on the many things that might be done to mitigate the harm to children of prisoners, see Lippke (2017).

perspective. Yet, the problem here is not that the collateral harm caused by these penal systems clearly renders them disproportionate. In fact, we suspect that quite a few might argue that this is not the case, especially if there are sufficient opportunities for family visits (see, e.g., Tadros 2011).⁶ Instead, the problem is that imprisonment seems to give rise to or aggravate already existing inequalities among children and the future adults that they will become. This is something that is not captured by an account that merely focuses on whether the harm caused to the children of prisoners by their parents' incarceration is largely proportionate. Or at least not obviously so.

To clarify, our claim is not that the UHA is wrong. However, based on our discussion so far, we believe that the focus on whether the children of prisoners are impermissibly harmed is perhaps too narrow. Therefore, in addition to the question of whether children of prisoners are impermissibly harmed by their parents' incarceration, we should also ask whether the inequalities that children of prisoners suffer are acceptable from a perspective of social justice. This is the question to which we now turn.

3 Parental Imprisonment, Luck Egalitarianism, and Justice for Children

Our overall argument in this paper is that the negative consequences that befall children of prisoners due to their parents' incarceration are unjust because they give rise to objectionable inequalities. In particular, our suggestion is that we should examine the negative consequences associated with parental imprisonment from the perspective of the branch of liberal egalitarianism known under the name of luck egalitarianism. According to luck egalitarians, inequalities are acceptable if they are the result of choices for which the affected individuals are themselves responsible. By contrast, inequalities in which individuals are made worse off as the result of factors beyond their control should be corrected or mitigated.

⁶ In response, one could perhaps argue that the moral disvalue of the harm caused to children of prisoners still renders the use of imprisonment disproportionate even in this case. A possible argument for this is that the moral disvalue of the harm caused to children of prisoners is aggravated by the fact that it is imposed on individuals who are already worse off. We do not want to dismiss this possibility. However, we should note that this response reintroduces the first issue raised to the more permissive UHA, namely, how to determine whether the harm is indeed disproportionate or not.

Other theories of distributive justice might also be relevant when it comes to analyzing and assessing the negative impacts of parental imprisonment.⁷ However, we believe that there are several reasons, apart from initial plausibility, to take luck egalitarianism as a starting point. Doing so allows us to incorporate the work of a large number of influential theorists in the theory of justice into our approach, which is useful for a project that aims to show the importance of considerations of equality for thinking about the situation of the children of prisoners. Moreover, the diversity of luck egalitarian theories provides a useful assortment of theoretical tools, and these, as we hope the analysis below shows, will be of help in interpreting the situation of children of prisoners and thereby helping us derive interesting both practical and theoretical implications. Furthermore, as will become clear, applying this influential account of justice to a topic regarding children makes necessary some theoretical developments. Hence, there is also some theoretical interest in taking this approach.

In what follows, we begin with an overview of some of the harms that children of prisoners might suffer. In doing so, we provide the first step towards the claim that children of prisoners suffer an objectionable inequality. We then present luck egalitarianism in somewhat more detail, including its implications for children. The next step is to discuss the appropriate metric of justice for luck egalitarianism. While luck egalitarianism is typically concerned with equality of resources, we argue that the *distribuendum* should also include a perfectionistic version of welfare for children. In applying our account to the case of children of prisoners, we argue that they are likely to suffer two forms of inequality, since children of prisoners are both at risk of being deprived of resources that are important for ensuring fair equality of opportunity in adulthood and likely to suffer an objectionable inequality in terms of childhood welfare.

3.1 Parental Imprisonment and Its Impact on the Children of Prisoners

Research in criminology and psychology suggests that parental imprisonment too often negatively affects the psychological wellbeing of children of prisoners (Arditti 2012; Comfort 2007; Murray 2005, 2007; Scharff Smith 2015). Besides

⁷ Salient alternative accounts of liberal egalitarianism are the capabilities approaches of Sen (1999) and Nussbaum (2000), which incorporate a similar approach to responsibility to that of luck egalitarianism, and the theory of democratic equality and the sufficientarianism developed by luck egalitarianism's fiercest critic, Elizabeth Anderson (1999; 2007). Indeed, it was Anderson who coined the term luck egalitarianism, and even though it may have started out as a term of abuse, it has become the standard label for the theories we discuss in this section.

feelings of shame and stigma, children of prisoners often experience sleeping problems and feelings of depression (Arditti 2012; Scharff Smith 2015). The experience of parental incarceration has been characterized as an enduring trauma associated with feelings of uncertainty about the parent's wellbeing whether the parent will come back, and whether things will return to the way they used to be. Children of prisoners might also experience symptoms of posttraumatic stress disorder (PTSD). The risk of PTSD is even greater if the child has also witnessed the arrest of their parent (Arditti 2012).

In addition to psychological harm, families of prisoners often suffer from the loss of household income as well as other financial costs and burdens associated with prison visits (Arditti 2012; Arditti, Lambert-Shute, and Joest 2003; Murray 2005). This might lead to or increase child poverty, which is a serious ethical concern in its own right (Schweiger 2019; Schweiger and Graf 2015). Here we should note that it is likely that the psychological wellbeing of children of prisoners might further deteriorate in such economically constrained circumstances as well as by a lack of social and emotional support. It is therefore important to remember that the harm associated with parental imprisonment cannot be dismissed as merely 'emotional'. Moreover, as Lippke (2017) points out, children can suffer in multiple ways when a parent is sent to prison, and not just from impoverishment. In the case of single-parent families, for example, the children might end up living with grandparents or family friends, or they might wind up in the foster care system.

All this puts children of prisoners in a very vulnerable position. Yet, it is important to keep in mind that parental imprisonment might have good consequences for children too, most notably when they are the victims of crime or domestic violence. One qualitative study suggests that some prisoners' family members may perceive prison as a 'safe haven' for the inmate that may help him or her stay out of trouble. Some of the research participants also believed that prison may lead to rehabilitation and reform and that it may help improve family functioning and communication. Still, the same study emphasizes that the challenges that result from the incarceration of a parent for the most part largely outweigh these positive effects, especially when the remaining parent has to struggle to fulfill their rather demanding parental responsibilities in a situation of economic hardship (Arditti, Lambert-Shute, and Joest 2003; see also Arditti 2012).

It has been noted that it is unclear to what extent the various negative effects associated with parental imprisonment are due to indirect effects associated with losing a parent to prison (such as economic disadvantage or lack of parenting stability) or the imprisonment as such (Arditti 2012). This distinction is important if one wishes to understand the direct causes of these effects and how to best prevent them. But it might also have relevance for an assessment of whether the inequalities associated with parental imprisonment are unjust or not. For example,

several of the effects discussed so far are also associated with other disruptive events that might negatively affect children, such as divorce, family separation or the death of a parent. Here too children will often suffer emotionally while the remaining family household struggles financially. Yet, some might hold that the inequalities that arise due to a divorce or separation are not necessarily objectionable and that others do not have a duty to compensate children for their parents' choices when this happens. This invites the question of whether there is something special about parental imprisonment.

Without underestimating the negative effects of the many other tragic events that might negatively affect children's wellbeing, we should again note that the incarceration of a parent is a state intervention and that it often has drastic effects for the children affected by it. As Arditti (2012) points out, the stigmatization associated with the involvement of the criminal justice system might intensify some of the negative effects associated with parental imprisonment. Unlike other separations, including the death of a family member, the incarceration of a member of family does not lead to much sympathy or recognition from others. On the contrary, families of prisoners are at risk of being alone when facing the burdens that this separation involves. In addition to the hardships that we have already mentioned, this includes strong feelings of shame, stigma and grief (see also Condry 2018).

There are also negative effects that come from direct contact with the prison system. Visiting a parent in a prison setting might be stressful and contribute to the enduring trauma already associated with the arrest and the physical separation of the parent (Arditti 2012). According to Megan Comfort (2007) prison visits are situations where the visitor might acquire the status of a 'quasi-inmate'. While inside the prison facility, 'visitors are subject to the same scrutiny, general withholding of information, required obedience of institutional rules, and periodic reminders of their subordinated status as are the inmates' (p. 277). Recent criminological research suggests that smaller children too might suffer due to strict institutional rules. For example, the prison context implies that children visiting their parent have to surrender control of their bodies to strangers and regulate their emotions (they might not be allowed to hug their mom or dad, for example). These aspects of the prison system can be both confusing and overwhelming for the child, who does not necessarily understand the logic behind prison rules (Aiello and McCorkel 2017). Similarly, Peter Scharff Smith (2015) notes that closely supervised visits might be experienced as stressful and awkward for the children, especially when opportunities for family visits are limited.

Stigmatization, social exclusion, and continuous reminders of one's subordinated status may surely have a negative impact on the welfare and wellbeing of families of prisoners, including the children. They also challenge what John Rawls

(1971) famously refers to as the social bases for self-respect. These consist of the institutional framework of society and the way it can function to enable people to have confidence in their ability to pursue their own conceptions of the good and in the value of the conceptions that they choose to pursue (p. 440ff.). Plausibly, the social bases for self-respect involve, as far as this is possible, freedom from stigmatization and other forms of degrading treatment. Victims of such treatment are at risk of internalizing a false view of their unequal worth, which could lead to and cause a lack of self-esteem. In the case of children of prisoners, we should note that such stigmatization might cause a lack of self-esteem both during childhood and in their future as adults. We will return to this issue below.

We should also bear in mind that imprisonment often has a disproportionate impact on already economically and socially disadvantaged families and that it magnifies patterns of social and economic disadvantage (see, e.g., Arditti, Lambert-Shute, and Joest 2003; Condry 2018; Condry, Kotova, and Minson 2016). As we have already mentioned, a recent study conducted in Sweden suggests that children whose parents are sentenced to prison, rather than given a non-custodial sentence, are less likely to complete high school and much less successful in the labor market. These effects are most prevalent among children from already disadvantaged families, which suggests that they might be particularly vulnerable to the trauma of losing a parent to prison (Dobbie et al. 2019). Moreover, it has been reported that parental imprisonment is associated with an increased risk of criminal behavior leading to subsequent criminal offenses by children of prisoners (see, e.g., Dobbie et al. 2019; Lippke 2017; Murray 2007), even if important differences among different countries have been observed (Dobbie et al. 2019; Scharff Smith 2015). These empirical findings suggest that the impact of parental imprisonment is not necessarily limited to the children's welfare here and now. It might also have a sustained impact on their opportunities later in life.

To sum up, children of prisoners are at risk of facing a range of negative consequences that are likely to render them worse off relative to other children. This is not to say that every child experiences parental imprisonment in the same way. On the contrary, things may vary greatly among different individuals, for example due to such factors as age. Some children might even benefit from their parents' incarceration, especially when the parent is sentenced for domestic abuse. That said, it is reasonable to assert that children of prisoners in general are likely to be worse off due to their parents' incarceration. As we argue below, the many inequalities that we have discussed so far are all problematic from a luck egalitarian perspective. However, before we can develop this part of our account in detail, we must say something about luck egalitarianism and how it can be developed in order to account for justice for children.

3.2 Luck Egalitarianism, Equality, and Responsible Choices

The starting point of the contemporary discussion of distributive justice is the work of John Rawls (1971). When he presents his theory of justice, the argument concerning the social and natural lottery takes a central place. Rawls notes that one is not responsible for the genes one happens to be born with since they are not chosen by oneself. This is the natural lottery. Moreover, one cannot choose the social circumstances one will find oneself in when one is born. This is the social lottery. Rawls's point is that distributions of goods should, *all else equal*, be equal, since there is no responsibility or desert consideration that justifies the inequality that otherwise follows from these two lotteries (p. 73ff.). This intuition can be spelled out in different ways, but one especially important strand of interpretation can be found among luck egalitarians, such as Ronald Dworkin (2000), G.A. Cohen (1989), and Richard Arneson (1989). They hold that the message we should take from the two lotteries is that distributive justice is concerned with both responsibility for choices and with equality (Kymlicka 2002). These philosophers further assume that one can be responsible for some choices and that the two lotteries do not determine every choice. Therefore, they interpret distributive justice as implying that unchosen inequality is unjust, whereas inequalities that are the outcome of responsible choice are just.

Luck egalitarianism consists of a family of theories, but we find Dworkin's (2000) account of justice particularly useful for spelling out the implications of this view. It starts from two principles: the state should show *equal concern* and *equal respect* for each citizen. To show respect for a person is to respect his or her agency and to hold the person responsible for his or her choices. In this sense, the value of personal responsibility is central to Dworkin's account of equality. The distribution of goods must be sensitive to the choices that people make based on their ambitions regarding their lives. However, the distribution of goods should not vary with their endowments, which is another way of saying that it should not depend on the outcome of the two lotteries. This is the principle of equal concern.

According to Dworkin, then, people are responsible for the outcomes of their deliberate choices and for the risks they choose to take, but not for things that happen to them through no choice of their own. This implies that people should be compensated for simply being worse off due to what Dworkin calls *brute luck*, while unequal distributions can be justified if they are the result of autonomous choice or risk-taking (p. 73). We believe that this makes luck egalitarianism attractive as a theory of justice. Of course, the distinction between what is the result of free choice and what is the upshot of brute luck may not always be easy to

uphold in practice. Still, we believe that the general notion of a difference between chosen outcomes and the results of brute luck is largely intuitive.

However, when we start thinking about the implications that luck egalitarianism has for children, we find that it needs further elaboration. On the standard view of agency, children are not yet fully autonomous (Schapiro 1999; cf. Hannan 2018). This means in turn that they are not yet the kind of agents that can justifiably be held responsible. This might seem to cause a problem for luck egalitarian theories, but in fact, it simplifies things. Since there are no inequalities among children that can be justified by reference to their responsible choices, luck egalitarianism straightforwardly implies strict equality among children. The principle of equal concern becomes *the sole guiding principle* of luck egalitarianism regarding the interests of children.

Some might argue that this account of agency and responsibility is ageist, especially towards somewhat older children. Let us therefore give yet another reason not to hold children responsible; namely, that they, due to being in a very important and potentially fragile developmental phase, are vulnerable (Schweiger and Graf 2015; Schweiger 2019). Demanding full responsibility from them during this phase might hinder the process of their becoming autonomous adults. If this is true, then we have a reason not to hold children responsible in the same manner that we hold adults responsible. Furthermore, even if children are indeed responsible and their vulnerability less important than we have claimed, inequalities among children cannot be justified by the choices and actions of their parents, even if those choices can justify inequalities among adults.

In the previous subsection we saw that parental imprisonment often creates a number of inequalities among children. In what follows, we discuss in somewhat greater detail how these inequalities relate to a theory of distributive justice of the sort described above.

3.3 Childhood and the Metric of Justice

Every theory of distributive justice must specify not only the principle of distribution but also give an account of what it is that should be distributed according to that principle. The question therefore remains what the appropriate metric of justice is. Luck egalitarianism is typically associated with the view that justice is concerned with the distribution of resources. However, as we argue in this section, the distribuendum should also include a perfectionistic version of welfare for children. For reasons of space, we are not able to provide a complete defense of our views on this matter. Yet, we hope that the sketch that we provide here has considerable plausibility.

At first sight, the obvious *distribuendum* of justice may seem to be welfare. (What could be more important than a happy life?) But the debate on luck egalitarianism has shown that this proposal for what ought to be distributed equally might be problematic. The standard argument here concerns the problem of expensive tastes (Dworkin 2000, p. 48ff.). Assume that equality of welfare has been achieved. Louis finds that he wants to become a wine connoisseur and sets out to learn to drink very expensive pre-*phylloxera* wine. He succeeds, with the consequence that he can rarely afford to satisfy his preference for this drink. He thereby achieves a much lower level of welfare than other people who might be happy with having a cheap beer every now and then. But this means that there is no longer equality of welfare. If our aim is to ensure equality of welfare, this would require that resources be redistributed to Louis to regain equality in the dimension of welfare. However, this seems unfair. Why should Louis get a larger share of resources, especially when he is the one who decided to become a wine connoisseur?

The fact that the ideal of equality of welfare isn't sensitive to responsibility considerations of this sort is one reason why some luck egalitarians have preferred resources as the proper metric for an egalitarian theory of justice. For Dworkin, the general concept of resources includes both impersonal resources – such as wealth, property and opportunities – as well as personal resources, which include the person's mental and physical health and his or her capacities (2000, p. 322f.). This is a rather general characterization of resources, but one can gain a more precise understanding of this notion if one turns to Rawls's interpretation of this idea. For him resources, or primary goods, consist of five categories (2001, p. 58f.):

- (i) the basic rights and liberties, (ii) freedom of movement and free choice of occupation against a background of diverse opportunities, (iii) the power and prerogatives of offices and positions of authority and responsibility, (iv) the all-purpose means of income and wealth, and (v) the social bases of self-respect.

As one notices, Dworkin and Rawls share a commitment to the general value of opportunities, and therefore share a focus on equality of opportunity, even if their conceptions of this ideal might differ. Moreover, the general message is clear: no one should have fewer such resources than anyone else for reasons having only to do with brute luck. Hence, those who are born with fewer resources – in terms of capacities or wealth, for example – should be compensated. Here it is again worth paying attention to what Rawls calls the social bases of self-respect. As we noted above, these arguably involve freedom from stigmatization and unfair discrimination. In fact, this is a vital resource if our aim is to ensure fair equality of opportunity.

One important reason for favoring resources as the proper metric of justice is that they allow the important value of personal responsibility to play its part in an egalitarian theory of justice. Yet, while this might be a strong point in favor of

resourcism, it also creates a problem when we turn to the issue of children and justice that necessitates further development of luck egalitarianism. Children, as we argued earlier, are not yet responsible agents, which means that this reason for favoring equality of resources, rather than equality of welfare, does not seem to work (see also Lindblom 2016). Moreover, the types of resources commonly discussed by luck egalitarians are primarily valuable for autonomous agents who are capable of making responsible choices for themselves. Since an account of justice should deal with the distribution of what is valuable, we therefore need to look elsewhere for a different metric for children (Lindblom 2016; MacLeod 2010).

One possibility is that those things that are valuable for children and which ought to be distributed fairly among them according to luck egalitarianism are simply the type of resources that are required in order to ensure fair equality of opportunity later in adulthood. Hence, a fair distribution of both economic and social resources, such as having access to equal education and a caring and supporting environment, is indeed important for children. However, from a justice perspective, we should not only think about the type of goods that are beneficial for children later in life, but also about goods that are important for children here and now (MacLeod 2010; Schweiger and Graf 2015). In addition to a metric that makes sense of inequalities among adults, we also need a metric that can handle inequalities among children *qua* children. Here, welfare might indeed be the relevant metric. After all, what motivated the move away from the ideal of equality of welfare and the belief in the importance of a happy life was the significance of personal responsibility. But if the argument from personal responsibility does not apply, we should accept the fallback position of welfarism. Furthermore, focusing on welfare allows us to incorporate the intuition that there is something very important about having a happy childhood. Therefore, the appropriate metric of justice for children should be a combination of welfarism for children *qua* children and resources covering whole lifespans (Lindblom 2016).

If welfare is the appropriate metric of justice for children *qua* children, how should one conceive of this value? We will not give a full-fledged account of welfare for children here (cf. Skelton 2015). Instead, we will focus on an important development in the philosophy of childhood with significant implications for how to think about welfare for children.

Philosophers of childhood argue that there are *intrinsic goods of childhood*. These are goods that are especially (or perhaps only) accessible in childhood and that in general make a distinctive and weighty contribution to childhood welfare (Gheaus 2015). In the quickly developing literature, there are several accounts of what these goods might be (Brennan 2014; Brighouse and Swift 2014; Macleod 2015; cf. Lindblom 2018). However, Anca Gheaus's (2015) suggestion seems particularly pertinent. She argues that learning, play, discovery of the world at

one's own pace, carefreeness, unstructured time, and developing capacities unrelated to work are all important childhood goods. Another important good for children might be to have a good and stable parent-child relationship (Brighouse and Swift 2014). The fact that these goods make significant contributions to childhood welfare suggests that children should be provided with equal opportunities for experiencing these goods. Moreover, in addition to their importance for childhood welfare, we should note that the fact that these goods are intrinsic to childhood implies that it might not be possible to fully compensate for their loss later in life (or at least not obviously so). The point of this is easy to see. Play at the age of forty-seven is not the same kind of activity and does not have the same kind of value as play at seven. This, in turn, means that it might be impossible to fully compensate during adulthood an inequality in childhood welfare brought about by a lack of the intrinsic goods of childhood.

The implication of our argument here is that children, as a matter of justice, are owed both a happy childhood as well as the resources needed in order to ensure fair equality of opportunity later in adulthood.⁸ To us this seems like a plausible view. Focusing solely on what is important for adulthood would render childhood 'a mere preparatory stage of life' (MacLeod 2010, p. 182). It would also be troubling if the value of a happy childhood could be completely overridden by considerations having to do with resources in adulthood. By contrast, our account suggests that having opportunities to experience the intrinsic goods of childhood also matters from a perspective of social justice. We also think that our account has the advantage of making it more precise what it is that we owe the children of prisoners, which is the issue that we now turn to.

3.4 Parental Imprisonment and Justice for Children

In section 3.2 we showed that the principle of equal concern becomes the sole guiding principle for luck egalitarianism in cases regarding inequalities among

⁸ In this regard, our account of justice for children has important similarities to the view defended by Schweiger and Graf (2015), although their view is grounded in the capability approach of Nussbaum and Sen rather than a pluralist distribuendum of resources and welfare. Also, on a similar basis to my account, Brighouse and Swift (2014) provide a compelling argument to justify the right of children to have parents. The parent-child relationship gives rise to familial relationship goods that are grounded in childhood welfare and adult autonomy interests. The topic of this paper, however, concerns the importance of equality rather than the import of rights, but we note that the implications of such a right may be far reaching for the situation of the children of prisoners. Another interesting account of childhood rights for this context can be found in Matthew Liao's *The Right to Be Loved* (2015).

children. In section 3.3 we argued that if luck egalitarianism is to take the interests of children into account, then it should include a pluralist distribendum that not only considers resources of the sort that facilitates fair equality of opportunity in adulthood, but also takes children's welfare into account. Putting these things together, we can now see how these points have important implications for the assessment of the negative impact of parental imprisonment that was made in section 3.1.

Firstly, since the metric of justice we are proposing includes childhood welfare, it explains why the economic, social, and emotional risks that children of prisoners suffer are serious concerns. The trauma associated with parental imprisonment clearly negatively affects the opportunity to enjoy many of the intrinsic goods of childhood and, therefore, childhood welfare. The same holds for the social vulnerability that follows from losing a parent to prison. Of course, losing a parent to incarceration is not the only event that might negatively affect children in this way. The same goes for the sudden death of a parent or might come from a parent's decision to simply abandon his or her family. This should not lead us to the conclusion that incarceration is unproblematic, however. A more reasonable conclusion, we think, is that all these losses are potentially worrisome.

Secondly, taking into consideration the importance of securing the social bases of self-respect, we can explain why social damage associated with parental imprisonment is an issue of justice. To be able to live life without stigma is a core demand of justice. Yet, as we noted above, stigmatization, social exclusion, and continuous reminders of one's subordinated status are also among the negative impacts that might follow from parental imprisonment. In addition to their negative impact on children's welfare, these effects are also worrisome with respect to children and adolescents and their prospects as future adults. If they experience an enduring stigma in their youth, they are at risk of internalizing a false view about their equal worth.

Thirdly, the importance of ensuring fair equal opportunities later in adulthood also ties our account to the issue of how parental imprisonment negatively affects the likelihood that children of prisoners complete their education as well as their opportunities to secure employment in early adulthood. It also ties into to the often-noted risk of future delinquency among children of prisoners. Each of these threatens to undermine equality of opportunity for these children as future adults. As we acknowledged in section 3.1, these effects are most prevalent among these children from already disadvantaged families, a societal group already disproportionately affected by imprisonment (Condry 2018).

In sum, parental imprisonment is associated with two different types of inequality that both turn out to be objectionable on our luck egalitarian account. Besides the risk of being deprived of the type of goods and resources that are

important in order to ensure fair equality of opportunities and resources in adulthood, children of prisoners are also at risk of losing the opportunity to enjoy many of the intrinsic goods of childhood and thereby suffer a substantially lower level of childhood welfare. The fact that it might not always be possible to compensate for loss of the intrinsic goods of childhood at later stages of life suggests that this form of inequality is perhaps worrisome.

4 Practical Implications

We have argued that parental imprisonment is associated with a number of social inequalities that are objectionable from a luck egalitarian perspective. These include both inequalities in terms of resources that are important for adult life as well as many goods that can perhaps only be enjoyed during one's childhood. In this section we explore the implications of our argument for public policy. Note, however, that this is a very difficult task and would require input from a large range of academic disciplines beyond moral philosophy. Therefore, our aim in what follows is merely to provide some tentative suggestions that should be taken into consideration for future policy.

The first issue that ought to be recognized is to what extent the demands of social justice are compatible with a proper functioning of the penal system. Without taking any direct stance on the grounds on which legal punishment is morally justified, we subscribe to the widespread assumption that criminal offenders should be subjected to a punishment that is proportionate to and reflects the severity of their criminal offense (see, e.g., Duff 2001; von Hirsch 2017). By the same principle it follows that individuals that are found guilty of crimes of equal severity should receive equally severe punishments. This emphasis on proportionality and parity in sentencing coheres with luck egalitarianism since it too suggests that unequal treatment is objectionable when there is no clear difference in responsibility.

On our luck egalitarian approach, then, an appropriate policy should (i) respect proportionality and parity in sentencing, (ii) avoid creating inequalities among the children as adults, and (iii) avoid creating inequalities among children *qua* children. Following our account outlined in section 3, these include both inequality in childhood welfare as well as inequality in resources. In what follows we consider two broad approaches that can be used in order to strike a balance among these three requirements.

The first approach is to reform the social institutions giving rise to the conflict among these requirements. The punishment of parents affects children largely

because of the relational vulnerability that characterizes the child's relation to his or her parents. One approach would therefore be to make children's welfare less dependent on their parents. For example, one could opt for a greater socialization of childrearing by giving all children additional parental figures. This would work to minimize the risks associated with childhood vulnerability (Gheaus 2018). However, such a reform of the institution of the family might seem too drastic to some. Let us therefore look at another approach.

This second approach would be to change the way that punishment is meted out and administered. Insofar as the harms endured by children of prisoners are largely due to the parent being physically removed from the community and prevented from working or providing social support for his or her family, one idea would simply be to encourage alternative forms of punishment to a much larger extent. As Manning (2011) points out, the harm inflicted on children of prisoners should motivate us to find alternatives to incarceration. She suggests that many prison sentences could be replaced with restorative justice programs, but also that mandatory drug-treatment programs could replace incarceration in several cases. Such suggestions are likely to be met with suspicion, however, as they might give the impression that parents should be punished less harshly than criminal wrongdoers who have no children. This would be unfair and goes against the view that individuals found guilty for similar crimes should receive equally severe punishments; a view that also coheres with the basic commitments of luck egalitarianism.

However, differences in modes of punishment do not have to imply a substantial difference in severity. For example, even if community-based sanctions, such as probation programs and community service, are often encouraged when dealing with less serious crimes (see, e.g., Duff 2001; von Hirsch 2017), we should note that such sanctions can be made more intensive and be just as harsh or burdensome as shorter or medium long prison sentences. Similarly, restitution programs, in which offenders are forced to pay compensation to their victims and to make amends, are also promising as alternatives to prison sentences in a wide range of cases (see, Sayre-McCord 2001). This suggests that it is sometimes possible to mitigate at least some of the harm that would be endured by children, had their parents been subjected to a prison sentence, without necessarily changing the severity of the punishment meted out to the parent. Different forms of punishments might be equally severe but have different impacts on the children of those punished.

Of course, the alternatives we propose might give rise to objectionable inequalities too. For example, alternative forms of punishment may still be stigmatizing for children whose parent is being punished. A family might also suffer financially when a parent is participating in a restitution program. Note, however, that this does not mean that these alternatives are on par with

incarceration or that incarceration becomes less problematic. On the contrary, the reason why a luck egalitarian should endorse these alternative modes of punishment is that they are likely to cause *less* harm to children than losing a parent to incarceration. For example, a luck egalitarian has strong reasons to favor non-custodial sentences since sentencing a parent to prison is associated with worse outcomes for children in terms of future life opportunities. Moreover, the fact that children are negatively affected by alternative modes of punishment does not mean that we should not be doing anything. Rather, we should seek to alleviate the negative impacts on children in this case too, for instance by providing social, psychological, and emotional support to the child when needed. Indeed, from a broad societal perspective, new policies to lower social and economic inequality in general may be called for as a means to minimize the and social harm caused to children by their parents' punishment.

We should remember that there will most certainly be cases where a prison sentence is the only feasible option. This is either because the crime was so reprehensible that no other form of punishment than a long prison term would do or because the wrongdoer is dangerous and poses a serious risk to the public. In the latter case, it will also be in the interest of the child that the parent is incarcerated. Imposing a prison sentence might also be the only feasible option should an offender simply refuse to abide by any of the alternative non-custodial sanctions required of him or her (Bülow 2019; Duff 2001). This should not lead to the conclusion that nothing can be done, however. Rather, in this case it becomes important to revisit the first approach and try to make the welfare of the child far less dependent on the consequences of the parent's actions and decisions. Again, this should include the provision of financial, emotional and social support to children of prisoners in order to mitigate the negative impact that their parent's incarceration might have for them. Moreover, given how children from already socially and economically disadvantaged families are particularly vulnerable to the negative impact of parental imprisonment, especially in terms of future life opportunities, alleviating pre-existing social and economic disadvantages might hopefully render this group less vulnerable to these risks. Finally, we should recognize that we all have a shared responsibility not only to ensure equality of opportunity for these children in adulthood, but also to make sure that they, to the best extent possible, have access to the intrinsic goods of childhood. This might require further actions beyond merely mitigating the negative impact that parental imprisonment has on the wellbeing of children.

5 Conclusion

The negative impact of imprisonment on children of prisoners is a pressing concern. According to some estimations, more than two million children have at least one parent in a European prison on any given day. These children often suffer a range of different harms because of their parents' incarceration, harms that they receive too little support to cope with. In this paper we have investigated the harms associated with parental imprisonment from the perspective of social justice. We have argued that the negative effects associated with parental imprisonment are unjust because of how they give rise to objectionable inequalities. Building on the framework of luck egalitarianism, we have argued that these objectionable inequalities include inequality regarding resources that are crucial in order to ensure fair equality of opportunity in adulthood, but also inequalities in terms of childhood welfare. Taking these inequalities seriously should lead us to reconsider prevalent practices within our criminal justice systems. In particular, we have suggested that, we could perhaps mitigate some of these inequalities, in a wider range of cases, by considering alternatives to imprisonment, alleviating pre-existing disadvantages, and by providing financial, social and emotional support for children of prisoners and their families. By doing so, we might hopefully make the welfare and life opportunities of these children less dependent on their parents' choices.

Acknowledgment: A number of people have provided valuable comments and constructive criticism on earlier versions of this paper. We especially wish to thank Rebecca Adami, Margareta Aspan, Gunnar Björnsson, Kalle Grill, Lisa Hecht, Kristin Hällmark, Jonathan Josefsson, Linde Lindkvist, Elin Palm and Bengt Sandin for their feedback. We also wish to thank the two anonymous reviewers and the guest editors of this issue for their constructive and helpful comments. Bülow's work with this paper is part of a project funded by The Swedish Research Council for Health, Working Life and Welfare (FORTE), grant nr 2018-01116.

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