Putting Wilt Chamberlain Back in the Game

Why Liberalism Is Not Compatible with Distributive Egalitarianism

JESSICA FLANIGAN AND CHRISTOPHER FREIMAN

In this essay, we argue that liberal egalitarians cannot maintain their commitment to liberalism alongside a commitment to distributive egalitarianism—that is, the view that justice requires the state to bring about a broadly egalitarian distribution of resources or welfare. Nearly all liberal political philosophers, including those who reject capitalism, endorse rights of personal property and occupational choice. We argue that respect for these rights, properly specified, precludes the state from enforcing a particular distribution of goods to achieve egalitarian aims.

In the first section we describe liberal egalitarianism and offer a reinterpretation of Robert Nozick's critique of liberal egalitarian principles of distributive justice. Next, we address the accusation that Nozick's argument is objectionably question-begging or stipulative. We show that it is not question-begging because it grants

Jessica Flanigan is a professor of leadership studies and of philosophy, politics, economics, and law at the University of Richmond. She is also the Richard L. Morrill Chair in Ethics and Democratic Values. **Christopher Freiman** is a professor of general business at the John Chambers College of Business and Economics, West Virginia University.

Note: We are grateful for comments from audiences at the 2021 Institute for Humane Studies Papers Workshop for the Center for Ethics in Business and Governance at Saint Anselm College and the 2022 meeting of the Politics, Philosophy, and Economics Society as well as for financial support provided by the Institute for Humane Studies. Thanks are also due to Jason Lee Byas for suggesting the title and to Greg Robson and Robert Whaples for their helpful feedback on an earlier version of this manuscript.

The Independent Review, v. 29, n. 2, Fall 2024, ISSN 1086–1653, Copyright © 2024, pp. 227–245.

the key premises that Nozick's liberal egalitarian interlocutors themselves endorse. Then we explain why Nozick's argument not only shows that a commitment to liberalism clashes with a commitment to egalitarian economic patterns but also serves as an effective internal critique of liberal egalitarianism—a critique that weighs in favor of pattern-independent conceptions of egalitarian justice more generally. Following this, we address the objection that distributive egalitarianism doesn't actually require patterning. In the final section, we argue that the recent relational egalitarian turn in liberal egalitarian theorizing, which conceives of equality in terms of equal authority or moral standing, can avoid many of the problems with a patterned approach to distributive justice while still achieving broadly egalitarian aims. We conclude that it is a mistake for liberal egalitarians to defend redistribution purely on the grounds that it promotes a more equal pattern of holdings.

The Nozickian Critique of Liberal Egalitarianism

As their name suggests, liberal egalitarians are committed to two core principles—liberalism and egalitarianism. Liberalism requires that public officials recognize some basic rights against coercive interference. John Rawls, for example, argues that officials should respect freedom of expression, freedom of religion, political liberties, and more. Critically for our purposes, Rawls explicitly specifies "the right to hold personal property" ([1971] 1999, 53) and "free choice of occupation" (242) as belonging to the list of basic liberties. Rawls later elaborates on the nature of the right to personal property, specifying it as "the right to hold and to have the exclusive use of personal property" (1996, 298). He also explains that "what kind of work people do, and how hard they do it, is up to them to decide in light of the various incentives society offers" (2001, 64). These rights are not unlimited; however, liberals acknowledge that officials may infringe on these rights only for the sake of other morally important social priorities, and even then, basic rights constrain the pursuit of those priorities.

Some liberals also endorse egalitarian distributive principles, which, following Nozick (1974, chap. 7), we can call "end state" or "patterned" principles of equality. (We'll address below the criticism that egalitarianism isn't actually a distributive principle.) According to these pattern theorists, the distributive justice of a society depends on the extent to which distributions of resources, status, opportunities, or other goods approximate an egalitarian state of affairs. Patterned principles include Rawls's difference principle, which requires that a distribution maximize the material welfare of the poorest, as well as a principle that demands strict equality of resources or a utilitarian principle of equal consideration of marginal utility. (Not all liberal egalitarians are committed to patterned distributive principles—relational egalitarians, as we'll discuss, do not claim that egalitarian justice requires achieving an egalitarian distribution of some good.)

According to liberal egalitarians who endorse patterned principles, officials must balance the demands of liberty and distributive equality where they conflict—officials should promote an equal distribution of resources within the boundaries of

respecting people's rights. On this view, some rights may reasonably be constrained for the sake of an equal society. For example, few, if any, liberal egalitarians would permit the state to interfere with people's religious or reproductive choices in order to promote egalitarian outcomes, while most are willing to permit a scheme of progressive taxation that interferes with people's choices about how to use their personal income.

Nozick replies to this line of argument by showing that liberal egalitarians who endorse a patterned approach to distributive justice must ultimately choose between their liberal commitments and their particular interpretation of egalitarianism. Nozick's argument, according to our interpretation, purports to show that a robust protection of basic liberties, including the rights of personal property and occupational choice, is incompatible with any sort of patterned principle of distributive justice. Any society where officials respected these rights in a meaningful sense would be a society that failed to achieve the distributive ambitions of Rawls's difference principle.[1] More generally, patterning is inconsistent with any minimally liberal theory of justice.

Nozick (1974, 160–64) begins by describing a society that has achieved a just distribution of resources according to your favorite patterned principle. For simplicity's sake, suppose the distribution of resources is perfectly equal. Now imagine that the basketball player Wilt Chamberlain offers his fans the opportunity to watch him play by negotiating a labor contract that gives him twenty-five cents from the price of every ticket to see him play. Chamberlain then sells a million tickets, making him substantially richer than everyone else—a result that eliminates the egalitarian distribution of resources.

If distributive justice requires achieving an egalitarian pattern, then the post-Chamberlain distribution is unjust because it no longer fits the pattern. Alternatively, if justice requires respecting people's property rights and occupational freedom, the post-Chamberlain distribution is just because it arises through the exercise of those rights. So, which is it?

In defense of the latter, consider the following. Those who chose to pay Chamberlain to watch him play were simply exercising their right of personal property when they elected to spend some of their personal income on tickets. Those who chose *not* to pay for tickets were also exercising their right of personal property—they elected to keep that portion of their income or spend it elsewhere. Lastly, Chamberlain was exercising his freedom of occupational choice when he elected to occupy himself playing basketball in exchange for a quarter per ticket. Thus, the Wilt Chamberlain

1. David Schmidtz (2006, 205) writes, "Nozick sometimes is accused of having no foundation, of merely assuming what he needs to prove. For better or worse, though, Nozick borrowed Rawls's foundation, accepting Rawls's premise about the separateness and inviolability of persons. . . . If this is not a foundation, then Rawls has no foundation either. Nozick's departure was to ask, when we say people are entitled to the most extensive sphere of liberty compatible with a like liberty for all and this right takes priority over other concerns, what if we meant it?" Elsewhere Schmidtz and Christopher Freiman (2012, 412) write, "Nozick departs from Rawls only when he treats liberalism's commitment to letting citizens decide for themselves how to speak and assemble as applying equally to decisions about how to truck, barter, and exchange—that is, as considerations that in the normal course of events trump any imperative to redistribute on behalf of the less advantaged."

argument demonstrates that officials cannot respect the free exercise of people's basic rights to personal property and occupational choice while also maintaining a specific distributive pattern.

We can restate Nozick's argument against patterned principles of distributive justice as follows:

1. Pattern theory: A distribution is just only if it achieves a particular distributive pattern.
2. Nozick's claim: If a distribution arises from a just initial distribution through the just exercise of basic liberties, then the resulting distribution is just.
3. A distribution that arises from a just initial distribution through the just exercise of basic liberties need not achieve a particular distributive pattern.

Pattern theorists who endorse Nozick's claim are therefore committed to a contradiction. Nozick suggests that people should resolve this contradiction by rejecting pattern theory:

4. Therefore, it is not the case that a just distribution of wealth must achieve a particular distributive pattern.

To avoid this conclusion, the pattern theorist must show that (2) is mistaken. Nozick himself, and some of his defenders, seem to appeal to intuition in defense of (2). It *seems* as though the new distribution is not unjust and it would be difficult to explain *why* it's unjust.

However, some of Nozick's critics simply deny the intuition in question. David Miller, for example, claims that Nozick appears "happy to ride roughshod over many everyday beliefs in the name of a single principle (of rights) claimed to rest on a fundamental moral insight" (2003, 59). More recently, Amartya Sen has argued that Nozick's work displays "an overarching emphasis on the self-evident nature of the importance of liberty" (2009, 274).

Our argument in support of Nozick eschews appeals to intuition. Instead, we argue that liberal egalitarians and democratic socialists should, by their own standards, accept premise 2 as well because they acknowledge a basic right to personal property and occupational choice. Since fans are exercising their rights of disposal over their personal property when they buy tickets and Chamberlain is exercising his right of occupational choice when he agrees to play, the resulting distribution is just even though it does not achieve a specific egalitarian distributive pattern.

Begging the Question?

In response to the foregoing argument, a proponent of a patterned principle of distributive justice may allege that Nozick's argument, as reconstructed, begs the question by assuming an absolutist, libertarian conception of economic freedom. In response, we show that the Wilt Chamberlain argument is not question-begging

because it grants all the premises that are endorsed by Nozick's liberal egalitarian interlocutors themselves. We concede that Nozick's argument would beg the question against *illiberal* egalitarians who deny rights of personal property and occupational choice, but critics of Nozick's argument are rarely willing to abandon their commitment to respecting basic rights in order to maintain their commitment to a patterned principle of distributive justice.

The question-begging objection to the Wilt Chamberlain argument challenges Nozick's assumption that Chamberlain's fortune is the result of the just exercise of basic liberties. This objection takes aim at the conception of personal property rights and occupational freedom at work in Nozick's argument. One interpretation alleges that taxing Chamberlain's wealth wouldn't involve violating personal property rights at all because property rights themselves are significantly constrained—permissible uses of personal property are confined to those consistent with the desired pattern. Alternatively, perhaps personal property rights and occupational freedom are basic liberties that can nevertheless be overridden for the sake of achieving a more egalitarian distribution of goods.

Consider the suggestion that occupational rights and personal property rights are, by their nature, limited and that therefore state-imposed constraints on their exercise do not involve any rights violations. Nozick writes that having a right to resource X entails having "the right to determine what shall be done with X" (1974, 171). But Thomas Nagel (1975) replies that this move is too quick. He writes that Nozick "erroneously interprets the notion of a patterned principle as specifying a distribution of absolute entitlements (like those he believes in) to the wealth or property distributed." In response, Nagel writes,

> Absolute entitlement to property is not what would be allocated to people under a partially egalitarian distribution. Possession would confer the kind of qualified entitlement that exists in a system under which taxes and other conditions are arranged to preserve certain features of the distribution, while permitting choice, use, and exchange of property compatible with it. What someone holds under such a system will not be *his property* in the unqualified sense of Nozick's system of entitlement. To suppose otherwise is to beg the question. (147; italics in the original)

On this view, the right to personal property does not confer a right to do *anything* one wants with their property. Rather, it confers a right to only those uses that are compatible with the realization of a "partially egalitarian distribution" of property.

Nagel's influential criticism contends that Nozick's view is question-begging because it assumes an excessively absolutist view of property rights that entails the conclusion.[2] But in order for a view to be question-begging, it is not sufficient to show

2. See also O'Neill (1976) and Ryan (1977).

that the assumptions of a view entail the conclusion (Sinnott-Armstrong 1999). If so, then any deductively valid argument would be question-begging. Rather, a view is question-begging if it assumes premises that one's interlocutor rejects in order to undermine the interlocutor's position. Nozick's interlocutors are liberal egalitarians, specifically Rawlsians. So whether the view is question-begging depends on whether liberal egalitarians endorse a view of occupational freedom and personal property that is closer to Nozick's interpretation or Nagel's. We will argue that Nozick's interpretation is closer to the mark.

As noted, Rawls himself recognizes that ownership of personal property is a basic liberty on a moral par with freedom of speech and bodily autonomy. This is not to say that these rights are absolute; however, Rawlsians insist that public officials may not violate these basic liberties to promote a more egalitarian distribution. By way of illustration, consider the right of bodily autonomy, which grants someone the right of exclusive use of their body, just as the right to personal property grants someone the right of exclusive use of their personal property. No liberal worth their salt would permit the state to "qualify" the right of bodily autonomy to promote a more egalitarian distributive outcome.[3] Imagine, for instance, a patterned principle that requires a "partially egalitarian distribution" of sexual partners. Taking inspiration from the difference principle, suppose the principle asserts that unchosen inequalities in satisfaction with one's sexual partners are permissible only insofar as they maximize the satisfaction of those least satisfied with their partners.[4] Such a principle is incontrovertibly inconsistent with respect for bodily autonomy. Similarly, we may interpret Nozick as claiming that enforcing a partially egalitarian distribution of property is inconsistent with respect for the right of property. Since liberal egalitarians themselves (at least those of a Rawlsian sort) claim that the rights of bodily autonomy and personal property are of comparable moral significance, the burden of justification rests on their shoulders should they wish to assert that the reason to respect bodily autonomy—but *not* personal property—is sufficiently weighty to rule out patterning.

It's worth emphasizing that Chamberlain's games will disrupt an egalitarian distributive pattern even if significant limits are placed on the rights of personal property. David Schmidtz writes, "Nozick neither argues nor presumes people can do whatever they want with their property. Nozick's point is, if there is *anything at all* people can do—even if the only thing they are free to do is give a coin to an entertainer—then even that tiniest of liberties will, over time, disturb the pattern" (2006, 200, italics in the original). If *one* fan buys *one* ticket and everything else about the distribution remains unchanged, Chamberlain's society will no longer be equal and the pattern will be disrupted. Thus, Nozick's argument stands even if one adopts a *severely* qualified entitlement to personal property.

3. See Nozick (1974, 206).

4. Nozick (1974, 150) says that in a free society, "there is no more a distributing or distribution of shares than there is a distributing of mates in a society in which persons choose whom they shall marry."

Along similar lines, consider that a proponent of Nagel's objection may claim that the right to choose one's occupation doesn't give one the right to choose it at *any* salary, and so officials can restrict people's salaries in order to maintain a just distribution of resources. Yet even if the liberal egalitarians' conception of occupational freedom were compatible with imposing a cap on salaries, respecting the free exercise of occupational freedom would still be incompatible with maintaining a specific distributive pattern. For example, imagine that Chamberlain comes out of retirement and agrees to play for a penny per season, simply for the love for the game. His new team cuts their lowest-paid player to make room for Chamberlain, thereby widening the disparity between Chamberlain and the poor. Here occupational choice disrupts a patterned principle of egalitarian distributive justice, even on the assumption that citizens may not accept any salary offer they want.

Thus, Nozick's argument doesn't need to assume that personal property rights or occupational freedoms are absolute entitlements—he can grant a more qualified conception of these rights that is consistent with most liberal egalitarians' conception of basic rights and liberties. Nozick's point is that, even in this more qualified sense, a right of personal property that permits only those uses that are compatible with a pattern is still no right at all. Similarly, saying "You are permitted to choose your own occupation only insofar as your choice achieves a just distributive pattern" is necessarily incompatible with a liberal understanding of occupational choice. (Consider again the analogy to bodily autonomy: "You are permitted to choose your sexual partners only insofar as your choice achieves a just distributive pattern.") Even though the scope of property rights may be limited, if someone has the exclusive right to some degree of personal property, then she may use her share of property as she wishes, regardless of its effects on the societywide distribution.

We claim, then, that if anyone is begging the question, it's Nozick's critics. To insist that the post-Chamberlain distribution is unjust on the grounds that it violates a patterned principle begs the question because it assumes the truth of the conclusion that these critics are intending to establish. For example, Nagel aims to show that Nozick's Wilt Chamberlain argument fails by assuming a conception of property rights that is instrumental to achieving a particular distributive pattern. But neither Nozick nor his liberal egalitarian interlocutors assume this conception of property rights. By analogy, Nagel's argumentative strategy is like an act utilitarian insisting to a deontologist that banning the survival lottery is unjust because it violates the principle of utility.

So the upshot is this: *any* theory of justice that regards the rights to hold personal property and to choose one's occupation as basic liberties is inconsistent with patterned principles of distribution. And notice that the rights of personal property and occupational choice are protected in a wide range of nonlibertarian regimes: welfare state capitalism, liberal socialism, and property-owning democracy. (In the latter two cases, citizens are not permitted to privately own *productive* property, but they may own "personal property"; that is, an individual may exercise exclusive control over a toothbrush, but not a toothbrush factory.)

Liberalism and Patterns

So far, we have argued that Nozick's Wilt Chamberlain argument successfully shows that liberal egalitarians cannot maintain their support for liberalism alongside support for patterned distributive principles. Rawls's own principles, consistently applied, imply that the post-Chamberlain distribution is just despite its failure to conform to the relevant pattern. In this section, we extend Nozick's Wilt Chamberlain argument to show that liberal egalitarians must reject the enforcement of *any* kind of patterned distribution. The challenge for liberal egalitarians is producing a non–ad hoc explanation for why patterning is permissible for the basic liberties of personal property and occupational choice but impermissible for other basic liberties.

Nozick's insight that respect for the right to hold personal property rules out state-enforced patterning of personal property extends to other basic liberties. The right of occupational choice rules out state-enforced patterning of the job distribution. This means that a policy mandating that some proportion of citizens serve as military officers would violate their occupational freedom, even if it resulted in a more egalitarian distribution of military service positions than a voluntary army.[5] In Nozickian terms, whether a distribution of occupations is just depends on whether people freely choose their professions, not on whether the distribution of professions approximates a particular pattern. Officials need to know *how* an inequality in professions arose, not simply *that* it arose.

Similarly, a right of religious freedom rules out state-enforced patterning of congregation membership. Officials should not aim to achieve a particular pattern of religiosity by either encouraging or discouraging religious attendance or particular religions, even if they believe that religion promotes (or undermines) their egalitarian social priorities.[6]

Consider additional examples from Nozick. A right of bodily autonomy rules out state-enforced patterning of body-part distribution.[7] This means that even if a state-backed kidney or blood tax would promote more egalitarian health outcomes, it would be objectionably illiberal because it would violate citizens' bodily rights.

So, too, public officials may not conscript the sexually charismatic to provide sexual services to lonely people in order to achieve a more just distribution of intimate partnership. Nozick (1974, 237) asks rhetorically, "If the woman who later became my wife rejected another suitor . . . for me, partially because (I leave aside

5. For example, Michael Sandel argues that "the volunteer army draws disproportionately from the lower middle class. The sons and daughters of the affluent are largely exempt. But if the nation decides to go to war, there is something to be said for sharing the sacrifice, rather than hiring those who cannot otherwise afford college to fight and die on our behalf" (Horton, 2010).

6. Or more generally, one may argue that officials should also not promote religious institutions more generally, even if doing so would protect and promote religious worship in public spaces. Brian Leiter (2013) makes an argument like this.

7. See Nozick (1974, 206). See also Fabre (2006).

my loveable nature) of my keen intelligence and good looks, neither of which did I earn, would the rejected less intelligent and less handsome suitor have a legitimate complaint about unfairness?"

Indeed, we contend that this kind of argument holds for *any* other basic liberty. If people are entitled to freedom of the press, then officials cannot regulate the number and kinds of media outlets or censor the media to achieve some egalitarian distributive aim. If people have freedom of association, then state-enforced patterning of friendships or membership in social organizations would be unjust. If people have freedom of exit and reproductive autonomy, then state-enforced patterning of population is unjust. And so on. In each case, officials' respecting a liberty as basic leads to an unequal distribution of goods, and the basic status of that liberty rules out officials' enforcing a patterned egalitarian distribution.

So here's the challenge for liberal egalitarians: if personal property and occupational choice are on a moral par with the other basic liberties, why may the state enforce patterning in *those* cases but not others? In what follows, we'll survey some answers and explain why they're unpersuasive.

One objection that liberal egalitarians could make to our argument is that citizens are guaranteed only an *adequate* amount of freedom to choose their occupation and dispose of their personal property, rather than the maximum amount. So the state may restrict your liberty to use your property and choose your occupation so long as it leaves you with an *adequate* array of options.

We have already offered one reply to this objection. Even if Chamberlain's freedom of occupational choice and his fans' rights of personal property are constrained, respect for these (limited) rights will clash with patterning. Moreover, liberal egalitarians tend to employ an adequacy standard selectively.[8] Consider, by analogy, that citizens' rights of bodily autonomy entitle them to decline to donate bone marrow to a patient in need. Few liberal egalitarians would endorse state-mandated bone marrow transfers so long as the "donors" had an adequate amount of bone marrow left over. Nor would they endorse state-mandated restrictions on one's choice of sexual partners so long as the restrictions left one with an "adequate" array of partners. The same could be said of restrictions on options for speech, religious practice, and more. Thus, an appeal to an adequacy standard fails to break the symmetry between personal property and occupational choice on the one hand and the rest of the basic liberties on the other.

Another argument alleges that the benefit-cost ratio of personal property regulation is comparatively high. Taking some of a person's property seems reasonable when it's needed to, say, save a life. The benefit is far greater than the cost, so why not tax some of Chamberlain's holdings to finance life-saving redistribution? Along these lines, Nagel writes, "It is far less plausible to maintain that taking some of an

8. See, e.g., Freiman and Hidalgo (2016); Flanigan (2017); and Freiman and Thrasher (2019).

innocent man's property is an impermissible means for the prevention of a serious evil, than it is to maintain that killing him is impermissible. These rights vary in importance and some are not absolute even in the state of nature" (1975, 141). Later he elaborates:

> There is no reason to think that either in personal life or in society the force of every right will be absolute or nearly absolute, i.e., never capable of being overridden by consequential considerations. Rights not to be deliberately killed, injured, tormented, or imprisoned are very powerful and limit the pursuit of any goal. More limited restrictions of liberty of action, restrictions on the use of property, restrictions on contracts, are simply less serious and therefore provide less powerful constraints. (145)

Nagel fails to recognize that his objection applies with equal force against liberal egalitarianism. Rawls, for instance, claimed that the protection of basic liberties enjoyed *lexical priority* over competing social concerns, a view that implies that these liberties are, to repeat Nagel's words, "never capable of being overridden by consequential considerations."[9] Thus, limited restrictions on basic liberties are impermissible, even to prevent a serious evil. By way of example, Rawls's stance on bodily autonomy implies that the state may not compel a fifteen-second blood draw even when needed to save a life. As Nozick himself notes, a liberal state permits citizens to emigrate even though such emigration may deprive the state of tax revenue it could use to produce good distributive consequences. It permits life-saving physicians and researchers to retire early. It permits speech that may persuade people to forgo life-saving medical treatments. It permits citizens to vote for a candidate who opposes high-utility policies like immigration liberalization or effective foreign aid. So here again, Nagel misses Nozick's point, which is that Rawls holds personal property to a different standard than all other basic liberties.

It's worth emphasizing just how much Nagel's argument concedes to consequentialism and how this concession has implications that broadly deontological liberal egalitarians may find unwelcome. Judith Thomson's defense of abortion on grounds of bodily autonomy comes to mind. She says that it does not follow "from the fact that you ought to allow a person to use your body for the hour he needs, that he has a right to use your body for the hour he needs" (1971, 60). Nozick would say that it doesn't follow from the fact that you ought to allow a person to use your property for some urgent purpose, that he has the right to use your property. Allowing a person to use your body for an hour might come at a comparatively small cost to you and generate a huge benefit to her. Yet, Thomson insists, your right of bodily autonomy permits you to decline to provide such assistance. A right held hostage to "consequential considerations" is not much of a right at all. Thomson elaborates:

9. See Rawls ([1971] 1999, 179).

> Take the case of Henry Fonda again. I said earlier that I had no right to the touch of his cool hand on my fevered brow even though I needed it to save my life. I said it would be frightfully nice of him to fly in from the West Coast to provide me with it, but that I had no right against him that he should do so. But suppose he isn't on the West Coast. Suppose he has only to walk across the room, place a hand briefly on my brow—and lo, my life is saved. Then surely he ought to do it—it would be indecent to refuse. Is it to be said, "Ah, well, it follows that in this case she has a right to the touch of his hand on her brow, and so it would be an injustice in him to refuse"? So that I have a right to it when it is easy for him to provide it, though no right when it's hard? It's rather a shocking idea that anyone's rights should fade away and disappear as it gets harder and harder to accord them to him. (61)

However, Nagel's objection to Nozick implies that Fonda's right of bodily autonomy permits him to decline to heal Thomson with the touch of his cool hand when he is located on the West Coast, but *not* when he is across the room. Deontologically minded liberals should fear that this concession makes respect for rights uncomfortably sensitive to consequentialist considerations.

Nagel may reply that the double standard is justified after all. In particular, Nagel suggests that the rights of bodily autonomy and personal property are not analogous "partly because there is no possibility that protection of this right [of bodily autonomy] will lead to the accumulation of vast hereditary wealth or inequalities of social and political power" and partly because of "the extreme character" of body-part redistribution (1975, 141n8).[10]

Nagel is correct that respecting personal property as a basic liberty can give rise to "the accumulation of vast hereditary wealth." Why, though, would this accumulation be unjust? Presumably Nagel's answer is that it conflicts with the realization of his preferred distributive pattern. The trouble with this reply is that it assumes the conclusion that Nagel needs to argue for—namely, that economic justice prioritizes realizing a particular pattern of holdings over respecting the choices individuals make about how to exercise their property rights, such as the choice to transfer one's property to one's children. Plus, as we've already shown, respecting bodily autonomy as a basic liberty can also give rise to dispreferred distributive patterns (of, say, blood or kidneys), but Nagel does not take this to undermine its status as a basic liberty.

Now let's turn to the inequalities of political power argument. First, Nagel may be right that protecting bodily autonomy is unlikely to produce political inequalities, but the same can't be said for other basic liberties. Rawls himself (2001, 149) recognizes that freedom of the press may generate inequalities in political power through the use of political advertising. But this doesn't mean that freedom of the press is

10. Though for a defense of body-part redistribution see Fabre (2006).

not a basic liberty; rather, Rawls thinks that we may simply have to accept trade-offs between liberties. Perhaps a liberal egalitarian state will restrict freedom of the press on the margin to uphold citizens' equal political liberties. This is a very different argument from one recommending restricting freedom of the press to uphold a particular patterned distribution of material resources.

Similarly, respecting citizens' rights of personal property may result in political inequalities via mechanisms such as private campaign contributions. Here again, the right of personal property may remain a basic liberty that nevertheless must be restricted for the sake of another liberty. But this conclusion doesn't imply that the right of personal property may be restricted for the sake of achieving a patterned distribution of material resources. Moreover, in both the case of freedom of the press and the right of personal property, a liberal state ought to institutionalize the least severe restrictions possible. For instance, the state may simply restrict a newspaper's freedom to run political advertisements in particular and otherwise leave freedom of the press unabridged. Similarly, the state may simply restrict a citizen's right to spend their personal income on campaign contributions in particular and otherwise leave their right of personal property unabridged (thereby allowing them to spend it on tickets to watch Wilt Chamberlain, among other things.)[11]

Now let's turn to Nagel's claim that the "extreme character" of body-part redistribution differentiates it from property redistribution. We offer two replies. For one, it's unclear what exactly Nagel means by *extreme*. Perhaps he means that we find body-part redistribution more grotesque than other property redistribution. This is probably true, but it's unclear what the normative significance of this intuitive revulsion is.[12] After all, that an action is repulsive doesn't make it wrong—drinking rotten milk and rooting for the Boston Celtics are both gross, but (arguably) not evil.

Alternatively, maybe we should understand the claim that body-part redistribution is of a more "extreme character" than property redistribution in terms of cost. The problem with this interpretation is that this claim is false in some cases. For instance, requiring that those with in-demand rare blood types periodically give blood comes at an extremely low cost compared with the social benefit it might provide—namely, millions of lives saved.[13] Moreover, the personal cost of occasionally losing a small amount of blood is far lower than the personal cost of losing thousands of dollars due to taxation. Think of it this way: it would be a good deal from

11. Nozick (1974, 274) also worries that allowing the state to seize property for the sake of redistribution can backfire by incentivizing rent seeking to capture the fruits of redistribution. Rawls might reply that such a worry is inapplicable in ideal conditions, where no citizen is motivated to capture political power for private gain. But in this case, there would be no need to worry about income-based political inequalities in the first place. See Freiman (2012; 2017a; 2017b, chap. 3).

12. For arguments in defense of the claim that disgust is morally insignificant, see Freiman and Lerner (2015) and Freiman (2017c).

13. For instance, a man named James Harrison has rare antibodies in his blood, and by donating blood plasma weekly for sixty years, he has helped save the lives of countless babies (Criss 2018).

the perspective of your self-interest if the state allowed you to skip taxation so long as you agreed to submit to an annual fifteen-second blood draw.

But there's a deeper objection to this argument. Holding basic liberties hostage to cost-benefit calculations is inconsistent with Rawls's position on the unconditional priority of liberty over material advantages. As Rawls himself says, "The rights secured by justice are not subject to political bargaining or to the calculus of social interests" ([1971] 1999, 4). Perhaps it *is* significantly less costly to regulate property than body parts. And perhaps liberal egalitarians ought to revise their view and argue that sufficiently bad consequences can count as defeaters for any given right, be it personal property or anything else. But this move would involve abandoning Rawls's claim that protecting basic rights and liberties should take lexical priority over enforcing other policies, which reflects the deontic commitment that liberties ought not be subject to the calculus of social interests.

One line of response to our argument would be to simply remove personal property or occupational choice from the list of basic liberties and thereby strip them of the special protection afforded to rights of bodily autonomy, freedom of speech, and so on. The challenge here is to explain why this is a good idea. It might be, but we're skeptical. And one reason for being skeptical is that the original liberal justification for these rights is a compelling one. Liberalism, at its core, is about securing people's freedom to choose and pursue their own way of life. It's hard to do this if you can't choose what to do with your house, car, computer, stereo, books, food, and so on, or if you can't choose how to spend your 80,000 hours or so on the clock.

Does Distributive Egalitarianism *Really* Involve Patterning?

Rawls, of course, denies that he's a pattern theorist, at least in the sense that Nozick finds objectionable. He writes, "The objection that the difference principle enjoins continuous corrections of particular distributions and capricious interference with private transactions is based on a misunderstanding" (1996, 283). The objection that realizing the difference principle over time will require the state to constantly interfere with people's choices about how to use their personal property simply misses the mark. Rather, the state sets up a redistributive and regulatory system aimed at realizing the difference principle and then allows it to run, subject to occasional (but presumably predictable) reconfigurations.

As an initial reply, it's simply not clear that stabilizing the rules governing the distribution of resources addresses our concern in this paper. Consider again the case of bodily autonomy. We could imagine a distributive principle that asserts that the just distribution of blood is the one that maximizes the physical well-being of those with the least physical well-being. This principle would license compelled blood draws, which, in turn, are ruled out by liberalism's commitment to bodily autonomy. A liberal would not be persuaded by a response that alleges that the compelled blood draws are permissible so long as they are regularly scheduled and predictable (perhaps

taking place on the same day every year). The right of bodily autonomy protects citizens from compelled blood draws, whether they are predictable or not. Similarly, interference with citizens' rights of personal property and occupational choice is not permissible simply in virtue of being predictable.

Plus, Rawls's admission that realizing the difference principle will require occasional institutional "adjustments" gives rise to a further objection. Here's Rawls: "The upshot of many separate transactions will eventually undermine background justice. . . . Thus, even in a well-ordered society, adjustments in the basic structure are always necessary. . . . Even with strict compliance with all reasonable and practical rules, such adjustments are continually required" (1996, 284–85). However, this space for adjustments creates a dilemma that pits distributive egalitarianism against his liberalism.

To illustrate this point, consider the following case from Eric Mack:

> It is easy to imagine calculations that would seem to reveal that the way to save the social security system and, thereby, best serve the favored pattern is to impose a tax of 75 percent on the social security payments of recipients who, aside from these payments, have an annual income of at least US$50,000. Previous income regimes did not recognize the need to save social security in this way; but now our most talented social calculators judge that this tax has to be imposed for the sake of the favored pattern. Indeed, these calculators may now judge that the favored pattern is most promoted by a new regime in which that tax is applied retroactively. (2002, 90)

So, may the state apply the retroactive tax to better realize the pattern or not?

Either answer causes trouble for liberal egalitarians. On one hand, if the state may *not* impose the retroactive tax because it would violate the entitlements of those earning at least $50,000, then conformity with a pattern is not sufficient to generate an entitlement. Respect for personal property as a basic liberty functions as an independent reason against achieving a pattern. Or, in Mack's words, "Justice in income distribution cannot be entirely a matter of comportment with some favored pattern of income distribution" (88). To put the point differently, the cost of choosing this horn is weakening, if not abandoning, one's commitment to distributive egalitarianism. Moreover, the poorest in this society might complain that they are being treated unfairly—after all, they have reason to comply with this system only because it was supposed to maximize their income, and now it's failing to do so. Generally speaking, when we discover that our system has been operating unjustly, we don't shrug and let the injustice stand—we correct it. If faulty DNA tests played a role in convicting an innocent person, we don't keep her in jail when we learn that she is innocent.

On the other hand, if officials may permissibly impose this retroactive tax (and others like it), then people do not *really* have a basic right to personal property since public officials may always seize it when a different distribution more closely

approximates the ideal pattern.[14] Thus, your right to your personal property is confined to those uses that do not clash with the difference principle. But this sort of severely limited right to personal property is hardly a right at all.

By analogy, suppose the state took inspiration from the difference principle and enforced a patterned principle of sex—the distribution of sexual partners is just only if it maximizes the satisfaction of those least satisfied with their sexual partners. This sort of severely constrained bodily autonomy is hardly a right at all. "You're only entitled to sexual choice within the limits imposed by the difference principle" is a *rejection* of freedom of sexual choice. And since Rawls recognizes that the right of exclusive use of personal property is on a moral par with the right of bodily autonomy, he should reject patterning in both cases.

To make this point clearer, it's worth asking why, on Rawls's view, realizing the difference principle doesn't require continuous interference with economic choices. If the idea is simply that it would be institutionally infeasible to micromanage distributions, that's plausible. But this reply leaves Rawls open to the objection that patterning does require continuous interference in principle. That is, if we had an omniscient central planner who informed buyers and sellers which transactions maximized the material welfare of the poorest, then presumably they'd be required to buy and sell in accordance with the demands of the central planner. But now the force of Nozick's objection is apparent—the right to use one's property would be limited to only those uses approved by the central planner (which, again, is hardly a right at all).

Notice that the dilemma facing Rawls stands even if one doesn't endorse the claim that protecting basic rights takes lexical priority over the achievement of other social goals—if officials are required to respect property rights at all, then they must accept limits on their authority to enforce rules that achieve a specific distributive pattern. The moral is that if we take Nagel's objection to heart, then we get pushed in a more consequentialist direction. And maybe we should, but the implications of this are just as revisionary for Rawlsian liberals as they are for Nozick.

Balancing Liberty and Equality

In a sense, the foregoing extensions of Nozick's arguments mirror other familiar arguments against consequentialism, including liberal egalitarian complaints that consequentialist approaches fail to respect the separateness of persons when they evaluate the ethics of an action in terms of the extent to which it promotes a favorable state of affairs. Nozick's argument demonstrates that, to the extent that liberal egalitarians conceive of equality in a broadly consequentialist way, their own approach is vulnerable to the critiques of consequentialism they advance elsewhere.

14. As Mack writes, "Continued allegiance to the pattern requires disloyalty to the expectations deemed legitimate under the previous applications of the pattern" (2002, 90).

In defense of the patterned approach to liberal egalitarianism, one may argue that liberal egalitarianism rests upon a pluralistic moral foundation that considers the moral importance of both promoting good distributive consequences and respecting rights. Even if maintaining a pattern doesn't require continuous interference with freedom, it requires that officials have the capacity to continuously interfere in this way if necessary. This holds for the administration of a distributive pattern in any domain, from property to body parts.

So liberal egalitarians should reject an interpretation of egalitarianism that conceives of justice as achieving a patterned distribution of some good. This insight does not, however, imply that liberal egalitarians must abandon egalitarianism. It only implies that liberal egalitarians should rethink their commitment to *distributive* egalitarianism. A commitment to egalitarianism within social relations or dispositions avoids the conflict between enforcing a distributive pattern and respecting freedom.

The recent "relational egalitarian" turn within liberal egalitarianism is a promising reinterpretation that can avoid the illiberal implications of a more distributive interpretation of egalitarianism. For example, Elizabeth Anderson (2010) argues that egalitarianism should conceive of equality "as a kind of social relation between persons—an equality of authority, status, or standing." Anderson contrasts this brand of egalitarianism with the more distributive approaches of philosophers such as G. A. Cohen or Richard Arneson. Relational egalitarianism doesn't require officials to maintain a specific distributive outcome, which we've argued licenses illiberal interference with citizens' basic rights. Instead, relational egalitarians advance a vision of egalitarianism that is grounded in the same principles of respect as their vision of liberalism.

Some have suggested that relational egalitarians should still care about achieving an egalitarian distribution of resources, or a patterned outcome (Schemmel 2011). Inequalities in resources can surely affect people's equality of status; however, this observation would, at most, support some redistribution only for the sake of preventing a level of material inequality that threatens people's equal social standing. And even then, redistribution would be justified only if it were necessary for the preservation of equal status, or only if it were the least restrictive way of preserving equal status.

Moreover, it is far from clear that even large income disparities between, e.g., basketball fans and basketball players threaten equal standing or status. After all, fans don't bow or scrape before millionaire basketball players—they shake their hands, take selfies together, and trash-talk them on Twitter. Indeed, the players are often sensitive (some might say *too* sensitive) to fans' reactions on social media. If anything, we suggest that fans ought to be *more* deferential to players in certain respects—for instance, by not screaming or throwing popcorn at them as they walk into the tunnel to the locker room. This point about millionaire basketball players like Wilt Chamberlain generalizes: income inequality doesn't necessarily threaten

social equality, and redistribution will not necessarily remedy inequality, so redistributive policies cannot be presumptively justified on these grounds.[15]

Others have suggested that relational egalitarians are patterned theorists after all—they care about achieving a patterned distribution of status rather than resources or well-being (Lippert-Rasmussen 2018). To the extent that this is true, so much the worse for relational egalitarianism. Imagine, for example, that public officials are worried that Chamberlain would become too popular if not for their intervention. So they arrange for Chamberlain to be shamed in the public square on the nights that he doesn't play. Forcing Chamberlain to participate in a ritual that aims to redistribute status or level Chamberlain down in the economy of esteem would also be an objectionable infringement on Chamberlain's liberties.

Yet we contend that relational egalitarian conceptions of liberal egalitarianism really can avoid any distributive commitments. For example, Samuel Scheffler (2015) defends a dispositional account of relational egalitarianism. On Scheffler's view, egalitarianism requires that people be disposed to consider others' interests equally significant in their deliberations. Or, as James L. Wilson (n.d.) has recently argued, liberal egalitarians should embrace a conception of egalitarianism that is not instrumental to achieving a particular egalitarian distributive outcome, but is instead about maintaining political equality, which Wilson views as intrinsically valuable. And on Wilson's account, political equality primarily requires a disposition to support democracy.

These accounts of egalitarianism point to an interpretation of liberal egalitarianism that does not require patterning. However, to the extent that egalitarianism is inevitably a distributive doctrine that requires patterning, then liberal egalitarians must choose between their liberal and egalitarian commitments. Liberal egalitarians may then follow Nozick in rejecting egalitarianism in favor of a more libertarian vision of justice. Or alternatively, liberal egalitarians can abandon liberalism and embrace a more consequentialist vision of egalitarianism or argue that liberty is an acceptable price to pay for egalitarian justice. Nozick's Wilt Chamberlain argument does not decisively show that liberal egalitarians should endorse Nozick's libertarian conclusions—it shows that they cannot maintain their dual commitments to liberalism and distributive egalitarianism.

Conclusion

Liberal egalitarians generally dismiss Nozick's argument against distributive egalitarianism as objectionably libertarian and question-begging, but we have shown that Nozick's argument can serve as a powerful internal critique of a certain kind of liberal egalitarianism. Though our reconstruction and extension of this argument

15. For a more detailed defense of this claim, see Freiman (2014).

does not refute liberal egalitarianism as a political ideal, it does show that liberal egalitarians ought to conceive of their egalitarian commitments in broadly deontological terms instead of focusing on distributive outcomes.

References

Anderson, Elizabeth. 2010. The Fundamental Disagreement between Luck Egalitarians and Relational Egalitarians. *Canadian Journal of Philosophy Supplementary* 36 (January 1): 1–23.

Criss, Doug. 2018. He Donated Blood Every Week for 60 Years and Saved the Lives of 2.4 Million Babies. *CNN*. Updated December 25, 2018. https://amp.cnn.com/cnn/2018/05/11/health/james-harrison-blood-donor-retires-trnd/index.html.

Fabre, Cécile. 2006. *Whose Body Is It Anyway? Justice and the Integrity of the Person*. Oxford: Oxford University Press.

Flanigan, Jessica. 2017. All Liberty Is Basic. *Res Publica* 24:455–74.

Freiman, Christopher. 2012. Equal Political Liberties. *Pacific Philosophical Quarterly* 93: 158–74.

———. 2014. Priority and Position. *Philosophical Studies* 167:341–60.

———. 2017a. Ideal Theory. In *The Routledge Handbook of Libertarianism*, edited by Jason Brennan, David Schmidtz, and Bas van der Vossen, 301–11. New York: Routledge.

———. 2017b. *Unequivocal Justice*. New York: Routledge.

———. 2017c. Why Parents Should Enhance Their Children. In *The Ethics of Ability and Enhancement*, edited by Jessica Flanigan and Terry Price, 155–72. New York: Palgrave Macmillan.

Freiman, Christopher, and Javier Hidalgo. 2016. Liberalism or Immigration Restrictions, but Not Both. *Journal of Ethics and Social Philosophy* 10:1–22.

Freiman, Christopher, and Adam Lerner. 2015. Self-Ownership and Disgust: Why Compulsory Body Part Redistribution Gets under Our Skin. *Philosophical Studies* 172:3167–90.

Freiman, Christopher, and John Thrasher. 2019. The Right to Own the Means of Production. In *Economic Liberties and Human Rights*, edited by Bas van der Vossen and Jahel Queralt, 182–99. New York: Routledge.

Horton, Scott. 2010. *Justice:* Six Questions for Michael Sandel. *Harper's Magazine*, February 12, 2010. https://harpers.org/2010/02/_justice_-six-questions-for-michael-sandel/.

Leiter, Brian. 2013. *Why Tolerate Religion?* Princeton, N.J.: Princeton University Press.

Lippert-Rasmussen, Kasper. 2018. "(Luck and Relational) Egalitarians of the World, Unite!" In *Oxford Studies in Political Philosophy*. Vol. 4, edited by David Sobel, Peter Vallentyne, and Steven Wall, 81–109. Oxford: Oxford University Press.

Mack, Eric. 2002. Self-Ownership, Marxism, and Entitlement, Part 1: Challenges to Historical Entitlement. *Politics, Philosophy & Economics* 1:75–108.

Miller, David. 2003. *Principles of Social Justice,* Cambridge, Mass.: Harvard University Press.

Nagel, Thomas. 1975. Libertarianism without Foundations. *Yale Law Journal* 85:136–49.

Nozick, Robert. 1974. *Anarchy, State, and Utopia*. New York: Basic Books.

———. 2013. Reprint edition. *Anarchy, State, and Utopia*. New York: Basic Books.

O'Neill, Onora. 1976. Nozick's Entitlements. *Inquiry* 19:468–81.

Rawls, John. (1971) 1999. *A Theory of Justice*. Cambridge, Mass.: Harvard University Press.

———. 1996. *Political Liberalism*. Rev. ed. New York: Columbia University Press.

———. 2001. *Justice as Fairness: A Restatement*. Edited by Erin Kelly. Cambridge, Mass.: Harvard University Press.

Ryan, Cheyney. 1977. Yours, Mine and Ours: Property Rights and Individual Liberty. *Ethics* 87:126–41.

Scheffler, Samuel. 2015. The Practice of Equality. In *Social Equality: On What It Means to Be Equals,* edited by Carina Fourie, Fabian Schuppert, and Ivo Wallimann-Helmer, 20–44. Oxford: Oxford University Press.

Schemmel, Christian. 2011. Why Relational Egalitarians Should Care about Distributions. *Social Theory and Practice* 37, no. 3 (July): 365–90.

Schmidtz, David. 2006. *Elements of Justice*. New York: Cambridge University Press.

Schmidtz, David, and Christopher Freiman. 2012. Nozick. In *The Oxford Handbook of Political Philosophy*, edited by David Estlund, chap. 22. New York: Oxford University Press.

Sen, Amartya. 2009. *The Idea of Justice*. Cambridge, Mass.: The Belknap Press of Harvard University Press.

Sinnott-Armstrong, Walter. 1999. Begging the Question. *Australasian Journal of Philosophy* 77, no. 2 (June 1): 174–91.

Thomson, Judith Jarvis. 1971. A Defense of Abortion. *Philosophy and Public Affairs* 1:47–66.

Wilson, James L. n.d. Social Equality against Regime Instrumentalism. Unpublished manuscript. Microsoft Word file.

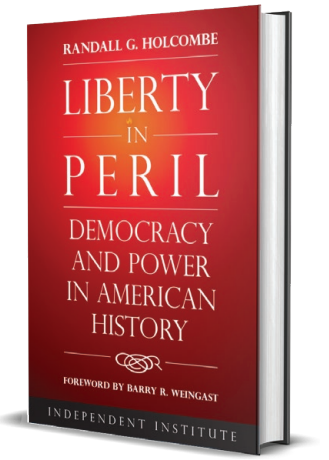
SUBSCRIBE NOW AND RECEIVE A FREE BOOK!



"***The Independent Review*** does not accept pronouncements of government officials nor the conventional wisdom at face value."
—**JOHN R. MACARTHUR**, Publisher, *Harper's*

"***The Independent Review*** is excellent."
—**GARY BECKER**, Nobel Laureate in Economic Sciences

Subscribe to ***The Independent Review*** and receive a free book of your choice such as ***Liberty in Peril: Democracy and Power in American History***, by Randall G. Holcombe.



Thought-provoking and educational, ***The Independent Review*** is blazing the way toward informed debate. This quarterly journal offers leading-edge insights on today's most critical issues in economics, healthcare, education, the environment, energy, defense, law, history, political science, philosophy, and sociology.

Student? Educator? Journalist? Business or civic leader? Engaged citizen? This journal is for YOU!

Order today for more *FREE* book options

SUBSCRIBE

The Independent Review is now available digitally on mobile devices and tablets via the Apple/Android App Stores and Magzter. Subscriptions and single issues start at $2.99. **Learn More.**



Download on the App Store | GET IT ON Google Play | Available on MAGZTER

INDEPENDENT INSTITUTE, 100 SWAN WAY, OAKLAND, CA 94621 • 1 (800) 927-8733 • ORDERS@INDEPENDENT.ORG