

Are Unequal Incarceration Rates Unjust to Men?¹

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Abstract

The genetic endowment of males makes them likelier than females to be perpetrators of violent crime and thus to end up in prison. Philippe Van Parijs notes this and raises a startling question: Is it not an injustice to males that their unchosen genetic endowment renders them likelier to suffer the harms of incarceration? In this brief response, I canvass some tempting avenues by which we might think we can dispel the puzzle, and argue that each is unsuccessful. This will disappoint those hoping for a refutation of the claim lurking behind Van Parijs' question: that even as their criminal behavior is so profoundly harmful to so many innocent victims, male violent offenders are *themselves* somehow victims of injustice. I hope to show that this indignation-provoking claim is far more difficult to refute than we would have hoped, but also to suggest that it is far less threatening—and less bizarre—than we might have feared.

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INTRODUCTION

In his fourth puzzle on gender equality, Philippe Van Parijs notes that the genetic endowment of males makes them likelier than females to be perpetrators of violent crime and thus to end up in prison.² He raises a startling question: If the unchosen genetic endowment of males renders them likelier than females to suffer the harms of incarceration, could this be an injustice (Van Parijs 2015: 88) Plausibly, it adds to the injustice of poverty that those who grow up in poor families are likelier to be incarcerated

1 I am grateful to Paula Casal, Jeff Behrends, Harry Brighthouse, and three anonymous reviewers at *Law, Ethics, and Philosophy* for asking challenging questions and making valuable suggestions on previous drafts of this response.

2 For more on biological contributions to male crime, see Thornhill and Palmer 2000, Casal 2011, and Rainer 2013. For data on men's greater criminality, see Greenfeld and Snell 2000.

than their more privileged counterparts.³ Why, asks Van Parijs, do we have the intuition that the elevated risk to those born with these disadvantages is different than the elevated risk to those born with male genetic endowments?

Those who are concerned about ongoing injustices against women are likely, at first, to find these puzzles irritating. We might lament the opportunity costs of theorizing alleged injustices against men when women continue to be victimized by pervasive structural injustices, and worry that such theorizing will slow progress toward women's equality. I share these worries. Still, hormonal inequalities *may* generate injustices against men even if this fact is troubling for those concerned to strengthen coalitions for social reform on behalf of women.

Of course, it is right that men be overrepresented among the prison population given that they commit more violent offenses. We must protect victims and potential victims, and incarceration presently offers the best means of doing so. But is the higher likelihood of incarceration among males unjust? The harms of incarceration can be severe. They include foregone opportunities for flourishing, alienation from spouses and children, enhanced risk of being oneself a victim of violence, and difficulty finding and keeping employment subsequent to release.⁴ If men are, through no fault of their own, likelier to suffer these harms, then we must at least entertain Van Parijs' question—a puzzling question to be sure, since the putative injustice to men would result, most proximally, from their doing violence to their victims: often, women.

In this brief response, I canvass some tempting avenues by which we might think we can dispel the puzzle, and argue that each is unsuccessful. No doubt other avenues for response exist, but I consider what I take to be the most plausible. Having explored these possible responses and found them unsatisfying, I tentatively conclude that men's higher likelihood of

3 No doubt rates of incarceration would be higher in these communities even if crime rates were not, but I assume that part of this correlation is due to elevated crime rates. As Van Parijs says, elevated crime rates among the poor are "in part no doubt but not only because they tend to be sentenced more severely for the same crimes" (87).

4 See NAACP Criminal Justice Fact Sheet. Some of these harms are intrinsic to incarceration, but some are contingent—incarceration need not be as harmful as we make it. I suspect that an elevated likelihood of criminal behavior is bad for offenders even if they are never caught: Whether or not they feel remorse for their crime, violent offenders are likely to experience greater difficulty maintaining or developing intimate relationships. Even those with a propensity to violence who never offend are likely to struggle to achieve and maintain the kinds of interpersonal relationships that, for so many, are crucial contributors to wellbeing, and they may be worse off for this whether or not they themselves judge it to be a loss. But nothing I say in the rest of this paper relies on the mere propensity to violence being harmful. All I will assume is that, on average, incarceration itself is harmful; I take it that any plausible metric of justice will have the resources to register it as such.

incarceration is a distinct injustice to men. This tentative conclusion is highly counterintuitive, but I suspect that a great deal of our resistance to it owes to worries about the strategies we might pursue to remedy the injustice. So I conclude by briefly sketching what seem to me some promising social policies to address inequalities in incarceration prospects—including unequal prospects based on sex, if it turns out that such inequalities are unjust to men.

How might we try to dispel the puzzle concerning men's incarceration? I first consider some reasons for thinking there is no injustice at all. I then consider a response that grants that there is *some* injustice but maintains that it is overridden by the many injustices of which men are beneficiaries; this response acknowledges that there is an injustice to men, but maintains that it is of no practical consequence, for men are owed no recompense.

1. NATURAL OR SOCIAL?

We might start by questioning Van Parijs' causal claims. Are the differences between men and women that lead to men's higher rates of violent crime *really* genetic, as he suggests? Isn't it plausible that some of these behavioral differences are due in part to social or environmental influences? Plausibly, even if genetic differences are present, certain socialization practices exacerbate their effects: If young boys are encouraged or indulged more when they display aggression, or if they are indulged more in losses of temper because gender norms make us more tolerant of male anger than female anger, these trends might help explain men's greater criminality. Even if they do, this does not dispel Van Parijs' puzzle. If Rawls was right that social and natural contingencies are "equally arbitrary" from a moral point of view (1971/1999, p. 64), then social contingencies justify inequalities no more than natural contingencies. If we have reason of justice to mitigate unearned disadvantage, those reasons apply no less to the disadvantage that results from socialization than the disadvantage due to genes.

Even if social and natural contingencies are equally morally arbitrary in the sense that the person whom they disadvantage is equally non-responsible for them, however, social contingencies at least seem to be within society's control. Because society appears responsible for creating it, socially-caused disadvantage might be thought more urgently to call for remediation. I find this implausible. Suppose there really is a fact of the matter about the extent to which the causes of any particular disadvantage are social or natural. Still, socially-caused disadvantage need not, in principle, be more amenable to change by collective action, either by mitigating the disadvantage or by mitigating the social differences that

cause it. Neither genes nor their justice-relevant effects are immutable. In a paper on educational justice, Christopher Jencks asks us to consider two deaf children: One child's deafness is due to an environmentally-caused early childhood disease; the other child's deafness is due to a genetic defect. According to Jencks, "the fact that one child's deafness was a product of heredity while the other child's deafness was environmental in origin tells us nothing about the physical character of the problem or the likelihood that it has a medical remedy" (1988: 523). This point about immutability increasingly applies to the *source* of disadvantage as well, as social sources of disadvantage become increasingly complex and gene therapy becomes increasingly sophisticated. Whatever the source of men's greater aggression, it *could* be addressed through collective social action—either by efforts to change socialization patterns, by existing gene selection and therapy, or by developing new technologies for genetic modification (Casal 2013, 2015, 2016; Rainier 2013).

But this is all largely beside the point. If men's greater likelihood of criminality is due to *social* influences contrary to what Van Parijs claims, and if social inequalities *do* more urgently call for remediation contrary to what I have claimed, then we have only strengthened the grounds for thinking there is injustice here. But if Van Parijs is right to regard the difference as genetic, then we're back to the puzzle we began with: Is it not unjust that genetic make-up renders men likelier than women to engage in violent behavior, thereby rendering them more susceptible to the harms of incarceration? Whatever configuration of social and natural causes are at work, they presumably make males likelier to be incarcerated because they make it more difficult for males than for females to avoid the kinds of behaviors that lead to incarceration. If so, then the influence of unchosen genetic or social endowment on males' prospects for incarceration seems to be the sort of starting gate disadvantage that justice condemns.

2. HARM TO OTHERS?

Violent crime is deeply harmful. It harms victims, and its harms extend beyond its immediate victims; for example, it inflicts opportunity costs in the form of public resources spent on prosecution and incarceration rather than other socially valuable projects. Can we dispel the puzzle Van Parijs' question raises by arguing that the serious and pervasive harms that crime inflicts tell against men's greater likelihood of incarceration being an injustice to them? Is it a plausible condition for an *ex ante* inequality in life prospects to constitute an injustice that those on the losing end not harm others in accruing the deficit they were *ex ante* likelier to accrue? No. Just

as men are disproportionately likely to be incarcerated relative to women, the least advantaged are disproportionately likely to be incarcerated relative to the more advantaged. This elevated likelihood of incarceration is plausibly one dimension of the injustice suffered by those who grow up poor through no fault of their own, and this would be true even if the effects of poverty on incarceration were mediated entirely by actual criminality—that is, even if poverty did not elevate one’s likelihood of incarceration beyond the extent to which it elevates one’s likelihood of committing a crime. Similarly, the effects of hormones on men’s high likelihood of incarceration are mediated by their criminality—by their harming others. But to be consistent, we must regard their unequal propensity to criminality as no less unjust on that count. This is true even if, plausibly, men’s criminality and the criminality of those born into disadvantaged circumstances disproportionately victimize those who are already unjustly badly off themselves.

3. FREE CHOICE?

Genetic and hormonal differences may render men *likelier* than women to engage in certain behaviors, but whether or not any of us *in fact* engages in those behaviors is, at the end of the day, up to us. Van Parijs readily acknowledges that “the role played by free will in the causal process is by no means irrelevant” (86), and clarifies that his drawing attention to the role of genetics is meant in no way to exonerate men for their violent crimes. How, then, is men’s greater propensity to violence an injustice, if we acknowledge that choice plays a role in determining whether any particular man acts on this propensity? If we are right to hold individuals accountable for the choices they make, even when factors beyond their control affect their likelihood of making those choices, why should we think that men suffer injustice due to the genetic endowments that make them, on average, likelier to be violent?

Consider the income inequality between women and men. Some of the inequality is due to outright sexism, and some to implicit biases or statistical discrimination that render women less likely to be hired and promoted whether or not they are or will become caregiving specialists, simply because they are statistically *more likely to be* caregiving specialists. Another cause of income inequality is unequal uptake of unpaid caregiving labor between men and women. Women take more time off for caregiving and more frequently work part-time so that they can perform caregiving. Full time working women have more caregiving constraints on their availability for overtime work or travel and are likelier to be on call for caregiving emergencies. They are also likelier to develop career aspirations in light of anticipating

that they will be the caregiving specialist within their families; they are thus likelier to choose the relatively flexible (and less socially valued) careers that will enable them to prioritize caregiving.

Some might think that if men's higher incomes are due to sexist bosses, that's unjust; but if the inequality is due to women's occupational or work-life balance *choices*, it is *not* unjust. This is a mistake. Women do indeed *choose* how to divide their time and energy, but they do not choose against a background of equality. Due to genes or socialization or both, women are likelier than men to subordinate the demands of paid labor to the demands of caregiving. Relative to men, women's options about how to allocate time and energy come with different constraints and payoffs. To make the counter-gender-typical choice of prioritizing paid labor, the average woman will have to overcome either ingrained social norms or a natural predisposition to prioritize others' needs for care, or both; and she will have to pay the costs of violating social norms that cast women as "cold" or "hard" for prioritizing paid labor and as "bitchy" or "domineering" for success in paid labor, which success itself will have to be won in a competition the terms of which largely favor men. So while women do indeed *choose* which careers to pursue and how to prioritize those careers against other life projects, we nonetheless rightly object to the *terms* of that choice: Women who choose less esteemed and less well-remunerated positions face higher costs than men for choosing more esteemed and better remunerated alternatives. Women who choose to shoulder more than their share of the caregiving load do so against a context that makes it costlier for them than for their male partners to resist doing so.^{5,6}

Clearly, there are important differences between women's choices to prioritize the needs of dependents over paid labor and men's engagement in violent crime. My point is not to claim that they are analogous, but to make one very specific comparison: Both involve *choice*. Considerations of justice must be responsibility-sensitive, and so the role of choice is not

5 One might think that diagnosing this social context of choice as unjust requires a welfarist metric of justice. I deny this, and in fact think it would be a mistake to invoke such a metric. I offer an account of the injustice of the gendered division of labor—an account that does not rely on a welfarist metric—in Schouten (forthcoming). Nor does the case for regarding the gendered division of labor as unjust rely on assuming that men and women have different preferences; rather, the arrangement of institutions that makes transgressing gender norms so costly is unjust.

6 One might point out that the unfair terms of choice are due to men's intransigence. I do not think this is relevant for the point I am making here, which is about whether the consequences of choice can be unjust to the chooser if the terms of the choice are unfair through no fault of the chooser. I do not think that others' culpability bears on that question, though it is certainly relevant to others. Moreover, I do not think that the unfairness of terms is due primarily to men's intransigence, as will become clear below.

insignificant. But in both cases, the inequalities in the background against which the relevant choice is made are *not* chosen; and in both cases, the relevant choice is *harmful* to the chooser. Women are worse off in many domains by virtue of making gender-norm-compliant labor allocation choices (as well as by the norms themselves, whether or not the women comply with them), and these harms have long been a concern of theorists of justice. Men are made worse off by virtue of committing violent crimes that result in their disproportionate incarceration. Through no fault of their own, women are *ex ante* likelier to be worse off in virtue of their greater likelihood to prioritize the needs of dependents over their careers. Through no fault of their own, men are *ex ante* likelier to be worse off in virtue of their greater likelihood to engage in violent behavior. Perhaps the unequal propensities in the two cases are due to different configurations of social and natural causes. But if we are committed to neutralizing the influence on our life prospects of circumstances beyond our control, then this difference is irrelevant to our deeming it unjust that unchosen contingencies impact on life prospects in these ways.

Men should not be exculpated merely on the basis of their *ex ante* elevated likelihood of criminality any more than women's gender-compliant choices should be disparaged as not genuine choices. For the purpose of theorizing justice, we want to be able to hold agents responsible for the choices they make even when alternative courses are very costly; thus, we must attribute to individuals the capacity to make costly choices. This capacity is the basis on which we hold perpetrators responsible for their crimes and respect women's gender-compliant choices. But in neither case does the role of choice exempt the backdrop against which choices are made from criticism on the grounds of justice. Just as the norms and institutions that make gender egalitarianism so costly may be unjust, so too it might be unjust that social structures permit men's unchosen genetic endowment so heavily to impact their likelihood of incarceration. We have seen that the effects of natural contingencies are not categorically immutable. If the incarceration effects of male hormones are not immutable—and I shall tentatively suggest in concluding that they are not—then the element of choice in criminal behavior does not exempt society from an obligation to intervene to lessen the likelihood of the harm: in the case of incarceration, by expending social resources to make violent crime less common.⁷

7 I have not argued positively that society does have such an obligation; rather, I have argued more modestly that the role of choice would not lessen or undermine it if we did. Moreover, social resources are scarce, and the question of how to prioritize remediation of the various injustices we confront is complicated. Even if we do have the obligation I consider here, it may be that in our non-ideal circumstances other obligations of justice must take priority.

4. AN INJUSTICE OVERRIDDEN?

Suppose there *is* some injustice in men's higher likelihood of incarceration. Still, we might think that, given the very many ways in which women are disadvantaged relative to men, that injustice is simply overridden by the many gendered harms to women of which men are beneficiaries. Indeed, some of the very features that plausibly help explain men's greater likelihood of incarceration also have disadvantageous consequences for women: Men are, on average, physically larger and stronger than women and so likelier to be successful when they undertake to commit a violent crime; this physical strength and stature might be a disservice to the men who are incarcerated for the crimes they successfully carry out, but those traits are much more pervasively a threat to women.

Of course, even if men are all-things-considered advantaged such that they are owed no recompense in virtue of their higher likelihood of incarceration, that disadvantage might still matter. If the various constituents of good lives are commensurable such that gains in one domain can make up for losses in others, any justice-relevant disadvantage men suffer might simply diminish the compensation owed to women on account of gender injustice favoring men.

But it is not obvious that the putative disadvantage to men would be relevant *merely* for lessening the compensation owed to women. Many candidate goods of justice—work, income, and leisure—appear to be commensurable in this way. But it is not always true that being advantaged in one way can compensate for being disadvantaged in another—that if the quantities and severities match up correctly, there is no injustice all things considered. Some goods are not commensurable. Certain health deficits that involve chronic pain plausibly cannot be outweighed by surpluses of other goods like income and wealth, or even by surpluses of goods that we regard, like health, as *intrinsic* constituents of wellbeing—intellectual stimulation, for example. Similarly, it may be that men's greater likelihood of committing violent crime is a disadvantage that cannot be compensated for by other goods, even goods in such important domains as those in which men appear to be favored, including social status and occupied positions of political power. None of this is meant to deny that the goods of which men enjoy unfairly large shares are very good goods; nor is it to deny that their large shares constitute an injustice. It is simply to point out that the impact on one's life of certain kinds of *bads* cannot fully be remediated by a larger share of goods. Presumably, the harm of suffering physical assault is such a bad. We may regard the harms of incarceration as similarly un-compensable without thereby committing to men's susceptibility

to suffering them being a disadvantage comparable in severity to women's vulnerability to assault.

Here we might be tempted to think that the badness of men's greater incarceration is not best characterized as *unjust*. Maybe the world is somehow *worse* in virtue of this inequality, but *justice* is about the distribution of commensurables. If men's higher likelihood of criminality cannot be outweighed by the very many advantages they have in virtue of being men, then it is not *unjust*.

Justice cannot plausibly be restricted in this way, because such a restriction would also exclude paradigmatic cases of gender injustice. Consider the incommensurable harms of the gendered division of labor which account—at least in part—for our regarding *it* as unjust. Imagine, counterfactually, that traditionally male and traditionally female work were esteemed and remunerated at comparable levels. Still, the persistence of social norms and institutions arranged in compliance with those norms could make gender-counter-typical choices very costly for both men and women. The costs of transgressing gender norms within institutions that affirm those norms can constitute justice-relevant harms, even if gender-norm-compliant alternatives resulted in equal distributions of commensurables between women and men. On this basis, I argue elsewhere that the gendered division of labor could remain unjust even if caregiving work were compensated and its status elevated such that esteem and remuneration accrued equally to traditionally male and traditionally female work (2016). But at the very least, it is *coherent* to claim that the gendered division of labor could be unjust despite all commensurable goods being fairly distributed. If so, then the concept of justice must extend beyond commensurables.

The injustice of the gendered division of labor also shows that a justice-relevant, incommensurable disadvantage can *remain* justice-relevant when the disadvantaged group enjoys a surplus of different incommensurable goods. If we are to take seriously the insight that we presently fail to value caregiving in proportion to its true worth—both in terms of the public good that caregivers generate and in terms of the personal value of intimacy that caregiving enables—then we must accept that women are not the only parties harmed by the gendered division of labor. Just as many women would have been better off with more opportunities for stimulation and esteem in the world of paid work, many men would have been better off with more opportunities for the intimacy and fulfillment that caregiving

enables.⁸ Women are harmed by their sub-optimal share of paid work, and men are harmed by a sub-optimal share of caregiving work. Of course, these harms are not of equal magnitude for women and men. But suppose, again, that traditionally female work were remunerated and esteemed equally with traditionally male work. Under these circumstances, the harms of a gendered division of labor could be equal in their extent and severity. Still, it would remain unjust that men and women are so thoroughly socialized in ways that make it very costly for them to attain what for so many of them is an important good, where the basis of this socialization is nothing more than (faulty) (institutionalized) assumptions about who is best suited to or equipped for different kinds of work. For those who would find fulfillment through non-caregiving work, a deficit in that domain cannot fully be compensated by larger allocations of commensurable goods or even by larger allocations of other non-commensurable goods. For those who would find fulfillment through caregiving, a deficit in that domain is similarly incommensurable. Still, none of this makes it incoherent to think of the gendered division of labor as a problem of justice. The gendered division of labor could remain unjust even if (counterfactually) it imposed only incommensurable harms, and even if (counterfactually) the harms accrued in equal magnitudes to men and women. Similarly, men's greater likelihood of incarceration could be unjust despite the harms it inflicts being incommensurable, and it could remain unjust even though women suffer incommensurable harms of even greater magnitude.

Because these (putative) injustices cannot fully be compensated by surpluses of other goods, to fully restore justice we must remove the *ex ante* inequality—by changing the gendered socialization patterns and institutional arrangements that sustain the gendered division of labor on the one hand; by removing or overcoming men's genetic or social propensity for violence on the other. In other words, fully remediating these injustices requires reform of social institutions rather than straightforward redistribution of goods. In one sense, this is nothing new. Even straightforward income and wealth inequalities might be best addressed *not* by giving more to those whose share is unfairly small, but rather by making careful and empirically-informed

8 It is tempting to think that if a dearth of caregiving really made men worse off, they would simply do more of it. But, first, even if their small share of caregiving work is simply due to their own intransigence, they might nonetheless be better off doing more. Just as women's socialization (or genetic endowment) affects their preferences and the choices they make, so too might men's. Second, there is evidence that men increasingly do prefer gender egalitarian partnerships and a larger share of caregiving work, but worry that "mounting job demands and a lack of caretaking supports" make egalitarianism not a viable option (Gerson 2010: 11). In other words, many of the same factors that make egalitarianism so costly for women—not intransigent partners but intransigent workplaces, for example—also make it costly for men.

institutional changes to schools, zoning policies, or campaign finance regimes.⁹ The difference is that, when we are dealing with commensurables, redistributing goods can still, in principle, fully restore justice, albeit perhaps less efficiently. When the injustice involves incommensurables, redistributing goods is not only less efficient; it falls short of fully restoring justice. If incarceration inflicts incommensurable harms, then men's greater likelihood of incarceration might call for redress despite the very many inequalities from which they benefit.

5. UNJUST BUT NOT URGENT?

Men's many advantages do not render hormonal inequality irrelevant from the perspective of justice, but perhaps their advantages render it a *less urgent* injustice. Plausibly, hormonal differences that disadvantage men *are* less urgent than many of the inequalities that disadvantage women. Still, I question how far this can take us in resolving the cognitive dissonance Van Parijs' puzzle generates. The fact that men enjoy so many advantages in virtue of their gender may well depress the urgency of remedying the disadvantageous consequences of hormonal inequalities, but other considerations should figure into our calculations of urgency as well: How severe is the harm? How pervasive? How difficult is it to avoid? Are the *advantages* which its victims enjoy *commensurable* advantages? Judging from these questions, we can see that many injustices against women are exceedingly urgent problems of justice. We routinely fail to make women safe in public spaces from threat of violence and assault. The resulting harms are severe, pervasive, and exceedingly difficult for women to avoid. We should try to ease these harms, but their seeming incommensurability would make them impossible fully to remediate, which makes it urgent indeed to do what we can to avoid them in the first place.

Where do the harms of men's greater likelihood of incarceration fall along these metrics of urgency? They are presumably less urgent than the harm women disproportionately suffer in virtue of living under threat of violence, but neither can the influence of unchosen genetic endowment on men's likelihood of imprisonment be dismissed as unimportant. I do not know how difficult it is for those with the genetic endowment in question to avoid criminality. But surely the harms of incarceration are severe and pervasive: The Bureau of Justice reports that, as of the year 2000, male violent offenders made up "about one violent offender for every nine males age ten or older" (Greenfeld and Snell 2000). If the harms of incarceration

9 This is not a claim that these issues no longer fall within the purview of distributive justice. The injustices might be distributive even if the ideal remedies are not redistribution.

are incommensurable, that would heighten the urgency of finding ways to avoid them.

Even if I am wrong about this assessment of urgency, moreover, relative non-urgency does not exempt us from responsibility to theorize and address injustices. The harms of the present day gendered division of labor are, on any plausible measurement, less urgent than the harms of institutionalized practices of female genital mutilation. But concern over the persistence of the latter has not prevented a great deal of attention to the former, and this is as it should be, assuming we can maintain perspective and allocate scarce resources and attention appropriately. On reflection, the unjust consequences of hormonal inequality seem relatively urgent; but even less urgent injustices merit attention.

6. WHAT TO DO?

Men's genetic or socialized propensity to aggression is a circumstance beyond their control. We should be committed, as a matter of justice, to minimizing the effects of such circumstances on life prospects. This comes to us as puzzling, because we are accustomed to thinking of *women* as being victims of gender injustice. No doubt readers will have other ideas for how to dispel the puzzle, or ideas for how more effectively to execute the resolutions I have considered. I welcome such ideas. Diagnosing sex-based unequal prospects for incarceration as unjust is counterintuitive, and I am open to the possibility that creative maneuvers to avoid this diagnosis can be made to work. But it seems to me that we must also reflect on the status of the intuition being contradicted. At one extreme, we might treat it as a desideratum of a theory of justice that it not diagnose the unequal likelihood of incarceration between the sexes as unjust, or that it not do so when males comprise the disadvantaged group. This would too strongly privilege the intuition that men are not victims of injustice in Van Parijs' puzzle. A weaker way to privilege the intuition would be to treat it as a sufficiently reliable piece of data to justify creative refinement of our theories of justice to accommodate it. At some point, though, the creativity of our maneuvers will come at the cost of the plausibility of the theories. If the intuition is so reliable, that cost might be worth bearing. But at some point, ingenious maneuvers become at best ad hoc and at worst implausible on their own terms. There are certainly options I have not considered, and some of them may impose no plausibility cost to the best theory of justice. But suppose not. What amount of "plausibility points" should we be willing to sacrifice in our theories of justice to preserve the intuition that unequal likelihood of incarceration is not unjust to men? I don't know. But for two reasons, I think that it would

not be the disaster we might at first have thought it to be if we had to admit that our intuition in this case is misguided.

First, we have long known that certain gender inequalities harm men as well as women. Men have historically been discouraged from developing the kind of intimacy with their children that makes parenting so rewarding for some. They have been encouraged to regard paid employment as fundamentally important to their self-worth and role in society. There is no denying that men have been mal-formed under patriarchy in ways that constitute real harms *to them*, and acknowledging these harms as dimensions of gender injustice takes nothing away from the urgency of addressing harms suffered by women, who remain the prime victims of gender injustice. Nor should acknowledging an injustice in incarceration prospects detract from our commitment to the diverse array of feminist goals that we've long recognized as morally urgent.

Second, if our intuition that there is no injustice here turns out to be misguided, the practical upshots are not the unpalatable measures we may have feared but rather social policy measures that we already have independent reason to undertake. Certainly we should work to ameliorate the harms of incarceration by making prisons safer, but this does not mean that we should decriminalize violence, exonerate its perpetrators, or lessen any of our efforts to better protect victims of violence. From the fact that a man's propensity to violence is beyond his control, it does not follow that he should be exonerated for acting on that propensity. If they can be shown to be safe and effective, we might incorporate technological solutions to lower recidivism, for example offering male offenders drug or gene therapies to lessen aggressiveness.¹⁰ And while it is a far less exotic proposal, I think we have reasons to be optimistic that education reform could lower men's likelihood of incarceration.¹¹ High quality early childhood education might better enable boys to manage and process anger. Arts and enrichment programming throughout primary and secondary school might help them find healthy outlets for it. Lengthening school days and school years could diminish students' availability for gang activity, drug use, and other behaviors that raise the likelihood of subsequent criminality. This strategy could be especially effective among students, like boys from

¹⁰ For more on these possibilities, see Persson and Savulescu 2012, Casal 2011, 2013, and 2015.

¹¹ There are good reasons to worry about educational programs aimed at changing people's propensities to engage in certain behaviors. Indeed, many such efforts can be ineffective and even oppressive (Casal 2016). But evidence suggests that non-oppressive education initiatives can be effective in reducing criminality. For example, studies of early childhood educational interventions, like Perry pre-school and the Abecedarian Project, show that test scores improved in the short term, but faded out quickly, while other benefits associated with the interventions (including lack of involvement in the criminal justice system) persisted. See, e.g., Heckman et al. (2010). See also Machin et al. 2010 and Deming 2011.

poor communities with high levels of unemployment, whose intersectional group membership further elevates their risk. Perhaps most importantly, education reform could mitigate the severe deprivation and hopelessness that often lead to criminality. Well-educated students have more options for meaningful life pursuits, more developed capital to make those pursuits successful, and higher opportunity costs to criminality. For these reasons and others, we should work to diminish the extreme inequality in our society through education reform and other forms of social support. It might seem as though education reform could only make a difference if the problem had its root in social causes, but this impression is mistaken. Just as corrective lenses can improve poor vision whether it has environmental or natural causes, education could offset whatever environmental influences raise men's likelihood of incarceration *and* lessen the likelihood that they will act on—or raise the likelihood that they will resist acting on—any natural predisposition toward criminality they happen to have. In short: Whether men's greater propensity to violent crime is due to genes or socialization or both, social solutions like education reform could help reduce their likelihood of acting on that propensity.

Perhaps, if all this fails, we will have to accept that the problem, at present, cannot be ameliorated, or that it cannot be ameliorated without making the world more unjust overall than it is if we tolerate this disadvantage to men. If so, some might think that the disadvantage is therefore not unjust. I doubt that injustice is limited in this way, if only because restricting the concept based on what we are presently able to redress risks removing reasons to develop new mechanisms for redress. But even if the concept is rightly limited in that way, we should not accept the conclusion suggested without having made a good faith effort to deploy the kinds of social solutions conjectured here. I have suggested that they hold promise for reducing the influence of hormones on men's criminality, and there is little reason to doubt that, if they can be made to do so, they could do so without imposing decisive costs to other pursuits of justice.

It is indeed counterintuitive to think that men are victims of injustice because their genetic or social endowment makes them likelier to end up in prison. It might nonetheless be true. If so, then many of the social policies that could mitigate the injustice are policies about which we should have little reservation. Indeed, many of them are long overdue.

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