

Liberal and Socialist Conceptions of Distributive Justice

Nozick's general critique of patterned theories of distributive justice leads him to a specific consideration of one of the most well-known and influential of such theories, John Rawls' 1971 *A Theory of Justice*, the now-canonical argument for mitigated economic liberty and redistribution. Nozick begins by praising the book, which he calls "a powerful, deep, subtle, wide-ranging, systematic work in political and moral philosophy which has not seen its like since the writings of John Stuart Mill, if then" (p. 183). And he also notes its influence, already huge in 1974 when *Anarchy, State, and Utopia* was published, and larger today: "Political philosophers now must either work within Rawls' theory or explain why not" (p. 183). This encomium does not seem like mere formal politeness towards a colleague, but rather as very genuine admiration. Nevertheless, Nozick then proceeds to explain why he rejects the Rawlsian framework.

Rawls had argued that the best way to discover the principles of justice is to imagine rational actors deliberating behind a "veil of ignorance," meaning that none of them know what their social status, wealth, intelligence, and so on, will be. The principles chosen under those conditions will be fair. People with experience sharing a piece of cake will already understand what he has in mind: the "I-cut-you choose" method ensures fair distribution of cake, because even assuming that I want to get as much cake as possible, I don't know which piece I'm getting. Since I do not know which piece will be mine, the only way I can maximize my allotment of cake is to divide it as fairly as I can. Similarly, if one didn't know whether one would be a slave or a master, it would be irrational to select a slave society. In fact, if I wanted to maximize how much freedom I

would have, without knowing my status in society, my best move would be to select a society in which everyone had equal rights. And this is indeed Rawls' first principle of justice.

The veil of ignorance does not, however, lead us to the conclusion that all material wealth should be equally distributed. People respond to incentives, and therefore the possibility of acquiring greater wealth can lead to increased productivity and increased investment in one's education and training. Some occupations require more specialized skills, some are dangerous, some are unpleasant – all of these might require differential compensation. And, as we saw in the previous chapter, large numbers of people's preferences might converge on one particular person. For instance, a best-selling novelist might receive one dollar per book in royalties, but if the book sells a million copies, the author's income will exceed that of many professionals. However, Rawls argues, the material inequalities in the society have to be part of a system that works to everyone's advantage. From a veil of ignorance, rational people deliberating about how inequality works would be sure to select a system in which the worst off subset are as well off as they can be. So Rawls' second principle of justice is that material inequalities must be arranged so that they work to the best advantage of the worst off, and that whatever inequalities result are attached to opportunities available to all.

Rawls' model, therefore, produces a society with equal civil rights and equal opportunity, and some form of moderated capitalism with redistributive taxation and other tax-funded social service programs. One reason Nozick rejects this model is that the two principles of justice seem to be mutually inconsistent. If everyone is to enjoy equal basic rights, as in the first principle, then we cannot use the taxation required by the second principle for redistribution, as it would violate rights. One argument Nozick deploys to demonstrate this is his argument that "Taxation of earnings from labor is on a par with forced labor" (p. 169). He is not thereby committed to the bumper-sticker version of the claim, that taxation *is* forced labour, merely that it is *morally equivalent* to forced labour. He notes that "taking the earnings of n hours labor is like taking n hours from the person; it is like forcing the person to work n hours for another's purpose" (p. 169). It seems different to take the wages of five hour's work than to make someone work five extra hours, but this is illusory. Nozick asks us to

imagine one person who works longer hours in order to obtain extra goods, and another who chooses not to work overtime because he prefers having the free time, and asks “if it would be illegitimate for a tax system to seize some of [the second] man’s leisure (forced labor) for the purpose of serving the needy, how can it be legitimate for a tax system to seize some of [the first] man’s goods for that purpose?” (p. 170). In general, the non-consensual appropriation suggests that the people do not have their property rights equally protected.

Rawls might counter that this is the reason for his ordering his principles of justice, such that equality of basic civil rights comes first, and inequalities in wealth being arranged to be of maximal benefit to the least well off coming second. The ensuing weakening of property rights is therefore consistent with the equal rights of all to free speech, freedom of conscience, voting rights, and so on. But Nozick’s argument implies that the distinction between “civil rights” and “economic rights” is arbitrary. One ramification of the “Wilt Chamberlain” argument is that what people choose to do with their assets is an extension of their values and personal choices, so interference with those transactions is not substantially different from restrictions on, say, speech or other expressive acts. Seizing a person’s assets violates their rights in just the same way as censoring speech or restricting worship: it interferes with one’s capacity to shape one’s life and strive for meaning. The “social contract” approach that Rawls favours, while not utilitarian, ultimately does not preserve the autonomy of each individual person as robustly as the deontological approach to rights Nozick has argued for. That is why Rawls’ second principle allows for interference with people’s rights.

One reason Rawls gives for making this distinction is that he says people do not deserve their natural assets (intelligence, strength, or, especially in a society of unequal social status for different groups, race and gender). Since one’s holdings may be a function of these natural assets, it is not really a rights violation for the social structure to interfere with one’s enjoyment of them. Nozick counters this by arguing that it is not a matter of whether one deserves one’s holdings but whether one is entitled to them, and one is entitled to them as long as they arose in a non-rights-violating way themselves. If Smith is born with greater strength or beauty than Jones, of course he does not *deserve* these assets, but Smith’s having greater strength or beauty than Jones does not violate

Jones' rights, so Smith is entitled to them. Hence the argument from non-desert of natural assets does not show that seizing people's holdings is consistent with respect for their rights.

Lastly, Nozick is skeptical that the "veil of ignorance" deliberations necessarily commit everyone to agreeing to the arrangements of inequality that are supposed to be structured to work to the best advantage of the worst off. He asks us to imagine a "social pie" appearing (a stand-in for the material assets in the society) to which no one has any more claim than anyone else and on which unanimous agreement is needed for its division (p. 198). He thinks it likely that equal distribution would be the result of the deliberation. But, he continues, suppose the pie wasn't a fixed quantity, and "it was realized that pursuing an equal distribution would lead to a smaller total pie than otherwise might occur" – here, he suggests, "the people might well agree to an unequal distribution which raised the size of the least share" (p. 198). For example, if under an equally-divided, fixed-total scenario, everyone's share was 10 units, but under an unequally-divided, non-fixed-total scenario, some got as much as 20 units, but even the worst off received 15 units, that would satisfy Rawls' second principle, as the worst off are better off than they would be under the alternative. But, Nozick says, this couldn't help but lead the participants to a discussion about who gets what piece. "Who is it that could make the pie [even] larger, and would do it if given a larger share, but not if given an equal share under [the first system]? To whom is an incentive to be provided to make this larger contribution? ... Why doesn't this identifiable differential contribution lead to some differential entitlement?" (p. 198). In other words, they would need some conception of historical entitlement, not merely end-state patterns. The arbitrariness that would result from doing without any historical principles would, Nozick says, keep them from agreeing to this. "But no historical principle, it seems, could be agreed to in the first instance by the participants in Rawls' original position. For people meeting together behind a veil of ignorance to decide who gets what, knowing nothing about any special entitlements people may have, will treat anything to be distributed as manna from heaven" (p. 199). This means that they might not even be capable of agreeing on principles which actually benefit the least well off.

Marxian patterned distribution runs afoul of Nozick's "Wilt Chamberlain" argument just as Rawls' does, but Nozick also investigates some of the other aspects of Marx's theory, chiefly the theory of exploitation. Marx argues that capitalist society is defined by class conflict between owners of the means of production and labourers, a tension that creates the oppression of labourers. The oppression is a product of the alienation and exploitation that result from capitalist forms of exchange. "Marxist theory," Nozick says, "explains the phenomenon of exploitation by reference to the workers not having access to the means of production. The workers have to sell their labor (labor power) to the capitalists, for they must use the means of production to produce, and cannot produce alone" (p. 253). Since this allows the capitalist to appropriate the surplus value of the worker's labour, the worker is said to be exploited. Nozick points out that the underlying premise in this account is the "labour theory of value," on which the value of a good is a function of the labour that went into making it. One of his criticisms of Marxism, then, involves disputing the account of exploitation and the underlying theory of value that makes it work.

Since criticisms of the labour theory of value were a century old when *Anarchy, State, and Utopia* was published, Nozick actually settles for merely alluding to them: "It would tedious to rehearse the standard counterexamples to the labor theory of value: found natural objects (valued above the labor necessary to get them); rare goods (letters from Napoleon) that cannot be reproduced in unlimited quantities; differences in value between identical objects at different places; differences skilled labor makes; changes caused by fluctuations in supply and demand; aged objects whose producing requires much time to pass (old wines), and so on" (p. 258). (To clarify that third example: a bottle of water seems to be more highly valued when one is thirsty in the desert than when one is shopping in the supermarket, but the labour involved in making both is the same.) But Nozick does pause to examine the distinction Marx makes between thinking about the undifferentiated labour hours that went into a thing's production, and "socially necessary" labour hours. One could spend hours working on a cake made of mud, but that wouldn't necessarily make it valuable. Nozick quotes Marx making this distinction: "Nothing can have value without being an object of utility. If a thing is useless so is the labor contained in it; the labor does not count as labor, and therefore creates no value" (Marx, from *Capital*,

p. 48, in Nozick, p. 259). Nozick thinks this distinction, while intended to forestall certain objections, ends up undermining the theory entirely. The idea that the object must be valued by some valuer shifts the essence of economic value away from the objective time of production to the subjective wanting of various persons. The amount of labour that counts as “socially necessary” will turn out to involve market conditions after all.

Nozick notes that even under a system of worker-controlled cooperatives, there would be no avoiding the importance of innovation and entrepreneurship. But no one would have an incentive to take risks for no reward. “If decisions are made by the vote of workers in the factory, this will lead to underinvestment in projects whose returns will come much later when many of the presently voting workers won’t benefit enough to outweigh withholding money from current distribution...” (p. 251). Again, Nozick points out, unless “capitalist acts between consenting adults” are banned, people having the freedom to create different economic organizations will lead some to risk, invest, accumulate. He argues that it violates no one’s rights for people to do this. More generally, he argues that it violates no one’s rights to benefit from other people’s voluntary choices. He gives the example of his wife having chosen him, rejecting other possible mates. They are in some sense deprived of her company, but their rights are not thereby violated. Indeed, none of them, including Nozick, had a “right” that they should be married to her, but whichever suitor she ended up choosing was certainly entitled to be in the marriage. If not, then she could not be said to have a right to her own body, her own choices. She is not exploiting anyone by choosing her preferred mate, and Nozick is not exploiting the rejected suitors by accepting. He concludes this section by noting that Marxism seems to involve fundamental misunderstandings about both economics and morality (p. 262).