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“Fairness: A Necessary Value in Society”

In Anarchy, State, and Utopia, Robert Nozick presents a theory about justice in which he states that “the minimal state is the most extensive state that can be justified,”¹ and holds liberty to be the most important value that a society can have. In A Theory of Justice, John Rawls argues that there are values other than liberty, such as fairness, that are more important to guarantee in a society. Rawls’s theory of “justice as fairness” allows a society to be set up for the most part voluntarily by the people in it, because “it meets the principles which free and equal persons would assent to under circumstances that are fair... members are autonomous and the obligations they recognize self-imposed.”² However, in Nozick’s libertarian theory, individuals can discriminate against other members of society as long as they follow Nozick’s “entitlement theory.” I will argue that Rawls is correct in holding fairness as more necessary in a society than Nozick’s version of liberty. By using Rawls’s justification for the hypothetical “original position” and “justice as fairness”, I will show that Nozick’s hypothetical situations that are meant to illustrate liberty as being more important than fairness fail.

When Rawls discusses his idea of justice, he states that “The justice of a social scheme depends essentially on how fundamental rights and duties are assigned and on the economic opportunities and social conditions in the various sectors of society.”³ He believes that there needs to be justice in the background institutions in a society in order for the society to be just

¹ Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 149.

² John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1999), 12.

³ John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1999), 7.

because the institutions in society have a strong effect on what a person's place in society will be.⁴ Rawls's idea of how to determine what justice requires in a society consists of members choosing principles of justice in the "original position," "a purely hypothetical situation characterized so as to lead to a certain conception of justice."⁵ In the original position, no one knows their place in society, their social class, their wealth, their natural assets and abilities, or anything that could influence their decisions of how to come up with principles of justice.⁶ Rawls's reasoning for this is that because people in the original position are rational and mutually disinterested, meaning that they do not take an interest in other people's interests, "...if a man knew he was wealthy, he might find it rational to advance the principle that various taxes for welfare measures be counted unjust; if he knew that he was poor, he would most likely propose the contrary principle."⁷ Rawls explains that the reason that people are deprived of this information is to "exclude(s) the knowledge of those contingencies which set(s) men at odds and allows them to be guided by their prejudices."⁸ Therefore, the most prominent condition of the original position is that people choose the principles of justice behind this "veil of ignorance," his justification for this being that it will ensure that "No one is advantaged or disadvantaged in their choice of principles by the outcome of natural chance or the contingency of social circumstances" and that these are "the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the

⁴ John Rawls, (Cambridge: Harvard University Press, 1999), 7.

¹ John Rawls, (Cambridge: Harvard University Press, 1999), 11.

² John Rawls, (Cambridge: Harvard University Press, 1999), 11.

² John Rawls, (Cambridge: Harvard University Press, 1999), 12 and 17.

¹ John Rawls, (Cambridge: Harvard University Press, 1999), 17.

fundamental terms of their association.”⁹ Rawls refers to this theory as “justice as fairness,” because since all people are in the same position, and the principles are not made to favor anyone in particular, the principles are designed from a fair agreement or bargain among the members of the society.¹⁰

In Rawls’s theory of justice, there are two principles that would be viewed as rational in the original position.

“First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others...Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.”¹¹

The first principle is rational in the original position because, since it would be unreasonable for someone to expect more than an equal share in the redistribution of primary goods because it is impossible for someone to win special advantages for themselves in the original position, and because no one would rationally agree to less, then the first principle of justice would logically require equal distribution of these goods.¹² His reasoning for the second principle is that, because the parties are mutually disinterested, they would accept these inequalities knowing that the basic structure would only allow them if they would improve the situation of everyone and are consistent with “equal liberty and fair opportunity.”¹³ Rawls also states that they must remain in serial order, to ensure that “the basic equal liberties protected by the first principle cannot be justified, or compensated for, by greater social and economic advantages.”¹⁴ Rawls’s

² *A Theory of Justice*
^{iv} *A Theory of Justice*
^{vii} *A Theory of Justice*
^{viii} *A Theory of Justice*
^x *A Theory of Justice*
^{xi} *A Theory of Justice*

theory guarantees that there will be fair equality of opportunity for all people, meaning that “...positions are to be not only open in a formal sense, but that all should have a fair chance to attain them...that those with similar life skills should have similar life chances.”¹⁵ This would “insure that the system of cooperation is one of pure procedural justice,” the advantage of this being that “it is no longer necessary to keep track of the endless variety of circumstances and the changing relative positions of particular persons.”¹⁶ Another part of the theory is the difference principle, which is part of the second principle of justice. It states that, “Assuming the framework of institutions required by equal liberty and fair equality of opportunity, the higher expectations of those better situated are just if and only if they work as part of a scheme which improves the expectations of the least advantaged members of society.”¹⁷ This means that unequal distributions are only justified if they benefit the least advantaged, and that institutions must be constructed in a way that benefits the least well off. Rawls’s theory of justice also says that no one ought to be advantaged or disadvantaged because of natural or morally arbitrary characteristics, his justification for this being that a person has done nothing to earn these advantages, and therefore does not deserve a better starting place in society because of this.¹⁸

Nozick’s theory on the other hand does not support the idea that there needs to be justice in the basic institutions that create a society, but rather that there needs to be justice in individual transactions among people in order to ensure justice. In Anarchy, State, and Utopia, Nozick presents “the entitlement theory,” which he uses as guidelines to judge whether justice is being

applied in people's holdings.¹⁹ His theory states that as long as there is justice in the acquisition of a holding, in the transfer of a holding, and in the rectification of holdings if they were acquired and/or transferred unjustly, a person is entitled to them.²⁰

economic situation, it would be unreasonable for them to choose policies that limit their status in society for the sake of others. Therefore, in the original position, it would be irrational for these things to count because it could cause principles to be based on things that are irrelevant to justice.²⁸ However, in Nozick's theory, people are entitled to these characteristics, and individuals in a society are allowed to treat people based on how desirable their natural characteristics are, so it could easily lead to the justification of things such as discriminatory hiring practices. For example, if someone was looking to hire someone for a job and they valued being a white male more than any other characteristic that someone could have, they could easily dismiss an applicant simply for being a minority or a female. Though Nozick does not disagree with Rawls's first principle, that people do deserve basic liberties such as the right to vote, freedom of speech and assembly, etc., he does disagree with the second principle that guarantees that people will have equality of opportunity.²⁹ Therefore, someone's personal feelings about what morally arbitrary characteristics are more desirable would take precedence over whether someone is being treated fairly or not. This could have a negative effect on a society's social and economic development, because it could prevent the most skilled people in particular areas from having the opportunity to pursue their areas of expertise. For example, if a scientist working on discovering the cure for cancer only wanted to hire white males to their team because they saw this characteristic as desirable for whatever reason, they could severely hinder the process if there were a more capable applicant who happened to be a woman or a minority. Though the woman or minority applicant's intelligence would also be a morally arbitrary characteristic, Rawls would not have a problem with their being hired because of these "accidents of nature and

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example, Nozick questions why social cooperation necessarily raises the question of distributive justice.³⁶ He uses the example of ten Robinson Crusoe's working alone on separate islands, and says that if one of the Robinson Crusoe's was not as well off on one of the islands as one of the other ones, that it would clearly be without merit for him to demand resources because and claim that the task of justice was to rectify these inequalities.³⁷ Nozick then goes on to say that it is not that no theory of justice is needed in this situation, as it would clearly be unjust for one island to steal from another island, but that the correct theory here is his "entitlement theory."³⁸ He uses this example to ask how social cooperation, rather than people working alone on separate islands, would change the situation of justice to needing a theory other than the entitlement theory. He asks why social cooperation in addition to people's voluntary exchanges raises any special problems about distribution, and why the "appropriate" set of holdings is not the one which occurs in the process of "mutually-agreed-to exchanges" where people choose to give to others what they are entitled to.³⁹ Rawls disagrees in that he feels that social cooperation does very obviously create the need to address distributive justice.⁴⁰ Though Nozick feels that his island example proves Rawls wrong and shows that social cooperation does not necessarily require distributive justice, Rawls proves that it does by acknowledging how conflicts come about in social cooperative situations that demonstrate a need for distributive justice. He states that,

"...although a society is a cooperative venture for mutual advantage, it is typically marked by a conflict as well as by an identity of interests. There is an identity of interests since social cooperation makes possible a better life for all than any would have if each were to live solely on his own efforts. There is a conflict of interests since persons are not indifferent as to how the greater benefits produced by their collaboration are distributed, for in order to pursue their ends they each prefer a larger to a lesser share...In the absence of a certain measure of agreement on what is just an unjust, it is clearly more difficult for individuals to coordinate their plans

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efficiently in order to insure that mutually beneficial agreements are maintained. Distrust and resentment corrode the ties of civility, and suspicion and hostility tempt men to act in ways they would otherwise avoid...once conception of justice is preferable to another when its broader consequences are more desirable.”⁴¹

Though the island example seems to illustrate that the entitlement theory would be an appropriate theory to govern Robinson Crusoe’s on individual islands, it fails to show why social cooperation would not cause conflicts of disagreement over holdings once social cooperation began to take place. Rawls believes that there is a distinction between being entitled to something and deserving it “in a fair although nonmoral sense”, as can clearly be seen in the fact that there are people in “favored positions” that do not have “to a higher degree than others the desired qualities and abilities.”⁴² This indicates that “...even the best economic arrangements will not always lead to the more preferred outcomes.”⁴³ Therefore, because a group of people working together would produce more goods than would be produced if they were working by themselves, it is clear that people would not agree exactly which individual would be entitled to those goods, or who would “deserve” what, creating the ‘problem’ that needs to be addressed with distributive justice. As Rawls states, in a society where social cooperation is taking place, “A set of principles is required for choosing among the various social arrangements which determine this division of advantages and for underwriting an agreement on the proper distributive shares.”⁴⁴ This explains why a theory of justice beyond the “entitlement theory” is needed in a situation of social cooperation; the “entitlement theory” alone could not solve the problem of people’s disagreements over how to justly distribute the goods that came about

cannot claim entitlement due to some outside circumstances that were out of their control. This brings about the need for a theory of justice that acknowledges how these goods should be distributed. Though Nozick believes that social cooperation does not raise issues of distributive justice that the entitlement theory could not solve, his island example does not provide enough valid reasoning for why this is so, showing why fairness in the form of distributive justice is more necessary to have in a society that is made up of social cooperation than the liberty that Nozick believes his “entitlement theory” to preserve.

The island example also fails in that it does not account for the profound influence that background institutions have on people in societies. Rawls illustrates this in saying,

“...the primary subject of justice is the basic structure of society...the way in which major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. By major institutions I understand the political constitution and the principle economic and social arrangements...taken together as one scheme, the major institutions define men’s rights and duties and influence their life prospects...this structure contains various social positions and that men born into different positions have different expectations of life determined...by the political system as well as by economic and social circumstances. In this way the institutions of society favor certain starting places over others.”⁴⁵

Clearly, the individuals on the islands did not have to experience the influence of background institutions in their proceedings. There were no significant economic or social arrangements, no political constitutions influencing the placement of each Robinson Crusoe within society. Therefore, “the entitlement theory” would fail as a way to preserve justice in a society developed beyond people living without background institutions, as people’s places in society would be altered in ways that could not be rectified or justly maintained via solely the three rules necessary for justice in individual transactions. This shows another way in which the island example fails to prove liberty to be more important than fairness; because it does not

grades total to a given sum.⁵⁰ In discussing this example, he points out that, according to the original position, even people if people would prefer to use a historical principal to distribute the grades that depends on how hard each student worked and their natural intelligence, they could not do so because,

“No such notions are allowed to be at work in the original position...The whole procedure of persons choosing principles in Rawls’s original position presupposes that no historical-entitlement conception of justice is correct.”⁵¹

The grade distribution example does not succeed in showing that the original position is an unsuitable standpoint from which to choose principles of justice. First and foremost, Nozick seems to draw the conclusion that Rawls does not allow for entitlements of any kind within his theory of justice. However, Rawls does address this by saying that people are entitled to benefits that may arise from their natural assets, it just should be for the common benefit.⁵² He explains this by saying,

“To be sure, the more advantaged have a right to their natural assets, as does everyone else; this right is covered by the first principle under the basic liberty protecting the integrity of the person. And so the more advantaged are entitled to whatever they can acquire in accordance with the rules of a fair system of social cooperation.”⁵³

From this statement, it is apparent that Rawls’ theory and the original position would not have an issue with students that have a more developed intelligence and have worked harder obtaining higher grades. As long as their obtaining higher grades came from a system that “improves the expectations of the least advantaged members of society,”⁵⁴ then these students could justly receive their grades. As long as these students were part of a system where, say, the



least intelligent were given tutors or extra help with their school work, and the people with the higher grades did not obtain them due to having been able to afford a private tutor or something else that was to their advantage, then the students could justifiably choose the option where they got the grades originally given out by the teacher in respect to Rawls's theory of justice.

Another reason this grading example is not a legitimate way to illustrate problems with the original position is because it does not prove that in the original position, students would not choose the grades given by an impartial grader. Nozick doubts that students would choose these grades; he believes that if students saw the grades beforehand, they would want to redistribute them.⁵⁵ However, in the original position, the students would clearly not have seen the grades, and therefore would not immediately demand a redistribution. Rawls could say that in the original position, the students would choose the impartial grader, because knowing that they were part of a system where they would receive extra help if they were the least intelligent, that no one in the class could use their wealth to pay for a private tutor, and that they would likely receive high grades if they were naturally intelligent, then there would be no reason why they would not choose what Nozick presents as the clear just choice, to accept the grades given to them by the impartial grader. Nozick is incorrect in thinking that Rawls has an inappropriate bias against historical principles; as Rawls does allow for people to benefit from their hard work and natural talents, as long as this takes place in a system that works toward advancing those that are worse off.

Within Rawls's A Theory of Justice, many logical reasons and scenarios are offered to why fairness is a necessary value for a society to have. In Anarchy, State and Utopia, Nozick attempts to present scenarios that prove Rawls wrong and show liberty to be a more important value in a society, but he fails to prove that liberty in the absence of fairness is ideal. Because

⁵⁵ Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 200.



Anarchy, State, and Utopia.

A Theory of Justice