

MAXIMIZING THE MINIMAL STATE:
TOWARD JUSTICE THROUGH
RAWLSIAN-NOZICKIAN COMPATIBILITY

by

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ABSTRACT

In what can be considered the seminal work in libertarian political philosophy, Robert Nozick established the notion of a minimally justified state in his *Anarchy, State, and Utopia*. Working from a deontological framework, Nozick sought to systematically reject the work of fellow Harvard philosopher John Rawls, who operated from an ostensibly disparate framework to establish the notion of justice as fairness in his *A Theory of Justice*. At a foundational level, these two concepts of justice seem to be incompatible. However, this work will lay out a case for Rawlsian-Nozickian compatibility by arguing that Nozick's view of individual rights and property rights can work in concert with the Rawlsian notion of justice as fairness.

CHAPTER I: AN INTRODUCTION TO THE COMPATIBILIST VIEW

In her oft-quoted criticism of socialism, Baroness Margaret Thatcher of the United Kingdom quipped that eventually you “run out of other people’s money.”¹ This, in essence, represents one of the main lines of criticism against redistribution of wealth in order to achieve a more just state: that it is a violation of an individual’s rights to take what is “rightfully” his in order to improve the wellbeing of another. This notion serves as a brief, albeit incomplete, summation of one of the many attacks that Robert Nozick’s conception of justice presented in *Anarchy, State, and Utopia* levels against another Harvard philosopher — John Rawls — and his conception of justice. Essentially, one is entitled to own what one has acquired justly and to remove that possession, even for the common good, is a violation of that individual’s rights. And redistributionist policies pursued by a governmental authority that in any way attempt to compensate for recognized inequalities in society not only are violations of the property rights of individuals but are also, more insidiously, the cause of many of the inequalities that occur in society.

Given this and many other attacks against Rawls’ view, it seems that the two views are fundamentally at odds. However, that is not necessarily the case. Both Rawls and Nozick establish their views of justice in opposition to utilitarian theories of justice that, they argue, fail to adequately provide a defense of the inviolable moral entity that is the individual. With these

¹ Gardner, Llew, writer. *This Week*. Thames TV. February 5, 1976. In an interview with Margaret Thatcher, recently elected leader for the Conservative Party of the United Kingdom.

deontological underpinnings, both the Rawlsian and Nozickian views attempt to set out a conception of justice that is, at its foundation, a defense of individual rights. For Nozick that leads to the Entitlement Theory, or justice in holdings—a view that examines whether or not a distribution of goods is just based on principles of justice that ensure that individuals possess only those holdings to which they are rightfully entitled. For Rawls, this individual notion of justice necessitates ensuring a basic scheme of liberties to all individuals while at the same time creating the basic structures of society such that the only inequalities that are justified are those that benefit the least-well off individual in society and by extension the entire society as a whole.

Though Nozick and Rawls reach these two, very different, conclusions about what justice is through differing means, it is clear that, with regard to their foundation in deontology, and in many other ways, the views are actually not as disparate as they may seem. Thus, it is the aim of this work to examine the Rawlsian and Nozickian conceptions of justice and argue for a compatibilist view of these two conceptions of justice.

This project has multiple aims, the first of which will be to advance the compatibilist view of Rawlsian-Nozickian justice that finds itself firmly founded in a defense of property rights and uses the mechanisms of the entitlement theory to recognize exploitation and problematic inequalities that exist within society. From there, the difference principle serves as a prescriptive measure of the construction of basic structures within society that rectify those injustices caused by the violation of property rights.

Second, this work will seek to examine the implications of this compatibilist view for the political philosophies of both Rawls and Nozick. Specifically, we will use the compatibilist view

as a means to maximize the role and duties of the minimal state. Essentially, the argument here is that, within the framework of justice established as the compatibilist view, the nature of the minimal state's obligation to its citizens will be radically different than that Nozick imagines in *Anarchy, State, and Utopia*.

In this work, the fact is not lost that there are apparent fundamental incompatibilities with the ways that both Rawls and Nozick approach the notion of justice and the duties of the state itself. However, the approach contained within seeks to explore, in detail, how the incompatibilities that seem to exist within the Rawlsian and Nozickian approaches to justice are either non-existent or trivial to the conclusions of the compatibilist view itself. Specifically, this work will explore the notions of Rawlsian equality of opportunity, concepts of exploitation, and the notion of historical justice—all of which seem to represent some of the key differences between the Rawlsian and Nozickian views.

However, though it may not be clear at first, these dissimilarities in the initial views of the authors does not stall the project of establishing a compatibilist view. Rather, it is these similarities that actually serve to highlight where it is that the notions of justice as fairness and the entitlement theory can best work together as a form of deontological justice and for the organizations of the basic structures of society. Thus, it is the aim of this work not to shirk away and ignore these differences but rather to embrace them as the lynch-pins for understanding the possibility and function of the compatibilist view of justice.

It is with these aims in mind that the rest of this work is organized. Chapter II will begin with an examination of the two views that are in contention. Beginning with the Rawlsian view of justice, we will examine the deontological framework established and the principles of justice

set forth in *Theory of Justice*. Subsequently, we will examine Nozickian justice, the Entitlement Theory itself, as well as Nozick's deontological views.

From there, Chapter III will layout the basic case for the compatibilist view and will describe how the arguments that are contained in the latter end of this work will ultimately coalesce. Chapter IV will present the argument for reframing exploitation and the maintenance of the equality of opportunity as property rights issues that mandate the rectification of through entitlement theory.

Finally, Chapter V will delve into the implications of the compatibilist view on the political philosophy of both Nozick and Rawls, specifically dealing with the maximization of the minimal state and the reframing of what exactly constitutes the *minimal* state. Chapter VI will present objections and deal with them while Chapter VII concludes.

CHAPTER II: JUSTICE AS FAIRNESS AND JUSTICE IN HOLDINGS

Both Rawls' *Theory of Justice* and Nozick's *Anarchy, State, and Utopia* are masterworks in their own rights. Impressive in their depth and scope, each work lays out the groundworks for the respective author's views on morality, justice, and the application of these ideas to political structures. However, in order to establish the compatibilist view, which is the aim of this work, this chapter must begin with an examination of both of the views: Rawls' justice as fairness and the two principles of justice and Nozick's entitlement theory. This chapter will explore various elements of the views as established with specific examination of the various principles of justice, the methodology driving each theory, the underlying moral view of both theories, and the ultimate application of each view to the organization of the state.

Section 1: Rawls and Justice as Fairness

Rawls on Deontology

A Theory of Justice begins with a discussion of moral theory and the motivations behind Rawls' reconceptualization of justice. Thus, it is necessary to explore the underlying moral theory that lays the groundworks for the Rawlsian view of justice as fairness.

Rejecting Utilitarianism. From the beginning, justice as fairness is established as a rejection of classical utilitarian theories of justice.² Rawls argues that the utilitarian theory, and teleological theories in general, though they are intuitively acceptable and rational creates a

² Rawls, John. *A Theory of Justice*. Cambridge: Harvard University Press, 1999. 20.

problematic distinction between the right and the good and leads to problematic outcomes in establishing a just state.

Rawls' first objection to utilitarian theories of justice discusses the distinction between the right and the good found in teleological theories. Rawls argues that, by definition, teleological theory defines the good independently from the right.³ For example, the good in a utilitarian sense is quantified as pleasure, but the right can be defined in many ways depending on the conception of the utilitarianism. The different formulations of utilitarianism (i.e. act utilitarianism versus rule utilitarianism) represent different formulations of the right in the teleological theory.

This notion of the right defined independently from the good allows for the categorization and judgments of goods without reference to rightness. This is problematic in several ways because it allows the evaluation of a state without reference to higher order principles that relate to the nature of the right. Rawls gives the example of distribution. The teleological separation of the definition of the right and the good indicates that the goodness of a state can be defined without reference to notions such as distribution because it lies outside of the definition of the good. Regardless of the impact that distribution might have on the overarching justness of a state, to consider a distribution of goods as a good in itself is to violate the classical definition of teleology itself.⁴

The teleological distinction between the right and the good is the groundwork of Rawls' rejection of classical utilitarian justice. Rawls calls into question the facet of classical utilitarian

³ Ibid., 22.

⁴ Ibid., 22.

theory that renders matters of distribution only to be secondary in the determination of the moral status of a given situation. In a utilitarian theory, then, all other aspects of the good are rendered subservient to the maximization of utility. This rendered the possibility of a maximization of good by concentrating all of the advantages of a situation in the hands of one individual as long as the aggregate utility is maximized.

And herein lies the second problem with utilitarianism, in Rawls' view: "Utilitarianism does not take seriously the distinctions between persons."⁵ Rawls argues that the acceptance of Utilitarianism lies mainly on the universalization of an intuitively acceptable individual proposition of creating more pleasure than pain in the world. This works on an individual level, but when the utilitarian conception of justice becomes a universalized tool for the evaluation of a society as a whole, it fails to treat the distinction between persons with the respect deserved. Rawls argues that, in the Utilitarian view, the entire nature of the society is transformed from a collection of individuals into a massive ecosystem of possible utility receptors. In this manner, it seems that, on the larger scale, Utilitarianism ignores the distinctions between persons and would ignore the foundational rights for a single individual if that action resulted in an increase in aggregate utility in the overall society.

Finally, Rawls illustrates some of the more disturbing realities of a utilitarian calculation of justice. Given the principle of utility and the notion that a society is best arranged when there is a maximization of utility, one must factor in all sources and qualities of pleasure, including pleasure that results from the violation of the rights of others.⁶ This is similar to the objection

⁵ Ibid., 4.

⁶ Ibid., 27.

presented above but differs in the more insidious manner in which people can gain pleasure. Rawls argues that the inclusion of pleasure that is obtained by “subjecting others to a lesser liberty as a means of enhancing” another’s pleasure is entirely antithetical to any real conception of justice. And even though the society would suppress these urges in certain individuals because they result in a net loss of utility, it seems problematic to allow murder if and only if that pleasure obtained by the murderer is at least slightly greater than the pain resultant from the action. It seems that actions such as these should be rejected prior to entering the utilitarian calculus.

Defining the Deontological View. This rejection of utilitarian justice leads Rawls to establish his notion of justice as fairness as an alternative view of justice. Rawls takes the two principles of justice (which are discussed later in this chapter) as the basis of his deontological view. However, it is important to note some of the key characteristics of this deontology before examining the actual view itself.

Primarily, it is necessary to examine how Rawls defines the notion of deontological theory as a contrast to his characterization of teleological theory. In this manner, Rawls defines deontological theories as those that characterize the right and the good in a dependent manner or a view that “does not interpret the right as the maximizing of the good.”⁷ This is an important distinction from many different definitions of deontological ethics. Rawls argues that deontology is not an ethic that ignores the consequences of one’s actions because any moral theory that ignores the consequences of the actions would be irrational.⁸ However, one can

⁷ Ibid., 26.

⁸ Ibid., 26.

draw distinctions between deontological theory and teleological theory in the way that the theory defines the good and the right.

Characteristics of the Deontological View. The view of justice as fairness specifically responds to the many objections to classical utilitarian theory that Rawls presents. First, as a deontological theory, Rawls's justice as fairness does not specify the right independent of the good. Nor is the right defined as the maximization of the good. This is a key aspect of Rawls' deontological view in that the problem of maximizing the net balance of satisfactions is never questioned in justice as fairness at all.⁹ Much like the plumage of a dead parrot, the utility or the aggregate happiness or utility or any measure of benefits simply doesn't enter into the calculation—because there is no calculation or measurement of the good to determine the right. Instead, the right and the good are both dependent upon

Additionally, it is important to note that the individual, subjective nature of satisfaction is ignored in the deontological view as well. Due to the nature of the Veil of Ignorance and Rawls' rationalist approach to political and moral theory, individuals chose to conform their particular notions of the good in such a way that they do not directly violate the principles of justice.¹⁰ This avoids the problem that Rawls reveals in the utilitarian theory where pleasure obtained from violating others is considered along with other pleasures. Rather, in the Rawlsian view of justice as fairness, the notion of the good is already pre-defined to a certain extent and individuals create their own concept of the good within the framework of the pre-existing and

⁹ Ibid., 27.

¹⁰ Ibid., 27.

consented to justice as fairness. This is part of the basic role of justice in a society, insofar as the principles of justice are those that would be agreed to behind the veil of ignorance and such that “everyone accepts and knows that the others accept the same principles of justice.”¹¹ In this sense, the view is not limiting the rights of individuals to take pleasure in what they will but limits the inclusion of that pleasure in the determination of what is and is not moral based on the mutually agreed-upon principles of justice.

Intuition and Lexical Prioritization. Finally, it is important to discuss the notion of intuitionism within Rawls view of justice. Much in the same way that the lexical difference principle illustrates how certain individuals ought to see advantages from inequalities in society before other individuals see those benefits, the lexical prioritization of rights argues that there is a similar prioritization of rights and principles that can be developed through intuition.

Intuitive judgments of priority can lead to a lexical (or lexicographical) prioritization or a hierarchical structure of rights and principles such that liberties can be arranged in a serial order. This order arises such that one need cannot be met without the needs prior to it being met. The idea here is that it is intuitive that individuals cannot enjoy certain rights without having a prior satisfaction of other rights. Similar to the notion that the right to life is a prerequisite for the enjoyment of any subsequent rights or liberties, the hierarchical structure of principles upon which Rawls bases his deontology argues that certain liberties and rights are more basic than others and can be thought of in such a serial order.

¹¹ Ibid., 27.

The Original Position and the Veil of Ignorance

So far, we have explored the nature of Rawls' conception of justice; however, in furthering an understanding of justice as fairness, it is necessary to, next, explore how Rawls arrives at this conception of justice through his notions of the original position and the veil of ignorance.

The Original Position. Political philosophers from Hobbes to Locke (and eventually to Nozick) have used the notion of a state of nature—a state prior to the existence of governmental and societal structures—and images of “wild Englishmen” as thought experiments upon which to build an understanding of the emergence of governance and the societal structures that exist today. Rawls rejects this as the basis of his conception of justice and instead adopts the notion of the original position which, instead of attempting to divine the purpose and nature of the just state by examining its origins through a purely hypothetical scenario, serves as a thought experiment from which Rawls intends to, through a rationalist approach, determine principles of justice to which all individuals in a society would assent.

The original position is what Rawls describes as the “appropriate initial status quo which ensures that the fundamental agreements reached in it are fair.”¹² This notion is fairly simple in the way that it attempts to allow a rationalist approach to issues of justice. Instead of justice as a natural outgrowth of the state of nature, it is considered a function of rational choice where individuals choose principles over others as a matter of deliberation and rational

¹² Ibid., 15.

understanding. It is only by ascertaining the principles of justice in this manner that it is possible to create a fair procedure so that those principles that are agreed upon are just.

The Veil of Ignorance. Individuals in the original position are envisioned behind a veil of ignorance such that they do not possess any knowledge regarding their particular circumstances in society.¹³ In the original position, restrictions on knowledge allow for a rational process in order to reach mutually agreed upon principles of justice.

Initially, Rawls relates the veil of ignorance to Immanuel Kant's notion of the categorical imperative. The veil of ignorance is innately tied to Kant's ethics in the sense that the categorical imperative wills universal laws from maxims. In the same sense, the notion of the veil of ignorance forces individuals in the original position to confront the universal implications of the principles of justice given that they could inhabit any of the positions allowable under the principles that they adopt. This, in the end, looks much like Kant's Kingdom of Ends.

That individuals in the original position are blind to their ultimate position in society means that they must consider all positions that are created by their principles of justice. And it is this that actually makes a mutually agreed upon conception of justice possible. Given knowledge of one's position in society, it would be seemingly impossible to reach a mutually agreed upon set of principles that characterize justice. Without the veil of ignorance, egoistic ideals would run rampant and impede any process of creating an agreement of principles that are suitably beneficial for all. Rather, by introducing the notion of the veil of ignorance, it is

¹³ Ibid., 118.

possible to develop principles of justice that all find agreeable regardless of the position that they will inhabit once the veil is torn away.

The View, Justice as Fairness

Justice as fairness is not as simple a view as it seems from the offset. Justice as fairness does not limit notions of fairness to the subjective and confusable notions of what “fairness” is and connotes. Rather, in establishing the view of Justice as Fairness, Rawls lays out two principles of justice to develop his deontological conception of justice. The first of these principles, the Liberty Principle, deals specifically with basic rights and liberties that all are entitled to. The second, and arguably more controversial principle, the Equality Principle, deals with the arrangement of social and economic inequalities within a state.

Overview. Before analyzing the individual principles of justice that Rawls lays out, it is prudent to look at the statement of these principles as Rawls writes and examine them as a whole.

Though there are a number of different statements of the two principles of justice as fairness, at the beginning of *A Theory of Justice*, in the first full statement of the view, Rawls writes:

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.¹⁴

The two principles can be identified as the Liberty Principle—that is the one dealing with equality of rights and liberties available to all—and the Equality principle—which deals with the arrangement of social, political, economic, and other inequalities in a society. However, though the Equality principle is stated as a whole, there are two distinct parts: the difference principle is that which describes the way in which inequalities are to be arranged for the benefit of all and the discussion of equal opportunity inherent in the notion of “positions and offices open to all.”¹⁵

Holistically, the principles paint the liberal picture of justice that Rawls would like to portray. The view of justice as fairness is largely concerned with the distributions of advantages in a society rather than the traditional, and simpler, approach to aggregating benefits found in the classical utilitarian conception of justice. Thus, as a whole, the view functions to evaluate justice in a unique way. The process of taking into consideration the distribution of advantages allows Rawls to form a view that is ultimately beneficial in utilitarian terms—in the sense that the outcomes and ideas articulated by the theory tend to be ultimately beneficial in terms of aggregate utility and the overall benefit of the society—but is justified on the basis of a deontological ethic that gives it unique benefits and avoids a multitude of the problems

¹⁴ Ibid., 53.

¹⁵ Ibid., 53.

associated with the utilitarian conception of justice. Thus, though the view espoused by Rawls does not measure the just state on the maximization of outcomes, the view itself creates high levels of aggregate utility.¹⁶

The Liberty Principle. The first principle of justice, or the liberty principle, is fairly straightforward insofar as it claims that a just state must provide equal rights to all individuals. This is, at first glance, a fairly standard and non-controversial claim, but it functions in many ways within the overall view of justice as fairness.

First, as Rawls explains it, the liberty principle applies specifically to the basic structures of society and “governs the assignment of rights and duties”.¹⁷ Rawls categorizes aspects of the social system into two separate parts, and the liberty principle deals with the first part of those systems. Essentially, the liberty principle functions to ensure the most basic and necessary rights to individuals within a society. This is crucial in Rawls’ conception of justice and morality, especially in the context of the lexical prioritization of rights (which will be discussed later in this chapter). In brief, the liberty principle functions to ensure a basic standard of rights for all individuals in the society in order to facilitate a sort of upward mobility. In much the same way as it is hard to obtain intellectual pursuits while starving, the liberty principle, working in the hierarchical structure of the lexical prioritization of rights, ensures that all individuals have access to the same base standard of rights.

¹⁶ Ibid., 66-68.. It is here that Rawls argues for a robust understanding of how the egalitarian principles of democratic equality and justice as fairness can, in turn, facilitate a greater overall utility. Though that is not the goal of justice as fairness, it is a byproduct of the view itself.

¹⁷ Ibid., 53.

These basic rights serve to facilitate more than the individual security of person. These basic liberties function similarly to Locke's inalienable rights. Rawls articulates that among the most important rights that must be guaranteed include political liberties, liberty of thought and conscience, freedom from physical and psychological oppression; and the right to hold private property and be free from arbitrary arrest and seizure.¹⁸ Insofar as these rights represent the first principles of the lexical order of rights, the security of these rights comes prior to the enjoyment of any other right, and thus, it is the duty of any just society to ensure that these rights are upheld prior to any other concern.

However, Rawls notes that this scheme of rights is not all encompassing. Rather, the idea of the liberty principle is to establish for all individuals in a society the most basic of liberties (which include the ones listed above) and even more liberties such that the most "extensive scheme of equal basic liberties" can be established for all.¹⁹ Insofar as any basic right can be guaranteed to all individuals in the society without necessarily infringing upon the rights of another in that society, the right should be guaranteed. This allows for equal protection and equal liberties to be guaranteed to all in a society without the guarantee of those rights being impossible or mutually exclusive.

Difference Principle. Rawls' second principle breaks down into two specific parts, the first of these is the difference principle, or the notion that "social and economic inequalities are to be arranged so that they are...reasonably expected to be everyone's advantage."²⁰ As a

¹⁸ Ibid., 53.

¹⁹ Ibid., 53.

²⁰ Ibid., 53.

complement to the liberty principle, which applies to the structures of society that govern rights and duties, the difference principle applies to the regulation and “distribution of social and economic advantages” within the society.²¹

Thus, the difference principle serves the function of addressing economic and social differences such as differences in the distribution of wealth and income and differing political authority in a society. And here is a key facet of Rawls’ ideology. Note, that in arguing for the distribution of advantages to be to the benefit of all, Rawls is not advocating for equal distribution. Rather, this conception of justice argues that the appropriate distribution of advantages in a society is one that improves the wellbeing of all in the society as a whole rather than simply aggregating utility regardless of distribution. To this end, several different inequalities in outcome can be tolerated as long as the positions of authority and the ability to achieve certain outcomes are available to all under a certain equality of opportunity. In this sense, there are several inequalities that are beneficial to the society, especially insofar as these inequalities can drive greater goods such as progress and scientific advancement.

However, there is an important distinction to be made here: in advocating for the inequalities as a benefit to everyone, Rawls does not advocate for a utilitarian aggregation. Rather, Rawls’ argues that inequalities in a society must directly benefit all in the society as a whole.²² In order for an inequality in a society to be just, that inequality must be structured such

²¹ Ibid., 53.

²² By drawing upon Rawls’ conclusions regarding the chain connection and the necessarily interconnected nature of individuals’ well-being within a society as a whole, it is clear that the justification of inequalities mandated by the difference principle lies in

that is justifiable to all, including those who are affected by the inequality itself, and work to the benefit of the representative worst off.

But this seems counterintuitive. How can an individual who has fewer advantages by birth than another individual be benefitted by a lack of advantages, or how does unequal treatment by the structures of society, such as a progressive tax code that taxes wealthy individuals at a higher rate than others, benefit those who seem to be directly harmed by those structures?

The answer lies in the fostering of a greater environment for economic and societal growth as a whole. Essentially, the compensating benefits for each individual that arises from a distribution of advantages, like the one described by justice as fairness, is preferable for the individual than either alternative. For the disadvantaged of a society, the promise of upward mobility and the chance to achieve more than one has already is preferable to the stagnation that is promised by a terminally equal distribution of advantages. For the society, this desire to be upwardly mobile creates the sense of competition that can aid in societal growth. And for the most advantaged of a society, a short-term loss of income through structures like a progressive income tax creates a prosperous economic climate in which the advantaged individual can continue to experience the benefits of her status in a more economically prosperous or socially advantageous climate.

the direct benefit to all. Though there are short-run harms for individuals facing the short end of the stick, the long-run gains justify those harms. Though the slice is smaller in the short run, the pie is bigger in the long run .

Further, an appeal to the veil of ignorance can also justify these inequalities as well. Behind the veil of ignorance, prior to any knowledge of one's position in life, it is clear that Rawlsian justice supports the benefits posed under the structures of society. The idea here is that the well-off are not burdened by the justified inequalities and those who are the least well-off are able to achieve economic mobility due to the inequalities. Thus, behind the veil of ignorance, one is comfortable assenting to inequalities that are to the benefit of the least well-off insofar as they provide for an overall more beneficial situation regardless of one's position in society once the veil is removed because of the chain connection and the tendency of these societal structures to promote greater sustainability and utility to the individual than the alternative.

Finally, the difference principle is key to creation of a state Rawls describes as democratic equality. Within the context of the difference principle, the notion of democratic equality is that, unless a certain inequality is beneficial to all individuals in a society, that an equal distribution of advantages and disadvantages is preferable and more just.²³ In practice, however, this does not mean that an equal distribution of advantage and particular goods in a society is the aim of Rawls' justice. In fact, the opposite is true. As shown above, there are a number of situations in which the nature of inequalities in a society is beneficial to the promotion of well-being for every individual. Thus, the view of justice as fairness does not argue for a complete equality of outcome; rather, it is to arrange the structures of a society in such a way that when those structures treat individuals unequally, there is just cause for those

²³ Ibid., 66.

inequalities such that it benefits all members of the society. The implication of this democratic equality, then, is that even once the veil is lifted, these inequalities are justified.

Rawls calls this interconnectedness of individuals within a society the chain connection. The idea here is simple: the best way to improve the lives of all individuals in a society is to improve the well-beings of the individuals who are least advantaged in the society—even at the short run cost of some. Improving the lives of the least advantaged in a society has a definite impact on the well-being of the other members of the society by fostering an environment of economic growth. Based on the diffusion of benefits that occurs when individuals at the bottom of society are the beneficiaries of redistributive policies and other “inequalities” under the law, there are practical benefits for all involved.

This is an intuitive principle, especially with regard to the lexical prioritization of rights. The chain connection holds that it is the benefit to all individuals within society when those are the least advantaged benefit in any way. This occurs because, even for those at the top of the food chain, the wealth and health of a society is dependent in many ways on the least advantaged. In much the same way as it is impossible to satisfy certain rights in the lexical prioritization without prior satisfaction of other rights, it is impossible for a society to advance as a whole (thus achieving greater benefits for those who are well-off) without achieving a certain level of well-being for those who are the least advantaged because it is the least advantaged who do the work that, in large part, makes societal growth as a whole possible. Until those at the bottom have achieved a certain status, it is impossible for the society as a whole to grow.

Thus, in order for inequalities in a society to be arranged such that they promote the overall health of the society as a whole, they must be arranged to the benefit of the least advantaged in society. This strengthens those who are the least well-off such that they can seek education, economic opportunity, and, in general, the upward mobility that drives the entire society forward. In turn, this creates an overall greater society that lends more wealth and opportunity to those at the top than existed prior to the inequalities justified by the difference principle. And even though the individuals at the top are affected by that inequality, it is justifiable to them based on the future societal growth it catalyzes.

It is this argument that leads to the ultimate restatement of the difference principle such that it addresses the creation of economic and social equalities not so that they are just to the benefit of all individuals in the society. Rather, “social and economic inequalities are to be arranged so that they are...to the greatest expected benefit of the least advantaged.”²⁴ This statement of the difference principle functions in the same way as the original, but it serves to facilitate what Rawls refers to as the lexical difference principle: understanding that structures of society should function to benefit the least advantaged of society, then the second-least advantaged, and then so on until the best-off individual is benefitted.²⁵ Treating the difference principle in this way allows justice as fairness to produce the great benefit (if not the greatest)

²⁴ *Ibid.*, 72.

²⁵ *Ibid.*, 72.

for society as a whole by raising addressing the poorest of the society in order to create the greatest benefit for the society as a whole.²⁶

Equality of Opportunity. The second aspect of the second principle of justice as fairness is the notion of equality of opportunity or, in longer form, the liberal principle of fair equality of opportunity. Equality of opportunity serves an important function within Rawls's conception of justice insofar as the distribution of advantages and disadvantages within the society can be and must be unequal in certain contexts. However, like the rights and liberties guaranteed by the liberty principle the fair equal opportunity to gain access to certain positions in a society cannot be denied. Though the difference principle can justify certain inequalities within a society, as long as a basic scheme of rights established by the liberty principle is respected, the positions within society that are established by these inequalities must be open to all equally under the principle of the equality of opportunity.

The Nature of Injustice. Given the nature of Justice as fairness, the nature of injustice becomes relatively clear: a state is judged unjust insofar as the structures of the society either: 1) promote inequalities that are not advantageous to every individual or 2) denies the fair equality of opportunity to individuals in the society. Though this seems to be a trivial notion, it is important to recognize that, as a consequence of this conception, states of justice are not a direct

²⁶ Here, however, there must be made an important distinction between the Rawlsian deontological view of justice and maximizing utilitarianism. Though the ultimate consequence of the Rawlsian view is one that tends to create greater utility for many, that does not make it functionally equivalent to the utilitarian view because the Rawlsian view does not define the right as the maximization of the good (the distinction that Rawls highlights earlier between teleological and deontological theories of justice). Thus, while Rawls certainly will take into consideration the concept of utility (as he argues that it would be foolish for any theory of justice to ignore the consequences it creates), the ultimate aim of the theory is not to maximize utility.

result of the end-state achieved by the principles but rather through the proper arrangement of societal structures in accordance with the principles. Thus, the principles of justice as fairness serve as the independent criteria in the formation of a purely procedural justice whereby the only evaluation of an outcome as just is through adherence to the principles of justice. And the opposite is true as well. As long as there is adherence to the principles of justice, a just state will be achieved. Now, this is not to disregard the outcome of adherence to the principles of justice; rather, the only way to achieve a just end state is to adhere to the principles and the only way to achieve an unjust end state is to not.

Section 3: Robert Nozick and the Entitlement Theory

Originally published in 1974, Robert Nozick's beloved *Anarchy, State, and Utopia* is a seminal work in libertarian political philosophy. A clear rejection of Rawls' notions of distributive justice, Rawls argues for a strong sense of individual rights and a defense of property rights that leads to his conception of the minimal state, or the idea that the "minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on" is the only justifiable state.²⁷ The work proceeds as its title suggests: first, it illustrates the problematic nature of government and then shows, through the state of nature, how governments arise naturally; second, the book then illustrates the conception of the minimal state and how it functions to meet all of the needs of Nozick's entitlement theory (his conception of justice); finally, the book discusses the nature of the utopia brought about by the

²⁷ Nozick, Robert. *Anarchy, State, and Utopia*. New York: Basic Books, 2013. xix.

minimal state. Here, we will focus on the deontology and strong sense of individual rights that serves as the foundation for Nozick's conception of justice, the entitlement theory itself, and finally the concept of the minimal state.

Nozick on Deontology and Individual Rights

Much like Rawls, Nozick rejects the utilitarian foundation of justice, and he does so for many of the same reasons. However, Nozick appears to contrast himself with Rawls through a seemingly radical defense of individual liberties. This is, of course, in contrast to the violation of individual rights that Nozick argues is inherent in the notions of the Difference Principle, redistributive actions of government, and any function of the state that is not minimally justifiable.

The clearest and most concise summation of Nozick's deontology and views on individual rights is that "individuals are inviolable."²⁸ To this end, Nozick takes the traditional Lockean conception of individual rights and runs with it. It is this radical defense of individual rights that leads Nozick to reject anything but the most minimal of states insofar as any further exertion of a governmental body over the people would be a dangerous and unjustifiable violation of the rights of the citizenry.

Deontology. Though there is little discussion of Nozick's concept of deontology within ASU itself, there are some clear indications that Nozick's deontology derives largely from the

²⁸ Ibid., xix.

Lockean notion of the individual as an inviolable moral entity. This is key to Nozick's view as it informs his concept of the minimally justifiable state.

Unlike Rawls, Nozick does not justify his rejection of a utilitarian justice, initially. However, the fixation on the maintenance of individual rights is clear within ASU. Beginning with the notion that the individual is an inviolable moral entity, Nozick's justice differentiates itself from the concept of aggregation and maximization that is inherent in utilitarian justice (and in some ways Rawlsian justice). In this way, Nozick actually begins his attempt to create a deontological theory of justice by limiting the role of the state to whatever functions do not violate the rights of the individuals within the state.

This strong sense of individual rights serves not only to distance Nozick from the legacy of utilitarian justice but also serves as an attempt to distinguish himself from the Rawlsian sense of justice which Nozick will claim violates the rights of the individuals through the redistribution of holdings that others are rightfully entitled to. Nozick argues that government as a "coercive power" that justice ought to limit government to a very few functions. Essentially in Nozick's view, the only duties of government are to maintain individual rights, prevent the violation of those individual rights, and to rectify injustices in accordance with the Entitlement theory.

Property Rights and Locke's Theory of Acquisition. Given the ideas contained within the Entitlement theory, it is clear that property rights are of the utmost concern for Nozick. To this end, Nozick embraces much of Locke's conception of property rights and his theory of acquisition.

As Nozick articulates, Locke's conception of property rights boils down to the "mixing of labour" with some unowned material thing. Essentially, the idea here is that the act of improving or in some way changing the object mixes one's labour, which one does own, with the previously unowned thing. It is this process that creates the right to the property as through the act of improving and mixing one's labour with the previously unowned object, one has added value to the thing and therefore one is entitled to that holding.

For the entitlement theory itself, this theory of acquisition is extremely important. Insofar as labour is central to the development of a property right to a certain object or holding, the entitlement theory itself become linked to the value that is contained within property and the singular role that labour has in defining a property right to that holding. Thus,

Dual Provisos. However, this notion of property as a function of labour brings about interesting questions about the extent to which an individual can claim a property right based on labour.

Enter the Lockean proviso. Nozick takes Locke's proviso to indicate that a property right can only be claimed if a state is not Pareto efficient; that is, a property right to a certain thing cannot be claimed unless there is no individual that is made worse off by claiming that right.²⁹

However, it seems that this proviso is fatally flawed as it may have once been acceptable but now no longer holds—or may have never held to begin with. Given the competitive nature of resources, it seems that by the very nature of claiming a right to a certain holding, the possible holdings for all other individuals are worsened. Unless the property right claimed is

²⁹ Ibid., 175.

completely trivial or inconsequential, it appears that any claim to a property right would necessarily reduce the available options for the rest of society as a whole, thus violating the proviso itself. It can, therefore, be claimed that no property rights could ever arise under a Lockean conception insofar as any claim to a property right would violate the proviso.

Nozick rebuts this claim by arguing that the proviso itself is not a “utilitarian justification of property.”³⁰ Rather, Nozick argues that the difficulty arises in determining how the standard of the proviso is to be measured. Against what is the relative standard of well-being to be measured? It is from these questions that Nozick’s proviso arises. Nozick specifies that the proviso by clarifying that that one must not consider how others’ opportunities are limited by establishing a property right for a particular holding or by taking into consideration the competition one may enter into with other individuals as a result of establishing the right.³¹

Additionally, Nozick notes that certain aspects of this proviso must apply to the principles of justice in transfer as well. In essence, this serves as a principle against monopolies of certain goods or items. Nozick argues that, when regarding principles of justice in transfer, the proviso must apply as well to the extent that one’s property rights may be abridged or limited if property rights become a violation of the proviso itself. As an example, Nozick offers the example of a water well that has become the only source of water in a desert. Though the circumstance is of no fault of the individual, certain limitations on the property right limit the exercise of that right.³² However, Nozick argues that this does not apply when considering the

³⁰ Ibid., 177.

³¹ Ibid., 178.

³² Ibid., 180.

invention of a medical researcher who, through her own ingenuity, can create a new, lifesaving treatment. Nozick clarifies that her property rights cannot be abridged in this case because the chemicals or ingredients purchased to make the treatment were purchased in a way that did not deprive others.³³ Here, Nozick places his faith in the free market to prevent situations that would violate the proviso. Rather, Nozick claims it is the actions of illegitimate government forces that make the violation of the proviso more likely and more problematic.³⁴

The View, the Entitlement Theory

It is with this view of deontology and the strong Lockean sense of individual rights in mind that Nozick sets out to formulate his conception of justice, the Entitlement Theory.

Historical and Patterned Justice. Prior to an examination of the principles of justice according to the Entitlement theory itself, it is crucial to understand the concept of historical and patterned justice, as Nozick articulates it. It is important to note that Nozick conceives of his conception of justice, through the ET, as a historical, non-patterned view of justice.

The distinction between historical and patterned principles of justice is simple. The historical principles of justice are almost quintessentially deontological. Nozick articulates that in historical views of justice, “whether a distribution is just depends upon how it came about.”³⁵ This is largely in keeping with the deontological roots of Nozick’s moral view, especially given that the historical principle, much like the notion of pure procedural justice in Rawls’ account,

³³ Ibid., 181.

³⁴ Ibid., 182.

³⁵ Ibid., 153.

argues that a just state exists insofar as the principles of justice are adhered to over the passage of time.

Historical accounts of justice are contrasted by the quintessentially utilitarian patterned views of justice. Nozick uses utilitarians as the chief example, though there are certainly many others, in this case where, in patterned views of justice, individuals “[judge] between any two distributions by seeing has the greater sum of utility.”³⁶ In this view, it is the distribution that exists at a certain time that is the only deciding factor in whether or not a current distribution is just. Nozick rejects these end-result principles or end-state due to the ways in which patterned principles of justice tend to violate the basics of individual rights and the notion of liberty itself.

Justice in Holdings. It is with this rejection of patterned view of justice in mind that Nozick seeks to lay out his view in the entitlement theory which can also be referred to as the view of justice in holdings. The view is articulated through three principles: the principle of justice in acquisition, the principle of justice in transfer, and the principle of the rectification of injustice. More generally, Nozick describes the view of justice in holdings as follows:

1. A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
2. A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding.
3. No one is entitled to a holding except by (repeated) applications of 1 and 2.³⁷

³⁶ Ibid., 154.

³⁷ Ibid., 151.

It is important to note here that Nozick does not specifically articulate any notion of the principle for the rectification of injustice at this point in the theory, but that is a point for later discussion. Thus, it is these two principles, those of justice in acquisition and transfer that dictate whether or not a state or distribution is just, and by repeated application of those principles, it is impossible for an unjust state to arise from a just one, making the entitlement theory a historical view of justice. As Nozick himself states, "A distribution is just if it arises from another just distribution by legitimate means."³⁸

Justice in Acquisition. It is, however, necessary to examine these principles of justice further. Initially, it is important to understand exactly how an individual, in Nozick's view, rightfully acquires a holding in accordance with his principles of justice. Here, the view is inextricably tied to the Lockean conception of the derivation of property rights, as discussed earlier in the chapter. Thus, given the statement of the Principle of Justice in Acquisition, the notion of justice thus becomes that a just state can only exist when individuals acquire holdings and establish property rights with respect to the mixing of one's labour within the bounds of the proviso itself. However, it is important to remember that, given the operation of the free market, Nozick argues that the proviso itself will never impact the development of property rights as long as there is no illegitimate government interference into the working of that market. Thus, it is the operation of the free market itself that ensures the historical nature of the entitlement theory as it serves to facilitate the appropriate development and assignment of property rights.

³⁸ Ibid., 151.

Justice in Transfer. In a similar manner to the Principle of Justice in Acquisition, the second principle of the Entitlement Theory is that of the Principle of Justice in Transfer. Simply, the notion of this principle is to say that as trades are voluntary, within the free market, and they do not violate the proviso, much like the first principle, individuals are justly entitled to those holdings that they acquire from others who are justly entitled to the holding originally. Simply, this means that individuals must not be defrauded or enslaved, “seizing their product and preventing them from living as they choose.”³⁹

Rectification of Injustice. After presenting the two principles of justice and noting that no unjust state could arise from a just one if the principles of justice are followed, Nozick notes that, indeed, these principles of justice can often be violated. Given this, Nozick articulates the third and final part of the Entitlement Theory: the principle of the rectification of injustice. Nozick argues that the principles of justice must “[use] historical information about previous situations done...and information about the actual course of events that flowed from these injustices, until the present, and...yield a description (or descriptions) of holdings in the society.”⁴⁰ Essentially, by relying upon the history of the situation regarding the injustices that can arise in society, the principle of justice will estimate what might have occurred (probabilistically) if the injustice had not occurred and, thus, act to correct it. Simply, the notion of the principle of the rectification of injustice is, then, to remunerate those affected by injustices by attempting to recreate a counterfactual reality in which the injustice never took place. This

³⁹ Ibid., 152.

⁴⁰ Ibid., 152.

act of rectification, in turn, serves to ensure that those affected by the injustice have holdings returned to them or are in such a way affected that the total set of holdings can be just again.

Entitlement Theory and the State

View of the State. Given this framework for justice, Nozick continues to lay out his notion of the justified state, or rather what he calls, the minimal state. Given the extreme strictures of the entitlement theory itself, Nozick lays out a framework for the state that is severely limited in its scope. Through the rejection of what he calls the Night-Watchman state, Nozick argues for a minimally justifiable state that does little more than protect individuals' rights and get out of the way.

State of Nature Theory. Nozick begins this exploration of the arrangement and obligations of the state with an explanation of his methodology in the state of nature theory. In this way, Nozick seeks to lay out his goals of establishing what he refers to as invisible hand explanations of the emergence and development of political structures from protective associations to the minimally justified state. It is through this analysis that Nozick seeks to determine the kind of state that would have emerged from a state of nature and, by extension, understand the duties of that state with regard to the individuals who allowed the state to emerge in the first place.

The Ultraminimal State. The first explanation of the minimally justified state that Nozick examines is that which he calls the ultraminimal state. This state is defined by the monopoly of the user of force and exacting of punishment; however, it only provides those

services to those who purchase these enforcement policies.⁴¹ Nozick rejects this notion of the minimal state because the ultraminimal state itself seems to leave certain rights of individuals unprotected because there are certain individuals who will not purchase the protection of the state. This is a choice that the state offers willingly and it, of course, does so in the name of protecting the rights of the individuals in that society. But this seems incoherent. As Nozick writes, “how can he support [leaving some persons’ rights unprotected] *in the name of* the nonviolation of rights.”⁴² It is the inconsistency of this position that leads Nozick to a different formulation of the concept of the minimal state.

Moral Constraints. Given the rejection of the ultraminimal state, Nozick argues for moral constraints on the state that aid in the determination of the goals and constraints that ought to be placed on the appropriate, minimally justifiable state. The main goal of the state, as Nozick argues, must be to minimize the violation of the individuals’ rights without approaching some sort of utilitarianism of rights. Thus, instead of treating the violations of rights as a calculus *ex post facto*, Nozick argues that the minimal state must be formulated with the notion of individual rights as a moral constraint upon the actions of the state itself. Therefore, the evaluation of the just character of a state is not based on the result of the state—thus warranting the notion of a utilitarianism of rights—but rather comes from the arranging of political structures such that they do not violate the rights of individuals in the first place.⁴³

⁴¹ Ibid., 27.

⁴² Ibid., 28.

⁴³ Ibid., 29.

These constraints on the state take a number of different formulations, but they all factor into the conception of the minimal state that Nozick offers.

The Minimal State. With Individual rights as a moral constraint on the actions of the state prior to the evaluation of the consequences, Nozick approaches the idea of the minimal state, and no more extensive state than the minimal state can be justified on the basis of these protections of individual rights. Thus, the main point of the minimal state is to ensure no more and no less that each individual is treated as the inviolable moral entity that we are.⁴⁴ It is thus, the obligation of the state to, with the moral constraints in mind, organize the structures of society in such a way that those structures serve to protect and ensure the individual's rights while at the same time protecting them from violation—if even from the state itself. The state itself, then, must be arranged such that it serves to protect all individuals from others and from the state itself.

Section 3: Summation

It is with these two frameworks in mind that we will approach the task of creating a compatibilist view of justice that works within both the Rawlsian and Nozickian frameworks. Though it is clear that there are sometimes wild differences between the two views, it is clear that the similarities that exist between the two views are substantial enough that we can forge ahead in the synthesis of these two views to create a deontological conception of justice that

⁴⁴ Ibid., 33.

emphasizes Nozick's strong protections of the individual's rights and Rawls' intuitive notions of justice as fairness with extreme regard for the fair distribution of advantages in society.

CHAPTER III: ON RAWLSIAN-NOZICKIAN COMPATIBILITY

Both Rawls's and Nozick's ideas of justice, morality, individual rights, and the role of the state in all of these concepts have helped to steer liberal and libertarian political philosophy in many different ways. Each philosophers' argumentation is fascinating and compelling in the ways that they transform the thinking on issues of political philosophy. And both seem to be on polar opposite ends of the same spectrum. Though both set out to create a deontological alternative to prevailing thoughts on justice, specifically utilitarian justice, Rawls and Nozick reached seemingly opposite conclusions with similar values and ideas in mind: the necessity of the reevaluation of the role of the state in maintaining a just society; the prioritization of the distribution of advantages or holdings in the evaluation of justice over the aggregation of the same; and the fundamental respect for the individual and the individual's rights.

Though the stylings and the ultimate conclusions of the two philosophers may obfuscate the fundamental similarities between the two philosophers in their methods and their ideas, this chapter, and the rest of this work, will seek to clarify and explore the similarities between these two giants while ultimately establishing a view of a compatibilist Rawlsian-Nozickian justice that derives from a closer examination of these similarities. This chapter will provide an explanation of the view of Rawlsian-Nozickian compatibility (known through the rest of the work as the compatibilist view or, simply, compatibilism) before the following sections of this work seek a deeper understanding of the intricacies and nuances of the compatibilist view with respect to such issues as property rights and the like and the insight that the compatibilist view can provide when examining such issues.

Section 1: The Principles of Justice

When working toward any sort of compatibilism between Rawlsian and Nozickian justice, preliminary discussion of the disparate principles of justice is crucial. As the heart and soul of Rawlsian and Nozickian justice, this section will endeavor to explain how the principles of justice as fairness and of the entitlement theory can function in harmony in the compatibilist view.

The purpose of this section is to lay out the basics of the Rawlsian-Nozickian compatibility in brief. Essentially, this chapter will serve as an overview and preamble to the justifications and argumentation contained in the rest of the work. Note that this explanation of the compatibilist view is not intended to provide a defense of or argumentation for the view itself. Rather, this is a simple presentation intended to introduce the view prior to the more extensive argumentation.

The Liberty Principle and Justice in Acquisition and Holdings

Nozick and the Liberty Principle. There are some basic similarities between the Nozickian and Rawlsian view that tend to be ignored. Specifically, as both views are deontological views of justice, there are clear similarities between the entitlement theory and justice as fairness.

Initially, the simple rejection of the utilitarian standard interpretation of justice is enough to create similar underpinnings in the thoughts and ideas of Rawls and Nozick. Both

philosophers approach notions of justice from the same angle: promoting the rights of the individual over any sort of aggregation of pleasures.

For Rawls, this manifests in a careful consideration of the distribution of advantages and burdens in the society. Unlike the utilitarian conception of justice, the notion of distribution is extremely important for the Rawlsian view of justice. Rawls evaluates the just nature of a situation based on the structures of the society and the distribution of the advantages in the society as well as the maintenance of a basic and extensive scheme of rights for all members of the society.

For Nozick, this manifests in the radical defense of the inviolable moral entity that is the individual through the protection of property rights. For many of the same reasons as Rawls, Nozick also rejects the notion of utilitarian justice for its justification of the violation of the individual. This violation of the individual occurs with respect to the violation of the property rights of the individual, the wrongful taking of holdings to which one is justly entitled, and the problematic courses of state actors that violate the individual liberties in pervasive and insidious manners. Thus, Nozick argues for the moral primacy of the individual in the evaluation of the justness of a state.⁴⁵

In this manner, Rawls begins his statement of justice as fairness with the principle of liberty—the notion that there is a certain extensive scheme of basic liberties that must be guaranteed to all individuals in a state. The nature of these rights are largely the same as the basic liberties that Nozick wishes to support through his version of the minimal state. Nozick

⁴⁵ Nozick, Robert. *Anarchy, State, and Utopia*. New York: Basic Books, 2013. xix.

specifically argues for supporting the main Lockean triad of life, liberty, and property, and though it is unclear whether the Rawlsian Liberty principle goes further in establishing an extensive scheme of basic individual rights, it is clear that the Rawlsian conception would subsume those three natural rights in particular as part of the basic and necessary rights that must be guaranteed to all individuals under the Liberty principle. Thus, it seems that the defense of the individuals' rights that Nozick advocates for is Rawls' starting place in establishing the principles of justice as fairness.

At this point, it may seem that the only thing going for the compatibilist view is a simple agreement between Rawls and Nozick that rights are primary; however, it is this initial agreement in the rejection of utilitarianism and the aim of establishing a deontologically oriented theory of justice that is key for establishing compatibilism. Once it is understood that Rawls and Nozick are supporting the same aims, the project of establishing a synthesis of the two views becomes much easier and intuitive.

Liberty and Justice in Holdings. Maintaining the basic rights of all individuals is crucial to both the Rawlsian and Nozickian views of justice separately, but in forming the compatibilist view, these notions become even more important. Whereas Nozick's ideas of justice center largely around the ideas of property, it is easily forgotten that property maintains a crucial role in Rawls' philosophy as well. Given that ideas of liberty and property are primary in both views, the compatibilist view must first undertake an examination of Nozick's principles of justice in acquisition and transfer in the context of Rawls' liberty principle.

The compatibilist view holds that Nozick's first two principles of the entitlement theory, those of justice in acquisition and transfer can simply be thought of as an extension of Rawls'

liberty principle. Property is as crucial to Rawls as it is to Nozick because it represents one of the basic rights that must be protected by the extensive scheme of rights guaranteed by the liberty principle.⁴⁶ Thus, it makes sense that the first two principles of the entitlement theory can work in concert with the liberty principle as a defense of the most basic liberties to which each individual in a society must be entitled.

As a historical conception of justice, the entitlement theory describes the just quality of a given distribution based on its adherence to the principles of justice in acquisition and transfer. If the principles of justice, as described by the entitlement theory, are adhered to, a just state will always emerge from a just state.⁴⁷ This works perfectly in concert with the Rawlsian notion of pure procedural justice. In the same manner that following the Rawlsian principles of justice as fairness always results in a just outcome, given a just state from which to operate, if the principles of justice in acquisition and transfer are followed, only a just end state can be achieved. Simply, the purpose of the principles of justice in transfer and acquisition becomes a means to evaluate whether or not the structures of society promote the defense of property rights that is necessitated by the Liberty principle.

The compatibilist view, insofar as it is simply attempting to subsume the principles of justice in acquisition and transfer may seem to be downplaying the priority of defending property rights in establishing a just state. However, this is not the case. Given that Rawls' discussion on the maintenance and development of property rights is not as extensive as is Nozick's, the Rawlsian defense of individual rights (including property rights) in the liberty

⁴⁶ Rawls, John. *A Theory of Justice*. Cambridge: Harvard University Press, 1999. 53.

⁴⁷ *Ibid.*, 74.

principle is greatly aided by the addition of the entitlement theory. Whereas there is little analysis of the origin of property rights or the nature of maintaining those rights in *A Theory of Justice*, the Nozickian concepts provide explication of these necessary ideas. Both of these theories, working in concert, informs the best way for societal structures to be evaluated in terms of their defense of property rights and other individual rights. In concert, the Liberty principle and the Principles of Justice in Transfer and Acquisition ensure the primacy of property rights (and all other individual rights) in determining whether a state is just. This is, of course, not to say that the sole duty of the state is to ensure a maintenance of these Lockean property rights; rather, as a part of the overall maintenance of individual rights, the state can protect property rights best within the context of these two principles.

The Difference Principle and The Entitlement Theory

Difference Principle and the Rectification of Injustice. The liberty principle itself can subsume the principles of acquisition and transfer as a means of evaluating the protection of property rights as one of the basic liberties that must be guaranteed to all individuals within a society; however, the case is different for the difference principle and the principle of the rectification of injustice. And it is here that the disparate nature in the entitlement theory and justice as fairness becomes most apparent. Whereas the principle of the rectification of injustice is a corrective measure for the remuneration of injustices that have occurred because of the violation of the principles of justice in acquisition and transfer, the difference principle is a prescriptive measure for arranging societal structures such that they are to the benefit of the least advantaged in society (and by extension all individuals in the society itself). Thus, the

second task for the compatibilist view is to explain how the difference principle, which seems to violate the property rights of individuals, and the principle of the rectification of injustice work in concert in the context of the strong defense of individual rights (especially property rights) that characterizes the entitlement theory as a whole.

Both Rawls and Nozick agree that, given an initially just state, if there is strict adherence to the principles of justice, then no injustices should occur.⁴⁸ Again, this is only if there is an initially just state. This, of course, is never the case that the original distribution of advantages or holdings in a society is perfectly just in either the strict Rawlsian or Nozickian sense. Now, in response to the already existing injustices in society, Rawls provides the difference principle as a means of re-evaluating the structures of society and reorganizing them such that there can be a more just distribution of advantages in the society.⁴⁹ Nozick, however, appears to side-step the issue of pre-existing injustices. Nozick argues that if situations that arise are not generated through the repeated applications of the principles of justice in acquisition and transfer, there would be a principle of rectification that could use historical information to remunerate individuals and attempt to, counterfactually, estimate what might have been the distribution had the injustice not occurred. And while this makes sense given the historical nature of Nozickian justice, but there is no description as to how this process would occur and how the information regarding the relevant circumstances of the injustice would be obtained. Though Nozick gives us a picture of how this rectification of injustice might take place, there is no clear and delineated or formalized principle of rectification. Rather, by simply inviting the notion of

⁴⁸ Ibid., 74.

⁴⁹ Ibid., 73.

constructing a counterfactual reality as a means of remunerating those who are affected by an injustice, Nozick fails to provide a true picture of what the rectification of injustice should look like from the libertarian perspective.

Vagueness on Nozick's part as to the rectification of injustice invites the clarity that can be provided by the compatibilist view. Given an initially unjust state, it is clear in both the Rawlsian and Nozickian pictures that there must be some mechanism of remunerating and rectifying the existing injustices. In the compatibilist picture, that is one of the major roles of the difference principle. The difference principle, insofar as it justifies structural inequalities that are to the benefit of the least advantaged of a society serves as a mechanism to rectify the historical injustices that are identified through the use of the entitlement theory and the liberty principle. Nozick admits that in the case of misappropriated holdings gained by violation of the principles of justice in acquisition and transfer, the property rights of the individual can be violated in order to rectify the injustice. And this is the purpose that the difference principle and the justified inequalities in society serve: to rectify the injustices that exist in society. Rawls notes that it is only in cases where inequalities are to the benefit of all that they are justified; in all other cases, democratic equality is preferable.⁵⁰ Thus, the inequalities justified by the difference principle are the ones that serve to rectify the injustices that exist in the structures of society such as exploitation (which will be discussed at length in Chapter IV).

However, there is also, at the heart of this issue, the contention about what it is that constitutes an injustice in the compatibilist view. Especially given the ostensibly disparate

⁵⁰ Ibid., 66.

approaches offered Rawls and Nozick in these cases that the nature of that which is unjust will be wildly different. However, this is not the case, especially when considering the deontological underpinnings of both conceptions. When it comes down to it, both Rawlsian and Nozickian justice have, at their cores, the protection of the individual as a unique moral entity. And even though it may seem that the concept of injustice in both views will be wildly different, because of the similarity in the underlying moral framework of these theories of justice, that the nature of the unjust is the same in both cases: the violation of the individual that occurs when one's individual rights (such as those defined by the Rawlsian Liberty Principle) are disrespected and disregarded.⁵¹

So, if the aim here is to establish a notion of pure procedural justice (or a historical view as Nozick would articulate it) such that no unjust state can arise from the application of the principles of justice in a just original distribution, the compatibilist view rectifies injustice through the difference principle itself. In this way, the difference principle (and the view of justice as fairness as a whole) does not act in a redistributive fashion, as Nozick is wont to argue. Rather, the "violations" of property rights occur in order to rectify the injustices in a manner that is consistent with Nozick's own advocacy in *Anarchy, State, and Utopia*.

This is key to the compatibilist view. In the end (as shall be discussed in the next chapter), the difference principle justifies inequalities in society as a mechanism for the rectification of injustice. And it is this rectification of injustice that ultimately creates the benefit

⁵¹ This issue will also be the central focus of Chapter IV where we will discuss the nature of injustice within the views more in depth and how the compatibilist view reframes the notion of exploitation as a systemic violation of property rights in order to better understand how both views take the notion of the violation of the individual into consideration.

to all individuals in the state (through the benefit of the least well-off) that Rawls' argues for.

The compatibilist view holds that these two functions of the difference principle, to benefit all individuals in a society and to rectify injustices, are the same function. Thus the inequalities that are justified by the difference principle that are to the benefit of all are so because they serve to rectify the injustices that exist within society.

On the Equality of Opportunity

The Problem. The final aspect of Rawls second principle of justice is what he refers to as the liberal principle of equality of opportunity. And the requirement of equality of opportunity to all, given a certain distribution of advantages in society is fundamental to Rawlsian justice. However, the notion of equality of opportunity seems to be fundamentally opposed to many of the ideas of the entitlement theory itself. Specifically, Nozick writes of the equality of opportunity that the only ways to establish the equality of opportunity are "by directly worsening the situations of those more favored with opportunity, or by improving the situation of those less well-favored."⁵² Given these two statements, the only conclusion seems to be that, given the strictures of the entitlement theory itself, the process of establishing equality of opportunity would be a violation of individuals' rights. Thus, the final task of the compatibilist view is to determine how to reconcile notions of equality of opportunity within the framework of the strong Nozickian sense of individuals rights.

⁵² Nozick, Robert. *Anarchy, State, and Utopia*. New York: Basic Books, 2013. 235.

The Reconciliation. It is certainly clear that Nozick is correct in the first premise of his attack on the equality of opportunity. The achievement of any meaningful equality of opportunity lies in changing the current advantages and disadvantages of society. The fault, however, comes in his idea that these changes require a violation of individuals' rights to holdings.

Initially, it is clear that the achievement of any sort of equality of opportunity will necessitate certain social mobility and changes in the distribution of advantages and disadvantages in society. But much of this does not require a violation of property rights. Nozick neglects the fact that much of the denial of opportunity in society comes from prejudices and bigotry that denies certain individuals, based on any number of characteristics, the opportunities that they deserve. Thus, the first step in achieving any equality of opportunity does not necessitate the violation of property rights at all, since privilege and bigotry are not things to which those who are advantaged by society are entitled. Privilege and bigotry also does not function in a vacuum—it is a fundamental part of the societies in which individuals live, and so, those phenomena have a marked impact on economic transactions in ways that violate the principles of justice in transfer.

Here, it is important to note that not only is it a non-violation of an individual's property right to attempt to rectify the harboring of bigotry and the ways in which those ideas tend to impact the establishment of an equality of opportunity, it is clear that these ideas violate the Principle of Justice in Transfer, thus necessitating rectification in the end.⁵³ Though this may

⁵³ The specifics of this view, again, will be clarified and expanded in Chapter IV where the notion of injustice is explored.

seem to be a controversial point, at least in the Nozickian view, the individual's rights to freedom of thought does not therefore entail a right to act, in accordance with those beliefs, in ways that violate the principles of justice.

Other than the inequality of opportunity that exists because of bigotries and prejudice, the only structures of society that could create inequality are those injustices that are rectified by the principle of justice. It is necessary as a function of the difference principle and the principle of the rectification of injustice, in the compatibilist view, that the "redistribution" of holdings that facilitates the fair equality of opportunity does not violate the property rights of individuals, because those aspects of a distribution of advantages that deny equality of opportunity are necessarily unjust. Simply, those structures that exist in society to deny equality of opportunity violate principles of justice in acquisition (via the proviso) or in transfer (through exploitation) and therefore ought to be rectified.

However, maintaining the equality of opportunity also necessitates the type of strong property rights protection that is inherent in the Nozickian view. Here, the compatibilist view does not ignore Nozick's ideas. Rather, in order to maintain any semblance of equality of opportunity, it is necessary to provide the type of radical defense of property rights that Nozick argues for after rectifying the injustices that exist in society. Because it is the violation of the property rights of the least advantaged in society (at some time in the past or present) that leads to most of the extant inequalities of the present society, to maintain a just state, the property rights of all individuals in the society must be protected in order to prevent those injustices that, in turn, prevent the true equality of opportunity. It is within the context of these strong property rights protections that the intervention of the state is justified as a means of rectifying the

violations of those property rights. Thus, if there is constant interference on the part of the government, as some might argue, it is symptomatic of the continual, structural, violation of individual property rights that must be rectified.

Section 3: The Synthesis

As mentioned earlier, this chapter is only meant to provide a simple presentation of the compatibilist view and to show that the view can pass muster and is at least a viable alternative to pure Rawlsian and Nozickian justice. From this brief explanation of the compatibilist view, it should be at least apparent that the view of Rawlsian-Nozickian compatibility is not a far-fetched or pointless project. There are some serious flaws in both the Rawlsian and Nozickian formulations of justice. From here, we will turn to a more thorough examination of the ideas and the arguments that are mentioned briefly in this statement of the Rawlsian-Nozickian compatibilist view here and examine the implications of those arguments

CHAPTER IV: EXPLOITATION AND RECTIFYING INJUSTICE THROUGH THE DIFFERENCE PRINCIPLE

Section 1: Introduction

In the previous chapter, the discussion of the compatibilist view of Rawlsian-Nozickian justice revealed the complementary nature of Rawls' difference principle and Nozick's principle of the rectification of injustice. Simply, the nature of the inequalities that are justified by the difference principle operates to rectify the injustices recognized by the entitlement theory itself. The nature of those justified inequalities and their benefit to the society is based solely on the nature of the injustices that they rectify.

However, to justify this view, there needs to be some explanation of the nature of the injustices that occur within the confines of the entitlement theory that would justify rectification through the inequalities of the difference principle. The answer lies in the reframing of notions of exploitation. In this chapter, we will examine that nature of property rights and exploitation in both the Rawlsian and Nozickian frameworks to reframe an understanding of exploitation as an issue of property rights. Through this redefinition of exploitation, the compatibilist synthesis of the difference principle and the principle of the rectification of injustice is shown to be viable.

Section 2: The Difference Principle and the Rectification of Injustice

Chapter III serves to lay out the basic view of Rawlsian-Nozickian compatibility and how the two views can work together to create a more coherent and functioning deontological theory of justice. However, it is necessary to delve further into how the difference principle and

the principle of the rectification of injustice can work together within the overall compatibilist scheme.

The View

Overview. Beginning with an overview of the compatibility of the difference principle and the principle of the rectification of injustice, recall that the major purpose of the inequalities justified by the difference principle is to rectify the already existing injustices in society. The nature of the compatibilist view is such that, like the Rawlsian and Nozickian view separately, if there is adherence to the principles of justice, there will be no injustices that arise. However, when injustices arise through the violation of the principles of acquisition and transfer or the denial of some of the certain basic liberties to which all individuals are entitled, there must be some mechanism within the theory of justice that is able to rectify those injustices.

The difference principle serves this function by permitting inequalities in society that deal with systemic and individual injustices in specific ways so as to address these injustices. For example, inequalities under the law, such as a progressive tax code, that are aimed at benefitting the least advantaged members of society serve to rectify a vast number of injustices within the society.

The Nature of Injustice. In the Nozickian sense, inequalities such as these are violations of property rights. Redistributive policies are fundamentally immoral insofar as they take from those who have rightfully earned a holding in society to equalize opportunity or make someone else better off. This attack on redistribution as a violation of property rights can be so extensive

as to undermine some of the most basic structures and functions of the state itself.⁵⁴ However, this attack fails to take into account the nature of the historical injustices that many are subjected to in modern society. The nature of exploitation itself, though Nozick attempts to rebuff it, serves as an excellent example of the types of injustices that occur and, therefore, invite the intervention of the difference principle as a means of rectifying injustice. Thus, the project here, for the compatibilist view, is to show how the principles of justice as Nozick presents them necessitates the recognition and rectification of injustices in the form of this exploitation.

Rectifying Injustice

The biggest problem with the Nozickian view is that it neglects to comprehend the truly pervasive nature of historical injustices that have been visited upon individuals in reality. Massive inequalities exist in society that many argue need be resolved. And while the injustices that characterize the inequality found in many modern states was not overt, that nonetheless does not justify the conclusion that no injustice has taken place. Even though Nozick may not have initially recognized the nature of these injustices, that does not mean that the view of justice in holdings, as Nozick articulates it, is blind to these injustices.

The Process of Rectification. If the difference principle is to be the mechanism for the rectification of injustice in the compatibilist view, the question then becomes one of method. How does the difference principle, through justified inequalities, rectify injustices?

⁵⁴ Nozick, Robert. *Anarchy, State, and Utopia*. New York: Basic Books, a Member of the Perseus Books Group, 2013. 27. This, of course, specifically referring to the attack on the night-watchman state wherein Nozick finds some of the most basic functions of the state to be redistributive and, therefore, unjust.

Nozick argues against the difference principle on the grounds that any inequality violates the property rights of individuals who are subject to it. By the very nature of the justified inequality, at least one entity loses some holding and another gains it. This is a violation of fundamental property rights in the Nozickian view. However, Rawls argues that the only justifiable inequalities in a society are those that are aimed at the benefit of all individuals in a society. This is done by arranging the inequalities such that it benefits the least advantaged of the society. Rawls argues that these inequalities are mutually beneficial propositions because of the chained benefit for the overall state that, in the end, improves the well-being of the individual who was, at least in the short-run, harmed by the presence of the inequality.

But this, almost consequentialist justification for the inequality does not work in the deontological framework of Nozick's entitlement theory. So, the mutually beneficial nature of these inequalities, alone, is not enough to justify the use of these inequalities as a means of rectification of injustice. However, the misappropriation of an individuals' rightfully entitled holding is only justified if that individual is *rightfully entitled* to that holding. If an individual does not have right to a holding, a given distribution is, itself, unjust and there is a need for rectification through a justified inequality that is able to channel goods from the advantaged member(s) of society (who possess holdings to which they are not entitled) and toward the individuals who were harmed by the injustice (the least well-off).

Justifying Rectification. Given the use of the justified inequalities of the difference principles as a means of rectifying injustice, the next issue facing the view in this situation is

that of justifying the rectification of injustices that the Nozickian view would not hold as unjust. What is it in a society that justifies the difference principle as a means of rectifying injustice?

In the Nozickian view, it all comes back to property rights. And so, that is the role that exploitation and inequality must play in the compatibilist view—a violation of property rights. It must be shown that both exploitation and massive inequality entail a situation where individuals who are advantaged in society are not entitled to their holdings. Essentially, we must reframe the notion of exploitation as a violation of property rights in order to justify the intervention of the difference principle in rectifying the injustice.

In the section that follows, we will seek to refine and reframe the concept of exploitation such that the injustices that arise from it and increasingly unequal wealth distributions can be recognized within the Nozickian framework of the entitlement theory and its principles of justice in acquisition and transfer.

Section 3: Redefining Exploitations

Exploitation is key to the compatibilist view of justice. Exploitation justifies the use of the difference principle to rectify the injustices that it creates which is key to the overall compatibility of the Rawlsian and the Nozickian views. First, in order to determine how exploitation violates property rights, we must revisit the Nozickian concept of property rights and the principles of justice in acquisition and transfer.

The Origin of Property Rights

Property rights play a key role in both Rawls' and Nozick's conceptions of justice. For Rawls, property rights are one of the many in the extensive scheme of basic liberties that must be guaranteed to all individuals under the liberty principle. For Nozick, property rights are the backbone of the entitlement theory and the means by which the justness of a given distribution is evaluated. However, not only are property rights crucial to establishing justice in both views, they are crucial to the determination of the nature of injustice. To be denied property rights or to have those holdings to which one is entitled taken is the clearest indication of injustice in both views. But how do these property rights arise?

A Theory of Acquisition. As discussed in Chapter II, Nozick bases his own principle of justice in acquisition based on the two ideas present in the Lockean theory of acquisition and his conception of property rights. The first of these ideas is the nature of property rights themselves. Locke explains that property rights come from "mixing" one's labour with material goods and natural resources.⁵⁵ Essentially, the origin of the property right comes from the improvement of the material in some way that improves that good; this process creates the property right and the holding for the individual.

Despite the problems that exist with the theory itself, Nozick accepts the basic idea that labour is the key factor in the origination of a property right to a certain holding. This is going to be key for the redefinition of exploitation that is necessary for the compatibilist view due to the clear relations to the labour theory of value (which will be discussed later in this chapter).

⁵⁵ Ibid., 174.

The Proviso. The second aspect of the Lockean theory of value is the Lockean proviso which defines limitations on property rights. The proviso states that individuals can only claim a property right when they leave as “enough, and as good left in common for others.”⁵⁶ Nozick interprets this to be a claim that property rights can only be claimed when there is a non-Pareto efficient state, and so Nozick sets out to revise the proviso.

Thus, the Nozickian proviso becomes such that a property right can be established if the individuals who are “no longer at liberty to use the thing [are not] thereby worsened.”⁵⁷ In this sense, the proviso serves as a limitation on the establishment of massively exclusionary property rights that end in harming the fundamental rights of other individuals. This is not an attempt to make property rights in any sense fairer, but rather, it is a function of the theory of acquisition that prevents the establishment of property rights from preventing others from fulfilling their own basic needs.

Finally, the proviso also applies to the principle of justice in transfer insofar as it prevents the creation of monopolies. This final point is of key importance to the compatibilist view, because, as Nozick argues, the transfer of property rights cannot serve to concentrate certain goods such that they are harmful to the rest of individuals in a society much in the same way that being entitled to a holding does not permit an individual who has exclusive rights to a necessary good for survival (the example that Nozick presents in *Anarchy, State, and Utopia* is that of the sole water source in a desert). Essentially, the proviso both in acquisition and in

⁵⁶ Locke, John. "Second Treatise of Government by John Locke - Gutenberg." Project Gutenberg. July 28, 2010. Accessed October 23, 2016. Sect. 26.

⁵⁷ Nozick, Robert. *Anarchy, State, and Utopia*. New York: Basic Books, a Member of the Perseus Books Group, 2013. 179.

transfer serves as a check on the establishment of property rights in ways that would harm the individual in a society.

The Nature of Exploitation

As was demonstrated earlier, the key point for the compatibilist view is that exploitation is the justification for the rectification of injustices through the difference principle. However, exploitation, in this sense, must be understood as a violation of the principles of justice in acquisition and transfer. Essentially, in order to justify rectification, we must think of exploitation as a violation of property rights rather than in the traditional terms. And interestingly, the reframing of exploitation as an issue of property rights has other beneficial and interesting implications for compatibilism and political philosophy as a whole.

Exploitation Defined. First, however, we must understand the basic notion of exploitation and how it functions. In the traditional Marxist sense, exploitation is contained within the labour theory of value—the notion that all value is created through labour and labour alone. G. A. Cohen explains this concept nicely when he argues that the simple existence of a difference between “the value the worker produces and the value the worker receives.”⁵⁸ The key here is that exploitation is defined through the theft of the labour and value created by the worker that is inherent in the capitalist system.

⁵⁸ Cohen, G. A. “The Labour Theory of Value and the Concept of Exploitation.” *Philosophy & Public Affairs* 8, no. 4 (Summer 1979): 344.

Nozickian Rejection of Exploitation. Nozick, however, rejects this notion of exploitation, calling the very notion of the labour theory of value “crumbling.”⁵⁹ In his attack on the notion of exploitation, Nozick argues that the surplus labour is almost a form of compensation for the risks that entrepreneurs face within the market. Simply, Nozick argues that the nature of beginning an enterprise is a risky endeavor, and thus, it seems only appropriate that the workers “bear some of the losses” in the case that the enterprise does not succeed. Thus, in terms of the entitlement theory, there is no reason to violate the rights of the entrepreneur who is rightfully justified in retaining some of the value of the labourers as a means of compensating for the risk of the venture.⁶⁰

Synthesis. However, the rejection of the labour theory of value by Nozick is odd, undefended, and, ultimately, hypocritical. Given the nature of the Lockean Theory of Acquisition, and its relation to the Nozickian principles of justice in acquisition, it seems disingenuous for Nozick to reject the notion of the labour theory of value.

In the Marxist view, it is labour that creates value. In the Lockean view, it is labour that creates a property right because of the improved value and increase of value in a material good. These ideas seem to be two sides of the coin. Rather than dogmatically rejecting the notion of the labour theory of value, it seems that Nozick ought to embrace it as the very foundation of his own justice view of justice in holdings.

Redefining Exploitation. But what does this relation of the labour theory of value to the Lockean notion of acquisition and property rights have for the concept of exploitation? Simply,

⁵⁹ Nozick, Robert. *Anarchy, State, and Utopia*. New York: Basic Books, 2013. 253.

⁶⁰ *Ibid.*, 256.

it serves to redefine and reframe the notion of exploitation in society as a violation of property rights. If an individual creates value through the process of labour, and that value is what creates the notion of a property right, the process of labour facilitates the formation of a property right for the worker. While some of these property rights are exchanged under the principle of justice in transfer, the massive retention of value by the employer violates those principles.

If labour is the key to defining a property right, as Locke argues, even though workers in the status quo are not mixing their labour with something unowned there is a property right established over certain elements of the work product. This is, again, all a result of the notion that one has a property right over one's own labour. And though the material that the worker labours with is not unowned, that process of labouring helps to establish a property right, especially given the

By reframing exploitation as a violation of property rights and as a violation of the rights of the inviolable moral entity that is the individual. Rather than the more abstract sense in which exploitation is a problematic and immoral facet of capitalist society, reframing exploitation as a property rights violation makes issues of exploitation more pressing. This redefinition also provides a much stronger justification for the use of the difference principle to rectify the injustices that exist in society.

The Existence of Exploitation. Further, it must be shown that exploitation itself does occur. As stated earlier, Nozick's main argument against the notion of exploitation is that the excess value retained by the capitalist is simply a means of remunerating the entrepreneur for

the risk undertaken in beginning a business venture. And while in the short run this justification may be considered appropriate (especially for smaller and less secure enterprises), this argument does not properly justify the massive retention of value that occurs once an enterprise is no longer volatile and unstable.

Even though the very nature of the capitalist economy is volatile and uncertain, it is very clear that the massive retention of value that occurs in capitalist societies is not all the result of any remuneration for entrepreneurs. Simply, the rate of retention is too high and constitutes a violation of the principle of justice in transfer. It is nonsensical to argue that the massive retention of value that occurs in economies is a buffer against the market—especially considering the ways in which capitalists have a tendency to buffer themselves such that they suffer almost no loss from market instability while workers lose their jobs, their livelihoods, their homes and even more.

Though this may seem fundamentally opposed to the Nozickian concepts detailed in the entitlement theory, the theory of justice in transfer helps elucidate exactly how this violation of property rights occurs. Given the establishment of a property right as a result of work and labour, the massive retention of value represents the defrauding of an individual of their property rights. This occurs largely due to the coercive nature of this labour. Though Nozick may defend this aspect of the market mechanism as a voluntary transfer, the voluntary nature of any work within a *laissez-faire*, “free market” economy is more than questionable (and will be discussed later). Thus, given the property right that is established through the Lockean concept of acquisition, this reframed notion of exploitation makes this massive retention in value a violation of property rights and the principle of justice in transfer.

The Nozickian view on taxation also further explicates why this recognition of exploitation as a property rights violation is unavoidable given the principles of justice in acquisition and transfer. Consider, for a moment, the Nozickian view of taxation as forced violation of one's basic property rights.⁶¹ This is, of course, due to the fact that when one is "excessively taxed" the fruits of one's labour, one's very property rights are violated and taken from the individual. Herein lies the contradiction. How can it be that government forces are robbing an individual of their very property rights through taxation but participation in corporate structures that retain value from the individual at a rate not commensurate to the value created for the company does not represent a similar violation? Nozick's answer here seems to be that participation in the capitalist structures is voluntary and negotiated. However, this is unsatisfactory, especially considering that operating outside of those disenfranchising and exploitative structures is just as easy as leaving the state. Further, given the example of a state to which one consented, or even negotiated, the terms of taxation—which were better than other neighboring (or any existing nation)—it would still not be said that the taxation in that case would not be the same type of violation of property right.

Exploitation in the Compatibilist View. This redefinition of exploitation and the following argument that exploitation does exist has massive implications for the compatibilist view. Simply, it is the redefinition of exploitation as an issue of property rights that makes justifies the use of the difference principle to rectify the injustices that occur in the capitalist system. Simply, that exploitation exists and can be thought of as a property rights violations

⁶¹ Ibid., 169.

means that, even under the entitlement theory (not just the compatibilist view), interference, for the purpose of rectifying the injustices, is acceptable. In the compatibilist view, this redefinition of exploitation ultimately justifies the use of the difference principle to create systematic and structural “inequalities” that function to rectify the injustices in society.

Section 4: Inequality and Property Rights

In addition to the notion of exploitation as an issue of property rights, many will argue, still, that the notion of massive inequality of wealth will either still exist after the elimination of exploitation (due to historical injustices visited upon those of the lower class) or that if there is to be an elimination of much of the massive inequality of wealth inherently violate the property rights of individuals. Now, it would be easy to respond that the violations of the property rights of the few are justified by the overall gain for society (the utilitarian view) or that the overall increase in prosperity, in the long run, will remunerate for the short-term violation of property rights. However, the compatibilist view is twofold in response to the problem of wealth inequality and property rights: first, the inequalities left after the rectification of exploitation will be trivially justified under the difference principle and, second, that if dangerous inequalities of wealth still exist such that they harm the functioning of the overall economy will constitute a violation of the Nozickian proviso and thus nullify the property rights of individuals.

CHAPTER V: MAXIMIZING THE MINIMAL STATE

Both Rawls and Nozick eventually shift away from the abstract discussions of justice and turn towards an examination of actual political structures in their respective works. Rawls examines how the difference principle itself works to actually arrange the basic governmental structures that his work discusses in the abstract toward a realization of the types of inequalities within society that best provide for a just state. Similarly, Nozick uses the entitlement theory to justify the notion of the “minimally justified state” in order to prevent the infringement upon individual liberties that is inherent in obtrusive government structures.

However, now that the Rawlsian-Nozickian compatibilist view has been elucidated, it is important to understand the implications that this view has on the political structures and organizations in practicality. In essence, this chapter will seek to examine the question of what it is that the just and minimally justified state will look like in the compatibilist view. In essence, this chapter seeks to take the compatibilist view and extend its conclusions, maximizing the role of the minimal state (as it is portrayed in *Anarchy, State, and Utopia*) and realizing the true duties of a government within the context of this deontological theory of justice.

Section 1: A Framework for the State

Initially, it is paramount to recognize the importance of the deontological framework in which the compatibilist view functions and what this means for the compatibilist view on the function and duty of the state itself. This means, to the greatest extent, that much of what Nozick talks about, in terms of the duty of the state to avoid infringing upon the liberties and rights of the individuals are clearly correct: it is the function of the state to treat the rights of

individuals as a moral constraint. Thus, this view shall not provide an aggregate minimization of the violation of individuals rights. Rather, the state must be organized such that the rights of the citizenry are moral constraints on the actions of their state.

The Goals of the State. Nozick articulates early on in ASU that the goal of his view of justice is not to provide any sort of minimization of the number of violations of individual rights that occurs within the state. To do so, he argues, would be to reduce the view to a “utilitarianism of rights” that is fundamentally contrary to the notion of building a deontological theory of justice with individual rights at the forefront. Thus, the goal of Nozick’s libertarian theory of justice is to institute governmental structures with the primary goal of limiting the actions of the state, at an initial level, such that government does not violate the individual. It is this notion that, ultimately, leads to the concept of the minimal state—the argument that the only just state is an entirely minimal one. In keeping with the (so-called) Jeffersonian maxim, Nozick’s conception of the just state is the most minimally justifiable body that operates in such a way that it does not interfere with the operation of the individuals under its purview or the free-market mechanisms that should allow it to function appropriately.

However, how does this compare to the Rawlsian concept of the goals of the state? Initially, the two ideas seem incontrovertibly disparate. And this is, in large part, correct. The Rawlsian conception of the goals of the state are wildly different from that of Nozick’s. The goal of the state in the Rawlsian conception is, largely, to arrange the political structures of the state in such a way that they are in keeping with the two principles of justice. The arrangement of political structures such that all individuals are afforded the most extensive scheme of individual liberties and inequalities that exist within the society are beneficial to the

representative least-well off individual (in accordance with the liberal principle of equality of opportunity) is the main goal of political institutions. Arranging society in this manner is the best way to achieve the goals of a just state and of justice.

Given these principles of justice, it is clear that the practical implementation of such political structure would be wildly disparate from the Nozickian concept of the state. Rather than a minimal state, the Rawlsian state would actively intervene in the market as a means of maintaining just procedures. The difference principle would justify the intervention that benefits the least-well-off (at the cost of the best-off) thus seemingly violating the entitlement theory itself. Thus, even though, in a theoretical framework of justice these two concepts of justice can meld, it is impossible to envision a concept of the state that is able to fulfill the principles of justice in each view while at the same time satisfying the goals of a state as laid forth by Rawls and Nozick.

Compatibilism and the State. Given these two disparate conceptions of the goals of the state, the question then becomes, for the compatibilist view, how is it possible to create a synthesis. The answer, here, becomes rather controversial. Because, in many ways, the compatibilist state does not stray far from the Rawlsian conception of the state. However, as is necessary for a compatibilist view, it will become clear exactly how this is possible within the framework and the goals of the state.

Moral Constraints. Much as Nozick argues, then, the notion of individual rights must be treated as moral constraints on the action of the state. This works in an *a priori* fashion— instituting the structures of the state in such a way that they will not violate the individuals' rights rather than attempting to *ex post facto* minimize these violations. However, how does this

view of organizing governmental structures with individual rights as moral constraints on the state function within the context of a compatibilist view that takes into account Rawls' strictures on the arrangements of the same basic political structures?

The concept of treating individual rights as a moral constraint on the actions of the state works well within the Rawlsian account of the arrangement of basic political structures.

Thinking back to the original position, and the liberty principle, individuals in the original position institute the first principle of justice such that each of them, regardless of the justified inequalities of the difference principle, have certain rights that are guaranteed to them.⁶² Thus, individuals in the original position can be thought of as laying out the liberty principle with the same ends in mind as the notion of the Nozickian moral constraint on the state. In an *a priori* fashion, it is necessary for individuals to ensure that a government does not violate the basic and extensive scheme of rights defined by the liberty principle. In this manner, the liberty principle itself lays out these moral constraints on the state such that, regardless of the ultimate aims that the state may aim to achieve (especially in terms of the aggregation of utility, etc.), the rights of the individuals in the state come first. Thus, it is these rights that are defined by the liberty principle as primary in the evaluation of a state's duties and rights that act as the moral constraints on the state.

The Minimal State. Given these moral constraints that are to be placed upon the state by the nature of individual liberties, it is clear that there is this notion of a minimal state that must be established with these moral constraints in mind. However, it is also clear that this

⁶² Rawls, John. *A Theory of Justice*. Cambridge: Harvard University Press, 1999. 70.

minimal state will not be quite as minimal as that originally depicted by Nozick. Thus, the following section will describe the goals of achieving a minimal state by both minimizing the intervention of the state into the business of individuals while at the same time ensuring that the government fulfills all of its necessary duties while at the same time considering the moral constraints that are placed on the state's actions by the rights of individuals.

What does this indicate for the overall conception of the minimal state in the compatibilist view? Much like the conclusions Nozick reaches, there are limited functions of the state. However, though Nozick limits the necessary functions of the state to protection against force and fraud, the compatibilist view will challenge the limitations Nozick places on what it means for a state to adequately fulfill the duties of protecting its citizens. Rather than just protection against force and fraud in the sense of violence and fraudulent appropriation of holdings, as a function of the duty of the state to protect its citizenry, the state must create political structures that rectify the injustices that occur within society (as are identified by the entitlement theory and the compatibilist conception of justice).

Section 2: Realizing the Truly Minimal State

The intent behind the phrase "minimal state," especially as Nozick first intended it, was to bring about the concept of minimizing the intervention of the state with the affairs of individuals and the market. However, though the compatibilist view will adopt the notion of the minimal state, it seeks to redefine what it truly means to have developed the "minimal state." As intended, the notion of a minimal state seeks to reduce the essential functions of

governmental structures; however, the notion of a minimal state, in the compatibilist view will also refer to the minimal duties and responsibilities of a just government.

Thus, the concept of the minimal state in the compatibilist view is two-fold. First, the state must be established such that it interferes with the citizenry in the most minimal way possible, treating the individual rights as a moral constraint on the actions of the state. Second, the state must also fulfill its basic and most minimal duties to its citizens by instituting structures within government and economies that serve to rectify injustices.

Protection and the Minimal State

The ability of a government to protect its citizens is one of the most important functions of the state. And as one of the main duties that Nozick assigns to the state, the compatibilist view does not take this account much differently. Similar to the Lockean account and the state of nature theory cited by Nozick, governments are instituted in order to ensure not only the physical protection of individuals but also a protection of their individual rights. And that is the key behind most of the arguments that will follow in the context of what it is that the minimal state must do for its citizens. There are clearly a number of protections in terms of life and liberty that a state must offer.

Similarly, the state must function to protect the property rights of its citizens—especially when those property rights are being exploited by the very market mechanisms that are supposed to ensure the proper allocation of those holdings. Though in the Nozickian view any governmental function other than the protection of its citizens is a violation of that individual's rights (as an unjust appropriation of that individuals' holdings), the activities and structures

considered necessary in the compatibilist view seek to flesh out the true nature of what is necessary for a government to *actually* protect its citizens.

Reframing Force and Fraud. Given this reframed concept of the derivation of property rights, exploitation, etc., it is, therefore, necessary to also reframe the concept of what it means for a state to adequately protect its citizenry from force and fraud.

How, then, does the compatibilist view seek to redefine what it means for a state to protect its citizenry against force and fraud? To begin with, we can start by examining the original intent of these protections. Simply, the minimal state's duty to protect citizens against force and fraud serves as a way of limiting the duties of the state to non-interference in the working of the market mechanisms, and ensuring that no single individual takes it upon herself to appropriate the holdings of another without respect for the principles of justice in transfer or acquisition. In essence, the duty of the state is to protect the most basic of individual's rights while at the same time enforcing a certain respect for the principles of justice as laid out in the entitlement theory.

Given, then, the reframing of exploitation and equality of opportunity as key in achieving a just distribution under the entitlement theory, the duty of the state must be reframed as well. Though the concept of protections against force stays relatively the same—the state has a duty to protect individuals from physical harm, the concept of protection against fraud is what really changes. In Nozick's view, the concept of protection against fraud can be thought of in a very strict sense. Ensuring the non-violation of the principle of justice in transfer, by preventing fraudulent appropriation of holdings, is one of the key roles of government.

However, the compatibilist conception takes this notion of protection against fraud in a much looser sense.

Rather than simply preventing citizens from being taken advantage of at a micro level, the government has a duty to prevent its citizens from having their holdings appropriated fraudulently in any sense. This includes macro level “fraud” such as exploitation that occurs within an economy and larger political, economic, or social structures that deny individuals equality of opportunity. f

Redistribution in the Truly Minimal State

One of the major breaks with the concept of Rawlsian justice within Nozick’s writing is with the notion of redistribution, especially as a means of achieving a just state. Nozick argues that redistributive schemes function to rob individuals of holdings to which they are rightfully entitled in order to provide for a greater good. This is problematic in a number of ways in the Nozickian ways.

However, redistributive structures in the compatibilist view serve a different function: as a practical means of remunerating individuals for injustices within a society. Though Nozick does not consider exploitation to be a possibility in a free-market economy, the previous chapters served to demonstrate not only how exploitation occurs and must be considered a violation of property rights.

Mechanisms of Rectification. So, given the Nozickian distaste (to put it lightly) for policies of redistribution that take holdings from the well-off and give them to the worst-off, how does the compatibilist view justify the use of inequalities that serve the same function?

The answer comes in that justifiable redistributive schemes are the mechanism for the rectification of injustice. Given notions of exploitation as inherent within the operation of “free” markets and inequalities of opportunity as indicative of injustices under the entitlement theory, it is clear that the state must have a mechanism for the rectification of this injustice. Herein lies the purpose of “redistributive schemes” in the compatibilist, for without a mechanism for the rectification of this injustice, the state has no ability to ensure that a just distribution of holdings can be maintained in instances where the principles of justice are violated.

In this sense, considering these mechanisms of government “redistributive” is a slight misnomer. Certainly these policies of government serve to redistribute holdings; however, in the compatibilist view, to redistribute these holdings through such schemes is not to rob Peter to pay Paul. Rather, redistributive schemes serve to reallocate goods in such a way to remunerate individuals for the injustices that occur within a society.

Taxation and the Minimal State. Nozick refers to taxation beyond that necessary to finance the state’s duties to protect the citizenry as tantamount to forced labour. However, for the compatibilist view, the concept of taxation is justified as a means of ensuring the proper functioning of the state. It is, of course, true that excessive unnecessary taxation is indeed abusive of the power of the state and is, therefore, unjustifiable. However, the practice of taxation is one of the most important ways of creating structures within society that are able to rectify injustices. Taxation allows the government to redistribute holdings in accordance with the ideas articulated above in ways that are not incompatible with the entitlement theory given their function as a mechanism for the rectification of injustice within society.

Progressive income taxes serve as an example as to how this can work. Whereas in the Nozickian view progressive taxation as a means of funding the state's duties to protect citizens is an unjust redistribution of another's holdings (to which they are rightfully entitled), the progressive tax can serve quite the opposite function. Rather, it can actually remunerate individuals for the injustices within society and can correct them by placing the burden of funding the functions of the state on those who are well off because of exploitative functions of the "free market," etc. Thus, rather than any scheme of "equal" taxation, or worse regressive tax schemes, governments can use progressive taxation as a means to simultaneously fund those protections of the citizenry and ensure a redistribution of holdings back to a state that is in line with the principles of justice in acquisition and transfer.

However, this does not necessitate the abandonment of the fundamental ideas of Nozick's entitlement theory. Rather, as a protection against the exploitation of individuals by problematic governmental structures, the compatibilist view, fully embraces the notion that taxation beyond that necessary to rectify injustices within society are problematic and should be eliminated. Here, though the reality described by Nozick is significantly different from the compatibilist view, the view does not represent a rejection of Nozick's principles.

Section 3: Summation

In the end, it is clear that the view of the state, as established in this chapter, is wildly different from the minimal state that is argued for by Nozick. However, it is also clear that the reframing of the aspects of the principles of justice in acquisition and transfer necessitate this type of reframing of governmental obligations. In this sense, though the end view of the state is

different from that articulated by Nozick, it is derived from an extension of his original principles incorporated into the compatibilist view. In this sense, as a deontologist, it seems that Nozick would be more concerned with the means (the principles) used to justify the end view of the state.

And it is in keeping with this deontological framework that the strong Nozickian sense of individual rights and radical protections of property rights is necessary and encouraged in the compatibilist view of the state. And it is out of the respect for those rights that government duties must be maximized in order to meet the demands of the minimal state that can fulfill its duties to its people. Thus the compatibilist view is no less justified due to its break with the Nozickian orthodoxy (as it were) and rather provides new insight as to how real defenses of property rights based on the reframed notion of exploitation as a property rights violation can actually be understood.

CHAPTER VI: OBJECTIONS AGAINST THE COMPATIBILIST VIEW

It is not lost that the view put forth in this work is very controversial in nature, not only because of the nature of its conclusions for the nature of the state or the concept of a deontological view of justice (I will not flatter myself). However, the concept of attempting to construct a compatibilist view of justice, attempting to bring together two of the most controversial and disparate political philosophers into a single, compatible view is highly problematic to many. Thus, it is the purpose of this chapter to lay out some of the most common objections laid before the author during the process of writing and contemplating the compatibilist view in order to elucidate and strengthen some of the conclusions and the logic behind those conclusions throughout this work. This is, of course, nowhere near a comprehensive list of objections; however, these are some of the most important contentions levied against the compatibilist view.

Section 1: Why the Compatibilist View?

This is the first objection vied with in this chapter, not because it is the most commonly asked about the project of this work, but rather because it is often the unspoken question. There is a certain curiosity in advancing the notion of an expansive “minimal state” as described in the previous chapter, but that does not mean that the conclusions drawn in the chapter prior to this one, or the other chapters in this work, could not have come from another vein of thinking. Thus, the question arises of simple motivation. Why is it necessary to examine these two deontological views of justice within the context of each other to reach conclusions about the role of the state in ways that are much easier and less dubious.

The Compatibilist View for the Libertarian

There are two answers to this question, and they come from the benefits that arise from examining these questions from the perspective of followers of both veins of thought: the Nozickian and the Rawlsian. Initially, from the view of the libertarian, the Nozickian, who thinks of the role of the government only in terms of the entitlement theory and of property rights, it is necessary to reflect on the actual meanings of those property rights. The notion that exploitation is a violation of property rights is, at least in this view, an inescapable conclusion of the Lockean theory of acquisition.

This is what makes the compatibilist view necessary when approaching these questions of justice from the perspective of the libertarian. While it is important and necessary to view questions of justice from the view of the entitlement theory, it is clear that this view often obfuscates, with its dogmatic insistence on the divine prescience of the “free-market,” the true nature of what actually occurs in society. Things are not cut and dried. Exchanges are rarely entirely mutual in the way that is necessary for this deification of the market to work. However, the libertarian view tends to ignore these consequences of the free market system or explain them away as justified because of the market’s ability to distribute holdings justly.

Given this, the project of establishing a compatibilist view is of the utmost importance. It is necessary to construct a groundwork of individual rights with those rights as moral constraints on the actions of the state, in order to force the libertarian to acknowledge the necessary functions of principles of justice that rectify extant violations of individual rights that they would otherwise ignore. Simply, rather than starting from a foundation that the libertarian would automatically

reject, the compatibilist view acknowledges the primacy of individual rights as a means of demonstrating the necessity for protections of those rights that would otherwise be considered an overreach of governmental bodies. Though the conclusions of the compatibilist view are severe challenges to the libertarian view, those conclusions are based on the same radical defense of individual rights and limitations of government to necessary functions.

Benefits from the Rawlsian Perspective

Similarly, there are clear benefits for the Rawlsian, liberal justice theorist in confronting the reality of justice. Though the Rawlsian view takes individual rights as its foundation, they are often lost in terms of the arrangement of political structures. And though the chain connection and difference principle are clearly beneficial in terms of maintaining individual rights and rectifying injustice, it is necessary for a deontological theory of justice to, once again, reflect on the primacy of the duties and rights of the individuals and governmental structures.

Here, the concept of exploitation as a violation of individual rights is paramount as well. Though the Rawlsian view recognizes that injustices, such as the denial of the equality of opportunity and exploitation, occur, attacks on those views obfuscate the justification for the rectification of those consequences by citing the primacy of individual rights and the consequences of interference with market mechanisms. Herein lies the beauty of the compatibilist view: by reinforcing the primacy of individual rights in the conception of justice, the compatibilist view avoids the arguments against the Rawlsian conception, many levied by Nozick, that claim it serves merely to justify ignorance of the consequences of government and societal structures on individual rights.

Further, the recognition of exploitation as a property rights violation is, again, important from a Rawlsian perspective as well in the sense that it makes the notion of exploitation necessitating rectification more palatable and plausible. In many ways, the Nozickian argument against the traditional concept of exploitation is that it is simply a free market exchange and, therefore, it is impossible for it to be exploitative given the individuals' choices regarding the matter. However, this compatibilist view forces the libertarian theorist to recognize that, even based on the standards of the entitlement theory, exploitation, first, is extant even within a "free market" and, second, necessitates rectification as a violation of the entitlement theory itself. By characterizing exploitation as a property rights violation, a violation of one of the individual's most foundational rights, the compatibilist view, through the very logic of libertarian theory, subverts the notion that any non-mutuality is symptomatic of the structural problems within the market and deserve correction.

It would also be a failure, within this project, to acknowledge the double-edged sword that the compatibilist view is for the Nozickian view. Despite the justification of the principles of justice in the compatibilist view along the libertarian argumentation of Robert Nozick, it is clear that the end result for political arrangements, as described in this work, is a fairly liberal one. Thus, from a Rawlsian perspective, there is a two-fold benefit toward constructing a compatibilist view in that it serves to justify a fairly liberal arrangement of the basic structures of the state along the libertarian hardline described by Nozick.

Admittedly, this is one of the ultimate aims of this project: to deconstruct the concept of what the "minimal state" is while at the same time constructing a view that the Rawlsian will accept and the libertarian must accept insofar as it uses the very principles of libertarian theory

against the conclusions that the libertarian is wont to make. Here, the motivation behind the compatibilist view is clear. If the minimally justifiable state with regard to Nozickian principles is less minimal than argued for in *Anarchy, State, and Utopia*, the state necessarily must be less minimal in order to ensure the basic rights of the individuals. Here, the compatibilist view seeks to acknowledge the dual nature of government in that as it expands it can protect more rights and at the same time tends to violate more rights. This view strikes a balance between the limiting of government's tendency to violate the rights of individuals within the state, while at the same time maintaining an expansive state that is able to adequately protect the rights of the citizens as it is designed to do. Ultimately, this requires a more expansive state than Nozick envisions and necessitates more limitations on the actions of government than it seems that Rawls lays out.

Section 2: Property Rights and Exploitation

Continuing along the same vein as many of the benefits of the compatibilist view, in terms of why approaching this project as a one of creating a compatibilist view is necessary, it is understandable that defining exploitation as a property rights violation, which is key to the compatibilist view, is a controversial notion. This section of this chapter will seek to deal with the number of arguments levied against this view with regard to this view and the concept of property rights, exploitation, and other related issues.

On the Chain Connection

One of the more controversial claims within this work is the reliance on the chain connection and the interconnected nature of the least-off and best-off individuals within society.

Much of the argumentation for the compatibilist view hinges on the idea that the well-being of the most advantaged individual is based, in part, on the well-being of the least-well off.

However, though this claim is contentious, it is well founded in terms of Rawls' view and in empirics.

This empirical claim has abundant support beyond that offered by Rawls. Essentially, the notion of the chain connection can be thought of in terms of human capital. How do individuals in the upper echelons of society get where they are? They depend upon human capital and ingenuity beyond that of their own in order to build further enterprises. This relies not only upon middle management but upon the very basic units of labourers. The productivity of this human capital that provides the very foundation of these enterprises is inextricably tied to their level of economic well-being. This create the link between the least well-off and the best-off in society. Simply, without basic necessities such as food or water or shelter, employees are not going to be as productive (limiting the overall benefit to the well-off). Beyond the simple, education, financial security, and other needs further ensure the ability of the worker to produce—for themselves and for the company and for society as a whole.

For Rawls, this is an important recognition. Especially in terms of the justification for the difference principle, the argument for the chain connection is that benefitting the least well-off in society is beneficial to the best off as well because of the massive benefits those minor increases in well-being have for the least advantaged of society. This, in turn, not only begets a better society for the well-off individual, it also fosters a better environment for economic and business growth as well as a more stable and prosperous society in general. In terms of the

inequalities that are justified by the difference principle, the end result is not just the benefit of the least advantaged in society, but also a benefit to the entire society as a result.

Property Rights in the Compatibilist View

Property rights are at the center of the Nozickian concept of justice. Thus, it makes sense that many of the arguments against the compatibilist view have to do with the concept of property rights as advanced in this work.

The Proviso and Property Rights. The Lockean Theory of Acquisition is crucial to the notion of exploitation and property rights in the compatibilist view; however, the conclusions regarding the Lockean proviso are still controversial. One clear objection to the invocation of the Lockean proviso as a means of understanding and explaining exploitation is that under the Nozickian proviso, it would almost never function to prevent a property right because of the limited circumstances in which the proviso actually applies. As Nozick defines it, the proviso limits the establishment of property rights in circumstances where the maintenance of that property right is to worsen the situation of another. Nozick identifies very few scenarios in which limitations on property rights are justified on the basis of the proviso.

However, this move on Nozick's part does not indicate that the proviso, in certain circumstances, will act as a check on the establishment of property rights in certain situations. Though the examples offered by Nozick seem to be wild fantasy, the truth is not too far off, especially in the context of many of the copyright protections and patents that have been used to prevent individuals from obtaining life-saving treatments. In this case, governments acting dogmatically to protect the property rights of individuals who create life-saving treatments

actually serves to demonstrate the necessity of the proviso itself. Nozick himself offers a similar example wherein there is a property right for an individual creates a life-saving treatment because there are no limitations on others recreating similar treatments that act to save lives. However, when those protections are taken to the extreme and others *are* prevented from recreating the life-saving treatments, there must be a limitation of property rights.

Further, even without the concept that the proviso does apply in certain extreme cases where the well-being and basic necessities for others are at stake, the limitations of the proviso itself does not overly burden the compatibilist view. Even if the proviso itself does not apply in the majority of cases, it still serves as a justification for the necessity of political structures that act to limit property rights when they become destructive to certain ends.

Exploitation and the Compatibilist View

As it is, there are a number of conclusions of the compatibilist view that are likely to be distasteful to the Nozickian and to the Rawlsian as well. However, it is likely that the most contentious of these issues will be the concept of property rights put forth in this work as well as the reframing of exploitation as property rights violation. Since there are a number of issues surrounding this argument, this particular section will address some of the most problematic arguments levied against this view.

Problem of Mutual Exchange. The first, and perhaps most important issue, for the compatibilist concept of exploitation is the notion that the exchange that occurs within the free market cannot be exploitative or, at the very least, violate the principle of justice in transfer because the exchanges are voluntary. Simply by nature of the system itself, the fact of the matter

is that individuals undergo trade without any obligation to do so. Further on this point, in fact, when governments intervene and forcibly intervene in the making of those voluntary exchanges, that is when the principle of justice in transfer is violated.

This view is widespread, but that does not necessarily prove its validity. That a trade is mutually beneficial to both parties does not ensure that the instance of the trade is not exploitative. Mutual benefit is not a necessary and sufficient condition to ensure that exchanges in a market are not exploitative. The choice to participate in a “free markets” is a non-choice. Individuals do not have the choice to or to not participate in the market structures that hold the key to their survival. Simply, these economic and political structures, by virtue of how they are organized, do not give individuals the choice to participate in them or not, and thus, under this coercive force of the structures, just because the choices that an individual makes within the context of the system are mutually beneficial does not mean that there is not exploitation occurring. Just because it is better for the miner to purchase goods at the company store rather than to starve, doesn't mean that the illusion of choice offered constitutes true liberty for the individual.

Property Rights and the Problem of Unowned Property Rights. The final problem facing the notion of exploitation that will be addressed here is the notion of the creation of property rights vis-à-vis unowned property and labour. Locke's original description of the theory of acquisition described the mixing of labour with unowned property as the key to acquiring property rights. However, the contention in this piece, especially as it relates to the notion of exploitation is the key to this acquisition. It is by the creation of this property rights

during the process of labouring that results in the property rights. However, this is contentious, especially considering the original contextualization of this notion of acquisition.

In response to this objection, one can consider a thought experiment. Take, for example, an individual who simply appears in the middle of a city. She is kin to no one, knows no one, and has no property of her own. Also, let assume that all property within ten thousand miles is accounted for. All property, including the forests, natural resources, etc. has been properly and justly acquired by the individuals who live in the city. However, an entrepreneur offers her a job in a factory and she will be compensated with a single unit of currency for a specific job. The transaction occurs and the recently appeared individual goes about her business with her currency.

Now, from the narrative, there are two conclusions: either the individual has a property right over the currency she now possesses or she does not. The more likely of these conclusions is, of course, that she does have some sort of property right. However, from whence did that property right come? There are, again, two alternatives. First, is the currency a gift for her labours? This seems an unlikely and unsatisfying answer to claim that all work results in currency simply out of the generosity of the individual employing the labourers.

However, the more logical explanation here is that the individual obtains a property right from an exchange of sorts. Now this occurs not as a result of any type of prior owned material good, but comes as a result of the labour the individual has exerted. Thus, because of the ownership, the property right, the individual has over her own labour, the transaction is one of property right (of the labourer's over her own labour) for property right (of the entrepreneur over the currency).

This, again, has a number of implications for the notion of exploitation and the compatibilist view. The first of these is the affirmation of the notion that individuals have a property right to their own labour and that it is this ownership over one's labour that leads to the compensation seen in exchanges. The second of these implications is that the lack of ownership over material goods is not necessary in terms of the acquisition of property rights. Thus, the notion of exploitation that the compatibilist view relies upon is not necessarily just a property right that a manufacturing worker might have over some hypothetical work product—especially in terms of more modern economies where the production of material goods by human hands is becoming more and more obsolete. Rather, exploitation hinges on the very real property right and ownership one has over one's labour.

Section 3: Equality of Opportunity

Nozick seems to spend more time within *Anarchy, State, and Utopia* railing against the concept of the equality of opportunity as he does constructing his positive view of the entitlement theory. Thus, it makes sense that the concept of providing for the equality of opportunity within the compatibilist view would be of equal concern to the Nozickian. Similarly, insofar as the liberal principle of equality of opportunity is one of the key facets of the second principle of justice within Rawls' framework, the issue of ensuring the equality of opportunity is equally important to the Rawlsian. This section will deal with the critiques regarding the concept of Equality of Opportunity within the compatibilist view.

The Necessity of Equality of Opportunity

The first problem with the notion of the equality of opportunity within the Nozickian perspective is the need for the equality of opportunity to begin with. Here, there is a simple question of the motivation behind the necessity of the equality of opportunity, especially from the perspective of governmental structures, the maintenance of the equality of opportunity requires an intervention into the mechanisms of the free-market (which already serves to provide an equality of opportunity to begin with), thus defrauding individuals of their rightfully entitled holdings in order to redistribute those goods in an unjust scheme that will actually denigrate the realization of any robust equality of opportunity.

This, however, is an inadequate picture of the nature of the equality of opportunity and the role that it plays within the compatibilist view. Referring to the arguments made in Chapter IV, any structure within society that serves to prevent equality of opportunity acts as a violation of the entitlement theory and violates individuals' property rights.

Herein lies the necessity of achieving equality of opportunity. Essentially, if there are structures or occurrences that prevent equality of opportunity for individuals, it is the result of some historical injustice that has occurred. Simply, as a consequence of the historical violation of property rights, either through the violation of the principle of justice in transfer or in acquisition, individuals in the here and now experience a lack of equality of opportunity on the basis of these historical injustices. Much in the same way that Blacks face a number of problems in modern society due to the massive historical injustices perpetrated against against them, historical injustices are, as Nozick himself argues, pervasive and continue to lead to further problems until the injustice is rectified.

That is the reason for the equality of opportunity in the compatibilist view. Rather than the assumption in the Rawlsian view that the notion of equality of opportunity is an innate good or that it is inherently beneficial, the compatibilist view justifies the notion of achieving equality of opportunity as a function of the rectification of injustices. Simply put, the lack of an equality of opportunity is symptomatic of an unjust society not because the equality of opportunity is itself the necessary and sufficient condition for a just state but rather because it reveals the historical injustices within a society that necessitates correction.

Achieving the Equality of Opportunity

Getting past the question of whether or not equality of opportunity is a necessary condition for a just state, allows a reflection on how the compatibilist view seeks to achieve that equality. Many of the critiques levied against the Rawlsian view within Nozick's work relied on the basis that any achievement of the equality of opportunity would necessarily violate the property rights of individuals within the state in order to achieve the goal. However, as described in Chapter IV of this work, the compatibilist view seeks to achieve the equality of opportunity by rectifying the injustices identified by the principles of justice in acquisition and transfer. However, there are still some questions to be examined.

Mechanisms of Equality. Though the nature of the state has been discussed in Chapter V, it may still be unclear how the mechanisms the state may use to achieve the equality of opportunity could possibly not violate the property rights of many in a redistributive scheme. It may seem that the dual goals of maintaining a just distribution of wealth (by not further violating individual's property rights as a means of rectifying injustice) and achieving even a semblance of the equality of opportunity are fundamentally mutually exclusive.

This, however, is not the case. It is one of the major contentions of the compatibilist view that the elimination of the injustices identified by the two Nozickian principles of justice is one of the two major factors that contributes to an inequality of opportunity, the other being bigotry and prejudices. It is possible for these to be resolved through the inequalities that are justified under the Rawlsian difference principle. These inequalities serve as the mechanism by which the state can attempt to recreate the counterfactual reality wherein the injustices the state seeks to rectify did not occur.

Bigotry and the Equality of Opportunity. It can also be argued that if there are two main causes of an inequality of opportunity in society, one being the injustices of distribution identified by the principles of justice in acquisition and the other being bigotry and prejudices, how can a government justify or seek to remedy the elimination of bigotries that prevent the equality of opportunity? It seems unclear that a government has a need to rectify these types of phenomena, even if they deny the equality of opportunity because it does not seem to violate any of the principles of justice to harbor problematic beliefs, even if those beliefs deny individuals the equality of opportunity. This seems especially problematic for the compatibilist view given the considerations laid out above wherein the notion of the equality of opportunity is necessary for justice only insofar as it is symptomatic of injustices within a given distribution.

There are a number of responses to this argument against the compatibilist view, but it is clear that there must be a certain recognition that the compatibilist view does not argue that the harboring of bigoted thoughts or prejudicial beliefs is fundamentally opposed to the concept of justice. Further, it must be articulated very clearly that the compatibilist view does not justify political structures that seek to prevent individuals from having freedom of thought—to do so

would be a violation of the Liberty principle. However, it seems clear that any action that, in a prejudicial manner, denies another individual an equality of opportunity, or especially government structures that systematically disenfranchise individuals, even in non-material ways, must be dismantled for justice to occur.

Initially, it is possible to think of the prejudicial beliefs that, in turn, lead to prejudicial actions as problematic in the compatibilist view as a violation of the liberty principle itself. Think in terms of the individual's right to liberty and life. Prejudicial actions deny individuals these rights on the very basis of irrelevant factors: race, ethnicity, gender identity, sexual identity, religion, and every other imaginable factor. In this manner, actions, not thoughts, that deny individuals on the basis of these factors in a prejudicial manner can be considered unjust. Insofar as structures within society and government, through prejudice, limit the actions of individuals based on those factors listed above through social pressures and acts of hate or through historical disenfranchisement, enslavement, or the denial of economic opportunity, it is clear that individuals are consistently robbed, by societal structures, of liberty.

Second, even if it is not convincing that bigoted actions that disenfranchise individuals, especially in a systematic sense, can be considered a violation of the basic rights to liberty, they can also be considered violations of the principle of justice in terms of the effect that these actions have on the distribution of goods. Bigoted and prejudicial actions can be considered a violation of property rights on the basis that they inhibit the free and mutual exchange of goods that is in accordance with the principle of justice in transfer.

Current situations demonstrate how this is true in remarkable fashion. Take the oft-quoted statistic that women are paid, on average, seventy-eight cents on the dollar compared to

men. This action is, of course, a result of patriarchal structures and bigotry that has fostered through centuries. So, in many ways, this phenomenon is the result of massive structural inequalities throughout history that have massively disenfranchised women for decades. But insofar as many of the existing barriers facing women are still the result of rampant misogyny and sexism, they actually affect the process of trade, competition, and free-market operations that are necessary under the Nozickian view.

The way in which women, and many other disenfranchised groups in society, are treated does not simply occur in a vacuum. This dogma, this bigotry has a real effect on the distribution of goods within a society. This effect occurs because of the way in which the denial of the equality of opportunity because of bigotry and prejudice violates the principle of justice in transfer. If a mutually beneficial exchange between two anonymous parties is, in any way, altered by the prejudicial beliefs or actions of one of the parties, that instance must be thought of as a violation of the principle of justice in transfer, even if (especially if) the transfer does not happen.

Rectifying the Consequences of Bigotry. Given the identification of these factors as a violation of justice, however, it does not follow that the government will be able to rectify these injustices without violating the property rights of other individuals. How is it possible for a government to attempt to rectify the injustices caused by massive structural inequalities without violating the rights of other individuals who did not participate in the injustice?

This objection gets at one of the major points of this particular issue with achieving an equality of opportunity within the compatibilist view: just because one did not actively *seek* to benefit from an unjust system does not mean that one *has not* benefitted from that very same

system. Not only is it possible for an individual to violate principles of justice in acquisition and transfer without knowledge of that violation, but it also becomes more and more likely as a function of the privilege that individual may or may not have.

Let us take for example, here, a more modern phenomenon: affirmative action. In Nozick's view, the concept of affirmative action itself would likely be considered enormously problematic as (in that view) it would be seen as redistributing the opportunities of individuals in society in a largely unfair way that violates individuals' rights. This functions in the same way that a progressive tax would. It takes from those who are advantaged and gives to those who are not. This would be especially problematic for a poor, white, male individual who seems to never have been able to catch a break in life but never participated in structures that sought to disenfranchise others. In the Nozickian view, then, it seems that the process of Affirmative Action represents a violation of this individual's rights in ways that are fundamentally unacceptable.

However, the compatibilist view sees this process in a different light. First, simply by virtue of skin color and gender identity any white male in society reaps the benefits of massive privilege. Thus, even though he did not seek to benefit from that privilege, the individual in question in this scenario has benefitted from this system. Though he may not have actively sought out benefits for himself on the basis of his skin color or gender, the fact of the matter is that even the ignorance of those benefits is a function of privilege itself. In terms of the entitlement theory, this constitutes a violation of the principle of justice in transfer as it unjustly channels underserved goods to individuals who are not rightfully entitled to those holdings

and further unjustly defrauds individuals not benefitted by privilege of their rightfully entitled holdings.

This example, of course, shows only one of the ways in which governmental and societal inequalities can be arranged to benefit the least well off in society without violating the property rights of others. This not only identifies that possibility of rectification but also elucidates the further point that even though there may be a perceived violation of property rights, that is not the case. The illusion of a property right does not ensure that right. And in the same way that privilege blinds individuals to the true nature of their illusory property rights and the benefits they gain from structures in society fueled by bigotry and prejudice, similar exploitative economic and political structures create pervasive injustices while blinding society to the nature of those injustices through the illusion of free-market practices.

CHAPTER VII: CONCLUSION

Regardless of the arguments contained within this work, the fact remains that the concept of any compatibilism between the views of Robert Nozick and John Rawls is controversial. While these two Harvard giants offer beautiful, albeit seemingly disparate conceptions of justice, the project of establishing a compatibilist view maintains a certain attraction—not only in terms of its ability to challenge the traditional misconceptions about these two figures and the ends of their concepts of justice, but also in terms of the challenge a compatibilist view would lay before the feet of libertarian and liberal justice theorists alike.

However, though there are a number of arguments here as to why the view presented in this work ought to be considered a compatibilist view, some may still reject this conclusion. Nonetheless, there are clear instances of compatibilism demonstrated by this work that demonstrate the viability of justifying a vastly different conception of political philosophy from the “minimal state” on the basis of libertarian principles.

Further, it is, at the very least, clear that concepts of exploitation cannot simply be explained away by market deification. The problematization of notions of exploitation in terms of the effects that has on property rights warrants answers from libertarian theorists about the nature of property rights and whose property rights governments are duty bound to protect. It seems that a radical defense of property rights means defending those rights of individuals who make less than mutual deals due to necessity and market forces.

It is also clear that there is further work that needs to be done in the elucidation of what the compatibilist view looks like in other facets of justice theory and in other aspects of Rawlsian and Nozickian philosophy. Further application of the compatibilist view to political philosophy

or in areas of ethics might also be possible in terms of a deontological approach to justice. Insofar as this work was not intended to provide a complete evaluation and consideration of the applications of the compatibilist view, further inquiry into the nature of the underlying relations between libertarian and liberal political thought (and specifically between Nozick and Rawls) might contribute to the understanding of the works of both philosophers—even if the viability of the compatibilist view itself is questionable.

And though there are no doubt quarrels to be had and problems with the concept of compatibilism, both in general and with the view laid out in this work, there is clear promise not only for the possibility of a Rawlsian-Nozickian compatibilist view and for the extension of libertarian principles to underscore further developments in both political philosophy and in justice theory.

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